

LEGAL RESEARCH ON STRUCTURED FINANCE

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Covering articles on:

- ❖ *Income tax issues in securitisation in India*
- ❖ *Securitisation of Receivables by Corporates*
- ❖ *Data Centre Securitisation*
- ❖ *Credit Default Swaps in India*

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Income Tax Issues in Securitisation in India: Navigating the Gap Between Statutory Design and Practical Reality

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Abstract

Securitisation has emerged as a critical instrument of credit intermediation in India, enabling originators to convert illiquid loan pools into tradeable securities and allowing investors access to diversified, asset-backed cash flows. While Parliament has enacted provisions designed to achieve tax transparency for securitisation trusts — principally through Sections 10(23DA) and 115TCA of the Income Tax Act, 1961 — the architecture of the law struggles to accommodate the commercial complexity of real-world transactions. This paper examines the principal income tax issues encountered in practice: the treatment of excess spread and deferred consideration, turbo amortisation using the originator's retained share, the character and timing of income in the hands of investors, withholding tax mechanics, capital gains on pass-through certificates, and the special challenges faced by foreign investors. Drawing on judicial rulings, advance authority decisions, CBDT circulars, and discussions with transaction participants, the paper identifies the fault lines in the current framework and proposes areas requiring legislative or regulatory clarification.

I. Introduction

Securitisation — the process by which a pool of financial assets is transferred to a special purpose vehicle ('SPV') which then issues debt instruments or pass-through certificates ('PTCs') backed by cash flows from those assets — has been part of the Indian financial landscape since the early 1990s. The market received its first robust regulatory architecture through the Reserve Bank of India's Master Directions of 2021¹ and the Securities and Exchange Board of India regulations of 2008 (as amended in 2021)². At its peak, the Indian ABS/MBS market has seen annual issuance volumes exceeding Rs 1.5 lakh crore, with vehicle loans, microfinance receivables, and mortgage portfolios forming the dominant asset classes.

The income tax framework for securitisation has undergone significant reform. Prior to 2013, the sector operated under general trust-taxation principles, giving rise to constant disputes as to whether the SPV or its investors bore the primary tax liability. The Finance Act 2013³

¹1. Reserve Bank of India, 'Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021', RBI/2020-21/65 (September 2021).

²2. Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (as amended 2021).

³4. Finance Act 2013, inserting Chapter XII-EA (ss 115TA–115TC) into the Income Tax Act 1961.

introduced Chapter XII-EA, imposing a flat 'distribution tax' on the trust, broadly analogous to the dividend distribution tax mechanism. This proved unsatisfactory because it created economic double taxation and did not reflect the conduit nature of the trust. The Finance Act 2016⁴ overhauled the regime: Section 10(23DA) now exempts securitisation trust income⁵, and Section 115TCA⁶ places the tax liability on the investor, with the trust obligated to deduct tax at source under Section 194LBC.⁷

Despite this apparent move towards tax transparency, a number of structural issues remain unaddressed. The provisions were conceived around a plain-vanilla securitisation model — a single originator, a homogeneous pool, and a clean two-tranche capital structure. Modern transactions are considerably more complex: pools are sometimes multi-originator; excess spread may be pooled, reinvested, or returned to the originator in a variety of ways; subordinated interests may be partially retained and subsequently sold; and turbo repayment mechanisms alter the sequencing of cash flows in ways the statute does not anticipate. This paper examines these fault lines systematically.

II. The Statutory Framework: An Overview

A. Pre-2016 Position

Before the 2016 amendment, securitisation trusts were taxed as 'specific persons' under Chapter XII-EA. The distributing trust was required to pay a distribution tax at a flat rate on income distributed to investors, regardless of the investor's own tax position. The regime was criticised on multiple grounds: it did not allow treaty benefits for foreign investors; it did not differentiate between interest and principal repayments; and it resulted in effective double taxation where investors were also assessed on their investment income. Litigation was common, with originators and investors both challenging the characterisation of assignment proceeds and coupon receipts.⁸

B. The 2016 Pass-Through Regime

Section 115TCA fundamentally reimagines the securitisation trust as a fiscally transparent vehicle. Three principles underpin the regime. First, the trust itself is exempt from tax on income arising from its securitisation activities by virtue of Section 10(23DA). Second, income is taxed in the hands of each investor as if the investor had directly received the income from the underlying assets — thus preserving income character ('character retention'). Third, the trust is required to withhold tax under Section 194LBC at the time of distribution, at rates that vary with the investor category.

⁴5. Finance Act 2016, amending ss 115TA–115TC and inserting s 10(23DA) to create pass-through treatment for securitisation trusts.

⁵7. Income Tax Act 1961, s 10(23DA): income of a securitisation trust from its activity of securitisation exempt from tax; see also Circular No. 14 of 2014, CBDT.

⁶6. Income Tax Act 1961, s 115TCA (applicable to securitisation trusts registered with SEBI or authorised by RBI).

⁷8. Income Tax Act 1961, s 194LBC; rate of TDS is 25% for resident investors who are individuals/HUFs and 30% for others; the trust itself deducts tax at source.

⁸9. CBDT Circular No. 2 of 2002; see also *Punjab National Bank v Additional Commissioner of Income Tax* [2008] 113 ITD 86 (Del) interpreting assignment of receivables.

Section 115TCA(3) requires the trust to furnish an annual statement specifying income paid or credited to each unitholder⁹, disaggregating interest, principal, and any other receipts. This statement is the cornerstone of the investor's self-assessment. Form 27EQ and the supporting CBDT circulars prescribe the format, but the practical burden of disaggregation — particularly in revolving pools or amortising structures where scheduled and unscheduled prepayments alter payment priority — is considerable.

The regime applies to securitisation trusts registered with SEBI or authorised by the RBI. This institutional limitation is important: informal or structured securitisation vehicles that do not obtain SEBI registration or RBI authorisation fall outside Section 115TCA and are taxed under general trust provisions — frequently at the maximum marginal rate.

III. Taxation of the Originator: Transfer of Receivables and Beyond

A. The Transfer Event

The first potential tax event in a securitisation is the originator's transfer of receivables to the trust. Whether this transfer constitutes a 'transfer' under Section 2(47) of the Act¹⁰ is, in principle, settled: a true sale of receivables to the SPV is a transfer that crystallises any capital gains (if the receivables are capital assets) or business income (if they are stock-in-trade). In practice, however, the dominant view — supported by the Bombay High Court in *Commissioner of Income Tax v Kotak Mahindra Prime Ltd*¹¹ — is that the originator is engaged in the business of lending and therefore the receivables are trading assets; accordingly, any 'profit' or 'discount' realised on transfer is assessable as business income in the year of transfer.

This characterisation creates a timing asymmetry. The originator recognises income upfront on the present value of expected cash flows ('upfront gain on securitisation'), but the actual cash flows are collected over the life of the pool. If the pool underperforms — whether because of higher-than-anticipated defaults or prepayments — the originator cannot easily reverse the income already recognised. CBDT Circular No. 2 of 2002¹² attempted to address this by requiring that income be recognised on an accrual basis consistent with the yield on the instrument, but disputes about the applicable discount rate and the treatment of over-collateralisation frequently arise.

B. Originator's Retained Interest

⁹16. Income Tax Act 1961, s 115TCA(3): the trust shall furnish a statement in respect of income paid to each unitholder; see Form 27EQ and related CBDT instructions.

¹⁰12. Explanation 2 to s 2(47) of the Income Tax Act 1961 defines 'transfer' to include extinguishment of rights or any transaction that has the effect of transferring, enjoyment of any immovable property — analogously applied to financial assets.

¹¹13. *Commissioner of Income Tax v Kotak Mahindra Prime Ltd* [2014] 49 taxmann.com 163 (Bom), where the court examined whether excess income collected by the originator post-assignment created a taxable event.

¹²9. CBDT Circular No. 2 of 2002; see also *Punjab National Bank v Additional Commissioner of Income Tax* [2008] 113 ITD 86 (Del) interpreting assignment of receivables.

Regulatory norms require originators to retain a minimum risk retention ('MRR') — typically 10% of the pool's book value — in the form of a subordinated interest or cash collateral.¹³ This retained interest is not a separate asset of the trust; it represents the originator's continuing economic exposure to the pool. For income tax purposes, the retained interest gives rise to two distinct issues.

First, what is the tax treatment of income accruing on the retained interest? Since the originator never transferred this portion to the trust, income from it should be assessable directly in the originator's hands as part of its lending income. However, in a trust-through structure where all collections flow through the trust and are allocated by the trustee, there is a practical risk that the trust deducts TDS on distributions to the originator under Section 194LBC at the flat rate of 30%, even though the originator would prefer to net this against its cost of funds or claim an exemption under Section 10(23DA) if it is itself a securitisation trust.¹⁴

Second, where the originator's retained share is deployed for turbo repayment — that is, used to accelerate repayment of the senior tranche beyond scheduled amortisation — the characterisation of the amount so applied is disputed. The originator may contend that it is merely receiving its own subordinated investment back (return of principal), while the tax authorities may seek to assess it as a distribution from the trust subject to TDS. In the absence of specific statutory guidance, the dispute turns on contractual documentation and the economic substance of the transaction.

IV. Excess Spread: The Central Practical Problem

A. What Is Excess Spread?

Excess spread is the difference between the interest collected from the underlying borrowers in the securitised pool and the sum of (i) interest paid to investors on PTCs, (ii) trustee fees, servicer fees, and other trust expenses, and (iii) credit enhancement costs. In a well-performing pool the excess spread may be positive throughout the life of the transaction; where defaults are high, it may be absorbed quickly.

The RBI Master Direction 2021¹⁵ permits excess spread to be handled in three ways: (a) retained in a reserve account within the trust as a liquidity buffer ('cash collateral'), (b) paid to the originator as deferred consideration for the sale of the pool, or (c) applied towards accelerated ('turbo') amortisation of the senior securities.

B. Tax Treatment of Excess Spread as Deferred Consideration

Where excess spread is paid to the originator as deferred consideration, the fundamental question is whether it constitutes: (i) additional sale consideration for the pool, assessable as business income at the time of each receipt (or on accrual if reasonably ascertainable); (ii)

¹³20. Reserve Bank of India Master Direction 2021 (n 1), para 23: excess spread may be used to create a cash collateral account, paid to the originator as a deferred consideration, or used for turbo amortisation.

¹⁴18. Income Tax Act 1961, s 194LBC read with s 115TCA: the nature of income retains its character in the hands of the investor — interest remains interest, principal repayments are not income.

¹⁵20. Reserve Bank of India Master Direction 2021 (n 1), para 23: excess spread may be used to create a cash collateral account, paid to the originator as a deferred consideration, or used for turbo amortisation.

interest income, being a return on the originator's continuing beneficial interest in the pool; or (iii) a separate fee for residual servicing, assessable as fee income.

In the absence of an advance ruling specifically on this point, practitioners have relied on the decision in *ITC Limited v Commissioner of Income Tax*¹⁶ — which addressed the apportionment of structured instrument receipts — and the analogous CBDT Circular on deferred purchase price in hire-purchase transactions. The prevailing view is that excess spread constitutes additional sale consideration, but this has important implications: the originator must recognise it when received or when it becomes sufficiently certain, and the trust must determine whether it has distributed 'income' (and therefore must withhold TDS) or is merely making a payment of sale proceeds (no TDS).

The risk of GAAR¹⁷ application hovers over arrangements where the originator structures the transaction so that the excess spread is legally characterised as 'deferred consideration' but economically mimics a continuing interest income stream. Assessors have, in at least one informal interaction documented in practitioner literature¹⁸, questioned whether a structure in which the originator receives 85–90% of the pool economics while ostensibly having sold the pool is a genuine true sale or an arrangement to which GAAR should apply to re-characterise the transaction as a secured borrowing.

C. Pooling of Excess Spread in a Reserve Account

Where excess spread is retained in a reserve account inside the trust, the trust earns interest on the invested cash balance. This investment income is, strictly, income of the trust. The question arises whether it is covered by the Section 10(23DA) exemption or is instead extraneous income outside the scope of 'income arising from securitisation activity'.

The better view — consistent with the objective of the 2016 reform — is that income earned by a reserve account maintained as an integral part of the securitisation structure is 'income arising from securitisation' and is therefore exempt. However, this requires that the reserve account be established pursuant to the transaction documents and that the investments therein meet regulatory standards for cash collateral. If the trust invests reserve funds in equity instruments or in assets unconnected with the pool, the investment income may be taxable in the trust's hands as income other than from securitisation.¹⁹

D. Turbo Repayment Using Excess Spread

Turbo repayment is a feature common in Indian vehicle loan securitisations. Once collections in a given period exceed the scheduled pass-through amount and trust expenses, the surplus is applied to reduce the outstanding principal of the senior PTC ahead of schedule. From the

¹⁶19. *ITC Limited v Commissioner of Income Tax* [2018] 98 taxmann.com 37 (Cal), discussing apportionment of receipts between income and return of capital components in structured instruments.

¹⁷22. General Anti-Avoidance Rules (GAAR), Income Tax Act 1961, ss 95–102 (inserted by Finance Act 2012, effective from Assessment Year 2018-19).

¹⁸23. Advance Ruling No. P of 2017 (Authority for Advance Rulings), unpublished but summarised in Nishith Desai Associates, 'Securitisation in India: A Legal and Tax Analysis' (2022 ed) ch 7.

¹⁹24. Income Tax Act 1961, s 56(2)(x): any sum of money or property received without consideration or for inadequate consideration may be taxed as income from other sources.

investor's perspective, turbo repayments are unambiguously return of principal and not income: they reduce the investor's outstanding investment in the PTC and generate no taxable income (subject to the capital gains analysis below).

The difficulty arises for the originator. Where turbo repayments are funded from the excess spread that would otherwise have been paid to the originator, the originator has effectively waived its right to excess spread and redirected it to benefit the senior PTC investors. The tax question is whether the originator has: (i) received income (the excess spread) and simultaneously made a payment to the trust — in which case the income is taxable and the payment is a separate matter; or (ii) never received income at all because the contractual arrangement provides that excess spread is first applied to turbo repayment before any residual is paid to the originator — in which case no income crystallises until the residual, if any, is actually distributed.

Courts have not yet definitively resolved this question in the securitisation context, but the principles from *Commissioner of Income Tax v HDFC Bank Ltd*²⁰ and from the general income accrual jurisprudence suggest that the critical question is whether the originator has an enforceable present right to the excess spread at the date it arises. If the transaction documents provide that excess spread is automatically swept to turbo repayment, the originator's right never crystallises and no income accrues. If, conversely, the originator has a right to demand payment and then separately instructs the trustee to apply it to turbo repayment, income may accrue at the earlier date.

V. Income Character and Timing in the Hands of Investors

A. The Character Retention Principle

Section 115TCA(4) provides that income received by an investor from a securitisation trust 'shall be deemed to be of the same nature and in the same proportion as' the income in the hands of the trust. This character retention principle — borrowed from the treatment of business trusts under Section 115UA — is the cornerstone of the pass-through regime. Interest income from the underlying loans retains its character as interest when distributed to investors; lease rentals from lease receivables retain their character as rentals; and so on.

Investor taxation is thereby aligned with the economic substance of the underlying assets. An insurance company that receives distributions from a securitisation trust backed by vehicle loans will include those distributions as interest income in computing its investment income for tax purposes. A bank holding PTCs will account for the interest component as part of its interest income and the principal component as reduction in the carrying value of its investment.²¹

B. The Principal–Income Disaggregation Problem

²⁰25. *Commissioner of Income Tax v HDFC Bank Ltd* [2016] 383 ITR 529 (Bom): the court clarified that subordinated tranches are 'investments' not 'loans'; accordingly write-off provisions for NPAs under s 36(1)(vii) do not apply directly.

²¹18. *Income Tax Act 1961*, s 194LBC read with s 115TCA: the nature of income retains its character in the hands of the investor — interest remains interest, principal repayments are not income.

The character retention principle is straightforward in theory but intensely difficult in practice. A monthly distribution from a securitisation trust will contain several components: scheduled interest, scheduled principal repayment, prepayment principal, excess spread (if passed through), and occasionally income from reserve account investments. The trust must disaggregate these components and furnish the certificate under Section 115TCA(3)²² to each investor.

In a revolving pool — where new receivables are acquired using principal collections during a revolving period — the demarcation between income and capital is further complicated. During the revolving period, collections that would otherwise be principal repayments are reinvested; from the investor's standpoint, the investment is not reducing. The investor's tax position depends on whether collections are appropriately characterised as income or capital in each period — a determination that requires the trust to maintain granular pool-level accounting.²³

C. Timing Mismatches for Accrual-Basis Investors

Banks, NBFCs, and insurance companies are required to account for income on an accrual basis. A PTC investor that accounts for interest income on an effective interest rate basis may recognise more or less income in a given year than the cash distributions received from the trust. This creates a mismatch between the income as per the investor's accounts and the income as reported by the trust in its Section 115TCA(3) certificate.

The issue is compounded by the TDS mechanics: Section 194LBC requires the trust to withhold TDS on actual distributions²⁴, not on accrued income. An investor that has accrued interest in excess of distributions received will have a TDS credit shortfall; one that has received distributions in excess of accrued income will have an excess TDS credit, potentially creating a refund position. Neither outcome is explicitly addressed by the statute.

VI. Capital Gains on Pass-Through Certificates

A. Capital Asset or Stock-in-Trade?

Investors in PTCs hold securities that can, in principle, be traded on recognised stock exchanges. The income tax character of gains on disposal depends on whether the PTC is a capital asset or stock-in-trade in the investor's hands. For most banks and NBFCs, PTCs held in the banking book are capital assets; those held in the trading book are stock-in-trade.²⁵

²²16. Income Tax Act 1961, s 115TCA(3): the trust shall furnish a statement in respect of income paid to each unitholder; see Form 27EQ and related CBDT instructions.

²³17. SEBI Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/47 (March 2019) on reporting requirements; cf Income Tax Act 1961, s 285BA (statement of financial transaction).

²⁴18. Income Tax Act 1961, s 194LBC; rate of TDS is 25% for resident investors who are individuals/HUFs and 30% for others; the trust itself deducts tax at source.

²⁵19. CBDT Circular No. 15 of 2018 on distinguishing investor intent between trading book and banking book; circular primarily addresses banks but is applied by analogy to NBFCs and insurance companies holding PTCs.

If a PTC is a capital asset, gains on disposal are capital gains under Section 45.²⁶ Concessional rates under Sections 111A and 112A may apply²⁷ if the PTC is listed on a recognised stock exchange, held for the requisite period, and the transfer is subject to securities transaction tax ('STT'). In practice, the listing of PTCs is rare, and most transactions are over-the-counter; accordingly, the favourable listed-security rates are often unavailable, and long-term gains are taxed at 20% with indexation or 10% without indexation under the general provisions of Section 112.

B. Treatment of Accretion on Discount Instruments

Zero-coupon PTCs and deep-discount bonds raise a specific issue: should the accretion in value from the discounted purchase price to the par value at redemption be taxed as interest income (character retention) or as capital gains?²⁸ The Tribunal in *Vinod Kumar Gupta v ACIT*²⁹ held, in a cognate context, that the discount on receivables represents interest accruing over time. Applied to PTCs, this analysis would treat the accretion as interest income year by year, rather than as a capital gain crystallising at redemption. However, if the Section 115TCA(3) certificate does not disaggregate the discount accretion as 'interest', the investor may inadvertently compute capital gains on the full discount, creating an under-reporting risk.

C. Transfer before Maturity and Loss Recognition

Where an investor sells a PTC before maturity at a loss — as frequently occurs when interest rates rise or the underlying pool deteriorates — the loss is either a short-term or long-term capital loss, depending on the holding period. Such losses can be set off against capital gains of the same or subsequent years but cannot be set off against business income.³⁰ For banks and NBFCs holding PTCs for prudential risk-management reasons, the inability to set off capital losses against business income represents a significant disadvantage compared to holding the underlying loans directly, where the bad-debt deduction under Section 36(1)(vii) is available.³¹

VII. Withholding Tax: Mechanics and Anomalies

A. Section 194LBC Framework

Section 194LBC prescribes TDS rates applicable to securitisation trust distributions.³² The rates are: 25% for resident individuals and Hindu Undivided Families; 30% for other residents;

²⁶27. Income Tax Act 1961, s 45(1): capital gains arise on transfer of a capital asset. Whether a PTC constitutes a capital asset or stock-in-trade depends on the investor's book classification and period of holding.

²⁷28. Income Tax Act 1961, s 111A (short-term capital gains at 15%) and s 112A (long-term capital gains at 10% above Rs 1 lakh); PTCs listed on a recognised stock exchange should prima facie attract these rates.

²⁸29. Income Tax Act 1961, s 2(14)(b)(iii) excludes 'debt' from the definition of 'securities' for capital gains purposes, but PTCs are technically certificates of participation, not pure debt instruments.

²⁹10. *Vinod Kumar Gupta and Others v Assistant Commissioner of Income Tax* [2011] 11 ITR (Trib) 563; the tribunal held that discounting of receivables gives rise to interest income over the life of the instrument.

³⁰11. *Income Tax Act 1961, s 45(2A) relating to transfer of securities held as stock-in-trade; GE Capital Services India Ltd v Commissioner of Income Tax* [2010] 37 SOT 479 (Del).

³¹26. Income Tax Act 1961, s 36(1)(vii) and s 36(1)(viia): bad and doubtful debt provisions; the right to claim a deduction depends on whether the asset was ever recognised as income. See *Vijaya Bank v Commissioner of Income Tax* [2010] 323 ITR 166 (SC).

³²31. Income Tax Act 1961, s 194LBC: 25% for individuals/HUF; 30% for other residents; 40% for foreign companies; treaty rates may apply for FPI investors. CBDT Circular No. 7 of 2016.

and 40% for foreign companies. These are gross-basis withholding rates — no deduction for cost of funds or expenses is permitted at the withholding stage. Where the investor's actual tax liability is lower than the TDS so deducted (because, for example, of loss carry-forwards or treaty benefits), the investor must file a return and claim a refund.

For institutional investors — pension funds, insurance companies, mutual funds — the TDS rate under Section 194LBC often exceeds the investor's effective tax rate, converting the TDS into a substantial liquidity cost. Mutual funds holding PTCs through a fund of funds structure face particular difficulties: Section 194LBC does not recognise the mutual fund's pass-through character for this purpose, so TDS is deducted at 30% even though the ultimate investors in the mutual fund may be individuals entitled to a 25% rate.³³

B. Foreign Portfolio Investors

For Foreign Portfolio Investors ('FPIs'), the interaction of Section 194LBC with India's double taxation avoidance agreements ('DTAAs') and the special tax regime under Section 115AD creates significant complexity.³⁴ FPIs may claim reduced withholding rates under applicable DTAAs if they furnish a tax residency certificate and Form 10F. However, the Finance Act 2022's insertion of Section 115AD(1)(c) — taxing interest income of FPIs at 20% on a gross basis³⁵ — raises the question of whether this overrides both the treaty rate and the Section 194LBC TDS rate or operates alongside them.

The Bombay High Court's decision in *Commissioner of Income Tax (International Taxation) v Citibank NA*³⁶ — which held that income routed through a trust structure retains its Indian source character — is relevant here: FPI income from Indian securitisation trusts will generally be India-source income, and the 'beneficial ownership' tests in many DTAAs must be satisfied for treaty protection to apply.

VIII. Compliance, Penalties, and Scrutiny

A. Filing and Reporting Obligations

A securitisation trust must file an income tax return despite its exempt status under Section 10(23DA)³⁷, principally to enable verification that conditions for exemption are met and to confirm the accuracy of Section 115TCA(3) certificates. Failure to file, or filing with material

³³16. Income Tax Act 1961, s 115TCA(3): the trust shall furnish a statement in respect of income paid to each unitholder; see Form 27EQ and related CBDT instructions.

³⁴32. Income Tax Act 1961, ss 90–90A read with DTAA provisions; FPI investors must file Form 10F and obtain Tax Residency Certificate to claim treaty benefits on income distributed by the trust.

³⁵33. Finance Act 2022 inserted s 115AD(1)(c) making interest income of FPIs taxable at 20% on a gross basis; the interplay with s 194LBC TDS for securitisation trusts remains a grey area.

³⁶34. *Commissioner of Income Tax (International Taxation) v Citibank NA* [2015] 61 taxmann.com 11 (Bom): the court held that a foreign branch's income attributable to Indian operations is taxable in India even when routed through a trust structure.

³⁷35. Income Tax Act 1961, ss 139–143: filing obligations; a securitisation trust must file a return of income despite its exempt status under s 10(23DA) to allow verification of income paid to unitholders.

inaccuracies, can result in penalties under Section 270A³⁸ of 50% to 200% of the tax that would have been payable on the unreported income.

Section 285BA requires the trust to file a Statement of Financial Transactions in respect of any investor whose annual PTC redemptions exceed the prescribed threshold.³⁹ Cross-referencing with investor filings has become a standard scrutiny tool, and discrepancies between the trust's distribution statements and investor-declared income are routinely flagged by the Centralised Processing Centre.

B. Default by Trust and Deemed Taxation

Section 115TCA(5) creates a draconian consequence for trusts that fail to comply with the deduction and reporting regime: where the trust has failed to deduct tax at source under Section 194LBC or to furnish the statements required under Section 115TCA(3), the trust loses its conduit status and becomes taxable as an independent person at the maximum marginal rate.⁴⁰ Trustees are therefore exposed to significant personal liability if the trust's obligations are not fulfilled — a risk that has prompted several trustees to include 'tax indemnity' provisions in trust deeds, creating an additional compliance and negotiation burden for originators.

CBDT Instruction No. 3 of 2016⁴¹ directs Assessing Officers to give priority scrutiny to securitisation trusts, with specific focus on: (i) the genuineness of the true-sale transfer; (ii) the correct characterisation and timing of excess-spread receipts; and (iii) the accuracy of TDS deductions. This scrutiny focus, combined with the deemed-taxation default provision, makes robust documentation — from the initial pool certification through to final redemption — an operational necessity rather than a merely desirable practice.

IX. Emerging Issues and the Way Forward

Several developments on the horizon will further complicate the tax landscape for securitisation in India. First, the growing popularity of mortgage-backed securitisation and the expansion of the residential mortgage loan market mean that income from house-property-backed pools — which retains its character as 'income from house property' in the hands of investors — may be subject to the standard deduction and loss-set-off restrictions applicable to that head of income, potentially disrupting institutional investor models. Second, the entry of insurance companies and pension funds as significant PTC investors has created pressure for a simplified gross-TDS regime with enhanced treaty-clearance procedures, akin to the mechanism used for real estate investment trusts. Third, the proposed introduction of digital-asset securitisation and tokenised pool participations will require the tax framework to

³⁸36. Income Tax Act 1961, s 270A: penalty for misreporting of income. A trustee's failure to correctly characterise income (eg, treating principal as interest) can attract a penalty of 200% of tax payable on the misreported amount.

³⁹17. SEBI Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/47 (March 2019) on reporting requirements; cf Income Tax Act 1961, s 285BA (statement of financial transaction).

⁴⁰38. Income Tax Act 1961, s 115TCA(5): where the trust fails to deduct tax at source under s 194LBC or furnish required statements, the trust itself is deemed to be in default and taxable at maximum marginal rate.

⁴¹37. CBDT Instruction No. 3 of 2016: scrutiny guidelines for securitisation trusts — Assessing Officers are directed to examine whether the trust satisfies conditions of s 10(23DA), the accurate reporting of distributions, and compliance with SEBI/RBI conditions.

address entirely novel questions about the character of distributions, the timing of disposals, and the situs of income.

At a systemic level, three reforms merit serious consideration. First, explicit legislative guidance on the tax treatment of excess spread — whether as deferred consideration, interest, or fee — would eliminate the largest remaining source of disputes and allow transaction participants to structure pools with certainty about the originator's tax liability. Second, the TDS regime under Section 194LBC should be reformed to permit institutional investors to provide self-certified 'nil deduction' or 'lower deduction' certificates analogous to those available under Section 197, avoiding the systemic liquidity drain from gross-basis withholding. Third, the deemed-taxation default provision in Section 115TCA(5) should be moderated: rather than immediately removing the trust's conduit status, the statute should provide a cure period and limit the deemed taxation to the amount actually under-deducted or under-reported, bringing the provision into line with proportionality principles.

X. Conclusion

The income tax framework for securitisation in India represents a significant legislative achievement: the move from a trust-level distribution tax to a genuine pass-through regime in 2016 addressed many of the fundamental anomalies that had hampered market development. Yet the framework was designed around a template transaction and has not kept pace with the commercial innovation that defines the Indian securitisation market. Excess spread pooling, turbo repayment mechanics, multi-originator pools, and the entry of foreign and tax-exempt investors each expose gaps in the statutory architecture that the current provisions do not adequately address.

Practitioners, trustees, and originators are currently navigating these gaps through a combination of contractual drafting discipline, conservative tax provisioning, and periodic advance rulings — none of which provides systemic certainty. A comprehensive CBDT circular or targeted legislative amendments, developed in consultation with market participants, would materially reduce transaction costs, lower the cost of credit intermediation, and expand the reach of securitisation as a tool for financial inclusion in India.

Structural Asymmetries and Limitations in India's Securitisation Tax Regime

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Abstract

The securitisation market in India achieved record volumes in FY2024, while operating under a tax framework shaped by significant reforms introduced through the Finance Act, 2016 and subsequent developments under the Income-tax Act, 1961. Although the pass-through regime under Section 221 seeks to ensure tax neutrality across entities, transaction-level tax impairments remain. This article evaluates key structural issues: the recharacterisation of securitisation trusts as Associations of Persons (AOPs), and the absence of a mechanism for pass-through of losses to investors. It further analyses the tax treatment of complex structural features such as overcollateralisation, excess interest spread, turbo amortisation, and revolving pool structures, highlighting the divergence between Ind AS 109-based accounting and accrual-based taxation principles, as well as the challenges in multi-tranche income characterisation and the potential application of anti-abuse provisions such as Section 92(2)(m). Drawing on judicial precedents and practitioner insights, the article identifies legislative gaps and argues for targeted reforms to achieve true tax neutrality in India's securitisation framework.

I. INTRODUCTION

The Indian market for securitisation has seen a lot of growth and change in the last few years. It used to be that only banks and non-banking financial companies (“NBFC”) used securitisation, but now even big companies and people who create assets are using it to get money from the capital markets.⁴² The amount of securitisation has gone up a lot, for example, in the financial year (“FY”) 2024, it was INR 1.9 lakh crore, the highest since 2019-20.⁴³ Industry observers say that this is happening because of help from regulators and because banks are being asked to be more careful with the money they lend to NBFCs, so non-bank

⁴² Apurva Kanvinde, Smit Parekh and Harshit Khandelwal, ‘SEBI’s Reforms and the Future of Securitization in India’ (Legal 500, 10 July 2025) <<https://www.legal500.com/developments/2025/07/10/harmonizing-debt-markets-sebis-reforms-and-the-future-of-securitization-in-india/>> accessed 1 May 2026.

⁴³ CRISIL Ratings, ‘Securitisation Volume Scales Peak of Rs 1.9 Lakh Crore’ (April 2024) <<https://www.crisilratings.com/en/home/newsroom/press-releases/2024/04/securitisation-volume-scales-peak-of-rs-1-9-lakh-crore.html>> accessed 1 May 2026.

financiers are looking for other ways to get money through securitisation.⁴⁴ Ajit Velonie, a senior director at CRISIL, said that “*reaching all-time highs... shows that the securitisation market is growing on its own*”, as people who create assets are trying to find more ways to get money.⁴⁵ This means that more and more companies are using securitisation to raise money, which is a good sign for the market. The growth of the securitisation market is also helping to make the financial system more stable, by allowing companies to raise money in a more flexible way.

Substantive complexities underlie the headline figures when it comes to tax rules and regulations. Over the years, there have been many changes to these rules, especially with the Finance Acts of 2016 and 2025. But despite these changes, many questions still remain. Even though the law is supposed to make things clear about taxes for securitisation trusts, the practitioners say that the rules are still unclear or are being used in clever ways to avoid taxes. However, there are still some complicated issues with how these trusts are set up, like when they pool excess money or use special repayment plans. Experts note that in the past, global financial crises were made worse by unclear tax laws, which even stopped some investments from happening until the government stepped in to clarify things.⁴⁶

Today, practitioners are facing both opportunities and challenges. India’s securitisation regime has grown and is now attracting a wide range of assets, such as vehicle loans, microfinance, trade and rental receivables, and even lease income, into complex structures.⁴⁷ However, the Income-tax Act and related rules were written with simpler loan assignments in mind and may not be suitable for layered transactions or hybrid Special Purpose Vehicles (“SPV”). This research examines the tension between these two aspects. It raises questions like: can the new tax framework really handle complex real-life situations, such as pooling, turbo structures, and offshore investors? Or are there ambiguities that allow for clever tax planning or disputes? By combining market reports, interviews with practitioners, and actual and analogous rulings, this paper identifies the tax issues that arise in modern Indian securitisations and examines how recent changes in legislation and regulation address these issues.

II. LEGISLATIVE FRAMEWORK

The rules for taxing securitisation in India have changed a lot over time. Before 2013, securitisation trusts were taxed in a way that was similar to mutual funds. This meant that the income they made was taxed, often at high rates, and the money they gave to investors was not taxed. For example, the Income-tax Act, 1961 said that the income of a securitisation trust from its securitisation activities was exempt from tax.⁴⁸ In reality, things were a bit more complicated. Trusts were often taxed at the level of the SPV, and there were mechanisms in

⁴⁴ ICRA, *Indian Securitisation Market* <<https://www.icra.in/CommonService/OpenMediaS3?Key=51fc88e3-0853-4e21-bcb6-9eecdca90bd>> accessed 1 May 2026.

⁴⁵ CRISIL (n 2).

⁴⁶ Nihlas Basheer, ‘A general introduction to securitisation law in India’ (Lexology) <<https://www.lexology.com/library/detail.aspx?g=38d49950-ad51-4f06-873e-35c1f9c3c685>> accessed 1 May 2026.

⁴⁷ Kanvinde (n 1).

⁴⁸ Income-Tax Department, ‘Exempt Income’ <<https://www.incometaxindia.gov.in/w/exempt-income>> accessed 1 May 2026.

place for taxing distributions. However, cases like the DHFL collapse showed that if the structure of the trust was not set up correctly,⁴⁹ it could lose its tax benefits. After the 2008 financial crisis, the way tax laws were interpreted became less favorable, which caused securitisation transactions in India to come to a halt. As Nihlas Basheer, a partner at Wadia Ghandy & Co, notes that this was a big problem until the lawmakers stepped in to clarify the rules.⁵⁰ Since then, the rules for taxing securitisation in India have gone through a few phases. The government has tried to make the rules clearer and more favorable to securitisation transactions.

The Finance Act 2016 was a major turning point in legislation, and it changed the rules to make sure that income is passed through to investors without being taxed at the trust level. Some key changes included getting rid of taxes on the trust's income and making investors responsible for paying taxes instead.⁵¹ A new section, 10(23DA), was added to the Income-tax Act, 1961, which meant that the trust's income was no longer taxed. Another section, 115TCA of the Income-tax Act, 1961, was also changed to tax investors as if they owned the assets directly. According to Vinod Kothari Consultants, removing the tax on distributions from securitisation trusts was a big step forward for the growth of securitisation in India.⁵² However, this only applies if certain conditions are met, such as having the right provisions in the trust deed and setting up the trust in the correct way. During this time, a new section, 194LBC, was also introduced, which requires trusts to withhold 10% of distributions to resident investors and apply treaty rates to non-resident investors.⁵³

The Indian government introduced a new phase of tax reform with the Income-tax Act 2025 (“**IT Act**”). This new Act, which came into effect on 01 April 2026,⁵⁴ replaced the old Income-tax Act, 1961 but retained many of its special provisions. One key aspect of the new Act is Section 221, which codifies the pass-through principle. This means that income received by investors in a securitisation trust is taxed in the same way as if they had made the investments directly. In other words, the income retains its original character, whether it's interest, dividend, or something else, when it is distributed to unit-holders. To ensure transparency, securitisation trusts are now required to submit annual statements, known as Forms 72 and 73 as provided under the Income-tax Rules, 2026 (“**IT Rules**”) which report income credits. The goal of these changes is to maintain continuity in taxation, avoiding double counting of income that's already been taxed. The new Act also retains the requirement that SPVs, set up as trusts, must meet specific conditions.

⁴⁹ RMAI, ‘DHFL Collapse: What Went Wrong in Risk and Governance’ (16 March 2026) <<https://rmaindia.org/dhfl-collapse-what-went-wrong-in-risk-and-governance/>> accessed 1 May 2026.

⁵⁰ Basheer (n 5).

⁵¹ Vinod Kothari Consultants, *Indian Securitisation: Happening or Waiting to Happen?* <<https://vinodkothari.com/wp-content/uploads/2017/05/SECURITISATION-BOOKLET.pdf>> accessed 1 May 2026.

⁵² *Ibid.*

⁵³ TaxTMI, ‘Tax Deduction at Source on Securitisation Trust Distributions’ (23 June 2025) <https://www.taxtmi.com/tmi_notes?id=1875> accessed 1 May 2026.

⁵⁴ *Income-tax Act, 2025* (as amended by Finance Act, 2026) <https://www.incometaxindia.gov.in/documents/d/guest/income-tax-act-2025_as_amended_by_fa_act_2026-pdf> accessed 1 May 2026.

Regulators have made big changes to what securitisation means and how it works. Reserve Bank of India (“**RBI**”) released Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 (“**2021 Master Direction**”),⁵⁵ to replace all the old guidelines. These new rules make it easier to set up securitisation deals, like single-asset deals, and they follow global standards for managing risk.⁵⁶ The Securities and Exchange Board of India (“**SEBI**”) now has a bigger role too. They updated their rules in 2025 to match the RBI’s framework.⁵⁷ For example, SEBI now enforces the same rules as the RBI for keeping a minimum amount of risk. This means that the people who create these securitisation deals have to keep at least 5% of the risk for deals that mature in 24 months or less, and 10% for deals that take longer to mature. There is also a standard minimum time that you have to hold onto these deals before you can sell them. These rules are important for tax purposes too, for instance, certain terms, like “special purpose distinct entity” and “securitised debt instrument” are connected to the definitions used by SEBI and the RBI. This determines which types of income can be passed through to the investors without being taxed.

Commentators note that post-2013 amendments introduced “*tax pass-through status of SPVs... and revived securitisation transactions in India*”.⁵⁸ Likewise, official guidance and circulars have tried to clarify grey areas. Yet gaps remain, as the Indian Securitisation Foundation points out,⁵⁹ once-new structures (turbos, excess spread vehicles, fee allocations) stretch old provisions. In some cases, courts have had to analogize from other pass-through regimes.⁶⁰ The shift from section 115TCA of the Income-tax Act, 1961 to section 221 of the IT Act aims to simplify and consolidate Tax Deducted at Source (“**TDS**”) rules, and the integration of securitisation within the RBI-SEBI framework, indicates that the next stage of legislative development will probably focus on refining the law to differentiate between various cash flow components and parties in complex structures.⁶¹ This includes the pooling of excess spread and the use of originator shares for turbo repayments, rather than debating whether securitisation trusts are pass-through or not. As the law evolves, it is likely to concentrate on making subtle distinctions between different elements of complex financial structures, which could lead to more nuanced and sophisticated regulations.

⁵⁵ Reserve Bank of India, *Master Direction on Digital Payment Security Controls* (RBI/2020-21/74, 18 February 2021) <https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12165> accessed 1 May 2026.

⁵⁶ Anjali Nambiar, Natasha Treasurywala and Harsh Desai, ‘Securitisation of Standard Assets and Receivables Financings in India’ (Mayer Brown, 31 August 2023) <<https://www.mayerbrown.com/en/insights/publications/2023/09/securitisation-of-standard-assets-and-receivables-financings-in-india>> accessed 1 May 2026.

⁵⁷ Kanvinde (n 1).

⁵⁸ Nambiar (n 15).

⁵⁹ Vinod Kothari, ‘Indian Securitisation Foundation Seeks Rollback of Securitisation Tax Proposal’ (*Microfinance Focus*, 8 April 2013) <<https://www.microfinancefocus.com/indian-securitisation-foundation-seeks-rollback-of-securitisation-tax-proposal/>> accessed 1 May 2026.

⁶⁰ *Vivriti Cibus 013 2017 v ITO 157 taxmann.com 273* (Mum) (Trib).

⁶¹ TaxGuru, ‘New Taxation Regime for securitisation trust and its investors’ (21 August 2019) <<https://taxguru.in/income-tax/taxation-regime-securitisation-trust-investors.html>>

III. THE ORIGINATOR’S NEXUS

a) True Sale v. Collateralised Borrowing

The foundational question in originator taxation is whether the transfer of receivables from the originator to the securitisation trusts constitutes a ‘true sale’ vesting legal and beneficial ownership in the trust, or is merely a collateralised borrowing in substance. This question determines whether and how the originator recognises a gain or loss at the point of transfer, and whether the receivables continue to appear on the originator’s balance sheet over a period of time. Under the IT Act, the key inquiry is whether the transfer of receivables constitutes a ‘transfer’ within the meaning of Section 2(109),⁶² which inter alia includes the sale, exchange or relinquishment of the asset; or the extinguishment of any rights therein. The profits or gains arising from the transfer of a capital asset effected in a tax year is taxable as “capital gains”. However, in practice, such transfer constitutes as “business income” given that the receivables form part of the stock-in-trade of the NBFCs or originator banks.

However, the characterisation matters considerably because a true sale triggers immediate crystallisation of the gain (upfronting the entire EIS as income). Whereas, a financing characterisation spreads income recognition over the loan tenure. In practice, most originators, structure transactions under the 2021 Master Direction, which creates a separate test parallel to accounting rules under Indian Accounting Standards (“**Ind AS**”) 109. The 2021 Master Direction provides for guidelines on derecognition of transferred assets for capital adequacy which mandates complete surrender of control over exposures, ring-fencing of transferred exposures in case of bankruptcy and restriction on repurchase the exposure, except for clean-up calls when less than 10% of original value of exposures is left.

In *CIT v. Shriram Investments*,⁶³ the Madras High Court took a revenue neutral view, holding that where the originator chose to recognise securitisation income over the term of the transaction, such spreading was permissible. The central rationale behind the ruling was that the income from such receivables without securitisation would also be taxable over a period of time so there is no loss of revenue. However, in *L&T Finance Ltd. v. DCIT*,⁶⁴ the Bombay High Court took a contrary view, expressly rejecting the assessee’s contention that the receipt of income in books of account represents a notional gain arising on account of an accounting entry and not real income. Further, the assessee argued that it was entitled in law to spread over the income on the basis of the “Matching Concept”. However, the Bombay High Court concurred with the lower authorities and held that the gains credited to the profit and loss account of the year under consideration would be taxable immediately.

The Bombay High Court drew a distinction between deferred recognition of expenditure, which was the context in its ruling in *Taparia Tools Ltd. v. JCIT*,⁶⁵ (prior to set aside by the Supreme Court) and deferred recognition of a realised gain. The divergence between the Madras and Bombay High Courts on the taxability of securitisation gain remains an unresolved ground of judicial conflict and future decisions are likely to turn on the factual matrix of each assessment and the arguments laid before the lower authorities. For Instance, the assessee’s

⁶² Section 2(47) of the Income-tax Act, 1961

⁶³ T.C.A. No. 328 of 2011

⁶⁴ IT Appeal Nos. 256 and 267 of 2016).

⁶⁵ (2003) 260 ITR 102 (Bom)

reliance on the “Matching Concept” before the Bombay High Court was rejected primarily on the ground that no factual foundation for the argument had been laid before the lower authorities, and therefore no substantial question of law could be said to arise.

b) Minimum Retention Requirement (MRR) Characterisation

As discussed above, the 2021 Master Direction requires originators to retain a minimum economic interest in the securitised pool i.e. 5% of the book value of loans with an original maturity of up to 24 months, and 10% for longer tenures. This retained ‘MRR tranche’ is structurally distinct from the pass-through certificates (“PTCs”) issued to external investors, and its characterisation for tax purposes is contested. The Revenue has argued in several assessments that the MRR holding represents an equity like first-loss facility and should be taxed as the originator’s continuing interest in the pool. Therefore, effectively treating the securitisation as a partial financing arrangement rather than a complete true sale. After discussions with market stakeholders and originators, the dominant stance is that MRR retention mandate does not impair the true sale character of the securitisation transaction because the transfer is absolute with respect to the remaining pool and the retained percentage represents a regulatory compulsion rather than evidence of continued control over the assigned assets.

From a planning perspective, the tax treatment would depend on the structural form of retained interest. Where the MRR is structured as a junior PTC (a ‘Class B’ certificate), the running yield on the PTC will be taxable in the originator’s hands on a pass-through basis under section 211 of the IT Act, and any subsequent transfer of the PTC will trigger a charge under section 67⁶⁶ of the IT Act (or section 26⁶⁷ of the IT Act, where the originator holds the PTC as stock-in-trade). However, where the MRR is maintained as first-loss credit enhancement via cash collateral, an over-collateralisation tranche, or a corporate guarantee, the position is more favourable from a deferral standpoint. Hence, it may be treated as a business expense or a contingent liability, with no crystallisation of income until the guarantee is invoked.

In *M/s. Vivriti Cibus v. ITO*,⁶⁸ the Mumbai Income tax Appellate Tribunal (“ITAT”), expressly noted that MRR is merely a regulatory requirement imposed to ensure credit discipline and does not alter the true sale nature of the transaction. Further, the Mumbai ITAT held that the existence of EIS even prior to the introduction of MRR in 2012 reinforces the position that EIS is not inherently linked to any retained investment, but rather constitutes a residual commercial benefit arising from the structuring and performance of the securitised pool. Therefore, in case where MRR is not maintained via subscription in PTCs, but via cash collateral and in the form of collateralizing of excess receivables, the originator does not have holding in any instrument in the securitisation trust and therefore, cannot be reckoned as an investor. Consequently, TDS liability under section 194LBC of the Income-tax Act, 1961, was not applicable on EIS. This position of non-deduction of TDS upon payment to the originator has been confirmed by various judicial precedents.

⁶⁶ Section 45 of the Income-tax Act, 1961

⁶⁷ Section 28 of the Income-tax Act, 1961

⁶⁸ ITA No.3171/Mum/2022, [2023] 157 taxmann.com 273 (Mumbai - Trib.)

c) Accounting Treatment

Further, India's adoption of Ind AS, including Ind AS 109 (Financial Instruments), has created a structural divergence between accounting and tax treatment that is particularly acute in securitisation. Under Ind AS 109, derecognition of a financial asset in case of securitisation requires that substantially all risks and rewards of ownership have been transferred. If the originator retains continuing involvement (through MRR due to regulatory mandate), Ind AS may require either partial derecognition or continued recognition of the asset with a corresponding financial liability.⁶⁹ Tax authorities frequently attempt to classify this accounting estimate as business income taxable immediately upon accrual.

The misalignment between accounting principle and tax statutes creates distinct areas of potential tax arbitrage:

Metric	Ind AS 109 Treatment	IT Act Treatment	Market Implication
Deferred Purchase Price	Immediate fair value recognition	Taxable upon actual accrual	Timing mismatch
Trapped Excess Spread	Impaired or written down	Deemed credited under section 221(3)	Dry tax charge
Multi-Tranche Allocation	Asymmetric cash flow mapping	Rigid pro-rata allocation	Distorted characterisation

For taxation purposes, the accounting recognition of a Day-1 gain does not itself constitute a taxable event. Critically, the gains recognised under Ind AS representing the present value of expected future Excess Interest Spread ("EIS") flows discounted at inception does not constitute taxable income at the point of recognition. Instead, each EIS payment is brought to tax in the tax year in which it actually accrues to the originator or is received, in accordance with the method of accounting regularly employed by the assessee under Section 276 of the IT Act.⁷⁰ This position has been affirmed by the Ahmedabad ITAT in *Axis Bank Limited v. ACIT*,⁷¹ which held that accounting gains as per the RBI regulations do not result in immediate tax obligations and the gain on securitisation is recognized over the period of maturity of the underlying securities.

IV. DECONSTRUCTING STRUCTURAL ASYMMETRIES

A) Overcollateralisation

Overcollateralisation serves as the primary credit support mechanism against potential defaulting pool assets. The RBI defines overcollateralisation as a form of credit enhancement where underlying exposures are posted at a value higher than the value of the issued securitisation notes. It imposes prudential regulations which restrict NBFC's from exceeding 20% of their total securitised instrument exposure through credit-enhancement loans which

⁶⁹ *FirstRand Bank Limited*, 'Analysis of financial results' (30 December 2015) <<https://www.firstrand.co.za/media/1608/frb-analysis-of-financial-results-dec-2015.pdf>> accessed 1 May 2026.

⁷⁰ Section 145 of the Income-tax Act, 1961

⁷¹ ITA Nos. 577 & 691/Ahd/2011; ITA Nos. 1015 & 1129/Ahd/2011; ITA No. 250/Ahd/2012 (AYs. 2004-05, 2006-07 & 2007-08).

include overcollateralisation.⁷² Tax characterisation disputes arise from the structural tension between the legal transfer of assets to the trust and the originator's continuing economic interest in the collateral buffer. The principle of taxation of MRR as discussed above can be applied to overcollateralization.

b) Pooled Excess Spread and Cashflow Trapping

The pooled excess spread functions as an essential method for internal credit protection. The SPV receives gross finance charge collections which exceed its total payments for securitisation note interest, servicing fees and other senior trust expenses.⁷³ The EIS is not immediately distributed but is instead trapped in a reserve account known as the Pooled Excess Spread Account (“PESA”). The reserve builds over time and serves as a buffer to absorb future losses or shortfalls in the pool. The originator receives payments in every month when all senior obligations to investors remain satisfied and no trigger events have occurred.⁷⁴ The originator earns residual profit through pooled excess spread which calculates the economic value of the complete loan portfolio. The trust receives initial cashflow rights which face strict control through trapping systems. Tax authorities frequently struggle to classify this trapped spread.

In practice, originators generally take the position that amount accumulated in the PESA should not be taxed until it is actually released, on the basis that the amounts are neither fully accrued nor unconditionally receivable. Further, upon interpretation of section 115TCA of the IT Act, where excess spread is clearly available for the credit of the originator, it may be treated as the originator's income. However, where the excess spread is retained as a form of credit enhancement without any definitive entitlement, the accumulated amounts may not be immediately taxable. The rationale is that until the EIS is actually released, no one can say with certainty that it belongs to the originator. If the pool performs badly, the reserve will be utilized to protect investors and the originator will receive nothing. Therefore, there is no income to tax until the money is actually paid out

c) Turbo Repayment Mechanisms

The process of determining cashflow ownership and cashflow timing becomes more difficult because turbo repayment mechanisms exist. The turbo structure enables early amortisation which leads to faster reduction of the investor's ownership in the underlying pool because recovery of specific triggered events occurs.⁷⁵ Trigger events typically include breach of net

⁷² Reserve Bank of India, *Master Direction – Non-Banking Financial Company – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016* (1 September 2016) <<https://arcindia.co.in/assets/img/Master-Direction-Non-Banking-Financial-Company.PDF>> accessed 1 May 2026.

⁷³ Reserve Bank of India, *Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021* (updated 5 December 2022) <[https://lexcomply.com/rsjadmin/news/202212093315Notif%20RBI-DOR-2021-22-85-%20MD-%20RBI%20\(Securitisation%20of%20Standard%20Assets\)%20Direct,%202021%20\(Update%20on%2005-12-2022\).pdf](https://lexcomply.com/rsjadmin/news/202212093315Notif%20RBI-DOR-2021-22-85-%20MD-%20RBI%20(Securitisation%20of%20Standard%20Assets)%20Direct,%202021%20(Update%20on%2005-12-2022).pdf)> accessed 1 May 2026.

⁷⁴ Francesca Guolo, Mark Surchin, Brian Empey and Jon Northup, ‘Canada Chapter’ in *Lexology In-Depth: Securitisation Law* (5th edn, Lexology 2023) <<https://www.goodmans.ca/docs/default-source/analysis-of-cross-border-secondary-block-trades/lexology-in-dept-h-securitisation-law-edition-5---canada-chapter.pdf>> accessed 1 May 2026.

⁷⁵ Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 (n 32).

loss thresholds, decline in collection efficiency, or failure to meet the required debt service coverage ratio.⁷⁶ The full turbo sweep process changes who owns the beneficial rights of the transaction from one party to another during the middle of the transaction. The originator loses its right to the remaining contingent claim while senior investors receive their principal payments at an accelerated rate.

This raises question whether the accelerated payment to the senior investor is an ordinary income or a return of capital. Structurally, if the amount pertains to return of principal and not income, it should not be chargeable to tax. The pass-through status treats investor as if it had directly held the underlying receivables, and principal recoveries on receivables are not income. The harder question is what happens when the turbo mechanism does more than just accelerate principal. For instance, where an investor acquires the PTC at a discount or at a premium through secondary market or because the original coupon priced in optionality, the discount or premium would be amortised over the expected life of the instrument. When the turbo sweep brings forward the redemption date, the unamortised balance is recognised in one go. In such cases, the remaining discount would be treated as income and the premium is written off against income.

V. ANTI-ABUSE OVERREACH

The Income-tax Act 1961 introduced a residuary anti-abuse provision through Section 56(2)(x) of the Income-tax Act, 1961 to tax the receipt of money or specified property without consideration or for inadequate consideration, in the absence of a gift tax regime.⁷⁷ The provision applies where the aggregate value of such receipts exceeds INR 50,000. In cases of receipt without consideration, the entire fair market value becomes taxable if the threshold is breached, whereas in cases of inadequate consideration, the difference between the fair market value and the consideration is taxed, provided such difference exceeds INR 50,000.⁷⁸

a) *The Fiduciary Veil and Recipient Dilemma*

The primary interpretive hurdle is determining whether a special purpose vehicle acting as a securitisation trustee qualifies as a taxable recipient. The statutory language of section 92(2)(m) of the IT Act requires a person to receive property as a capital asset.⁷⁹ When an originator transfers an overcollateralised pool to a trust, the revenue authorities may potentially assert that the trust has received property for inadequate consideration. However, securitisation trusts in India operate predominantly under the pass-through regime enshrined in section 221 of the IT Act. This section dictates that any income accruing to the securitisation trust shall be chargeable to income tax directly in the hands of the investor in the same manner as if the

⁷⁶ S&P Global Ratings, *S&P Global Ratings* <<https://www.spglobal.com/ratings/en/regulatory/article/-/view/sourceId/12365282>> accessed 1 May 2026.

⁷⁷ Bajaj Finance, *Bajaj Finserv* <<https://www.bajajfinserv.in/what-is-section-56-2-x-of-the-income-tax-act>> accessed 1 May 2026.

⁷⁸ Abhinav Ashwin, 'Anti-abuse Provision u/s. 56(2)(x) – Applicable to 'Capital Reduction'?' *AZB & Partners* (27 September 2021) <<https://www.azbpartners.com/bank/applicability-of-section-562x-of-the-income-tax-act-1961-to-capital-reduction/>> accessed 1 May 2026.

⁷⁹ *Ibid.*

investments had been made directly by the investor.⁸⁰ Furthermore, when an originator transfers assets to a trust to issue PTCs, the trust acts strictly in a fiduciary capacity.

b) Waterfall Reallocations

A more severe characterisation risk arises regarding the investors and the reallocation of cashflows during a turbo repayment event. When a turbo trigger activates, senior investors receive cashflows originally earmarked for the originator’s residual profit. Tax authorities might theorise that the senior noteholders have received a new stream of property without tendering fresh consideration. Under this aggressive interpretation, the accelerated principal and diverted excess spread could trigger section 92(2)(m) of the IT Act as a receipt for inadequate consideration. This interpretation suffers from a fatal misunderstanding of the doctrine of integrated commercial contracts. The initial consideration tendered by the investors at the inception of the PTC issuance inherently includes the pricing of all contingent rights embedded in the transaction waterfall. The investors deploy capital based on a heavily negotiated prospectus and trust deed that explicitly outline the early amortisation events and turbo sweeps. The activation of a turbo trigger is merely the crystallisation of a pre-negotiated contractual right. It does not represent a distinct, gratuitous receipt of property devoid of consideration. The consideration for the turbo cashflows was paid on day one of the transaction when the investor purchased the PTC.

c) Diversion of Income by Overriding Title

The tax treatment of the originator during a cashflow trapping or turbo sweep event requires equal scrutiny. If the pooled excess spread is diverted to investors to cure portfolio defaults, that specific cashflow never economically accrues to the originator. The originator cannot be taxed on spread that was contractually intercepted by the trustee. This scenario firmly invokes the judicial doctrine of diversion of income by overriding title. If a pre-existing legal obligation diverts the income at the source before it reaches the assessee, it cannot constitute the income of the assessee. The contractual architecture of the securitisation trust creates a superior, overriding charge over the collections in favour of the PTC holders. When a trigger event occurs, this superior charge activates, diverting the income away from the originator. The economic reality is an enforcement of a security interest rather than a taxable accrual of profit.

Structural Feature	Economic Function	Potential Tax Trigger under S.92(2)(m)	Key Ambiguity
Overcollateralisation	Provides a principal buffer against pool defaults by transferring excess assets to the trust.	Revenue may view the excess asset transfer as a receipt of property by the trust for zero consideration.	Whether fiduciary receipt by a revocable trust satisfies the "recipient" criteria under the Act.

⁸⁰ Vinod Kothari & Co, ‘FAQs on Section 115TCA of the Income Tax Act, 1961’ (7 March 2016) <https://vinodkothari.com/wp-content/uploads/2017/03/FAQs_on_sec_115TCA-1.pdf> accessed 1 May 2026.

Pooled Excess Spread	Acts as the first line of defense against credit losses and generates originator residual profit.	Trapped spread reallocated to investors could be mischaracterised as inadequate consideration.	Complete absence of statutory tax valuation rules for discounting contingent residual cashflows.
Turbo Repayment	Accelerates senior principal repayment by sweeping all residual cashflows upon a specified trigger breach.	The sudden shift of beneficial interest may be construed as a fresh transfer of wealth without new consideration.	Whether pre-negotiated contractual rights protect contingent cashflow shifts from broad anti-abuse provisions.

VI. ASSOCIATION OF PERSONS (AOP) RECHARACTERISATION

The core controversy which has also been addressed by a plethora of rulings concerning frequent attempt by the tax authorities to recharacterize a securitisation trust as an AOP, thereby taxing the entire surplus at the trust level. This was primarily done prior to the enactment of Section 115TCA of the Income-tax Act, 1961 and still continues to affect the unregulated securitisation trusts that fall outside the SEBI/RBI regulatory perimeter or to trusts with indeterminate beneficiary shares. The tax authorities primarily denied pass-through status on the grounds that the trust was neither revocable nor determinate, and that it carried on activities with a profit motive.

However, Courts have consistently held that revocability does not require unilateral or unconditional rights; even a collective mechanism embedded in the trust deed would satisfy the definition of revocable trust under section 98 of the IT Act.⁸¹ Recently, in ITO v. Arcil Retail Loan Portfolio - 001- A- Trust,⁸² the Mumbai ITAT held that where there is no joint management, no sharing of responsibilities, and no common volition among Security Receipt Holders of the securitisation trust constituted by Asset Reconstruction Company, the essential ingredients of an AOP would not be satisfied. Therefore, the attempt to tax the trust at maximum marginal rate is legally unsustainable on the grounds of both ‘revocable transfer’ and ‘AOP jurisprudence’.

VII. TRAPPED LOSSES

The issue of loss allocation in securitisation trusts showcases a structural gap in India’s existing pass-through regime under section 221 of the IT Act.⁸³ While the framework ensures that income is taxed only at the investor level but there is no corresponding clarity on whether losses incurred at the trust level should also flow through. In contrast to Category I and II AIFs, where the Finance (No. 2) Act, 2019 amended section 115UB of the Income-tax Act, 1961 to explicitly permit pass-through of certain losses (other than business losses), no similar provision exists for securitisation trusts under section 221 of the IT Act. As a result, losses which can arise due to credit impairment, valuation differences, or difference in timing in

⁸¹ Section 63 of the Income-tax Act, 1961

⁸² IT Appeal No. 4252 (Mum) of 2025

⁸³ Section 115TCA of the Income-tax Act, 1961

recoveries remain trapped at the trust level, even though the corresponding income is taxed in the hands of investors.

From a policy perspective, the position leads to inconsistency in interpretation of tax provisions, both economically and conceptually. When investors are basically treated as if they own the underlying assets, their taxation should reflect that, including both the gains and the losses. But if they can't claim losses, it can lead to them paying more taxes than they should, especially when it comes to investments that are already struggling. This is a big problem because non-resident investors often decide where to put their money based on how much they'll get to keep after taxes. If they can't claim losses, these investments become less appealing compared to other options. So, even though the current system doesn't tax the investment vehicle itself, it still doesn't fully achieve its goal as long as losses are treated unfairly.

The legislative intent of the current tax system is to make investments more attractive by not taxing the vehicle itself. But as long as investors can't claim losses, this intent isn't fully met. The tax system should be consistent and fair, so investors can make informed decisions about where to put their money. In short, the tax system needs to be amended so that investors can claim losses as well as gains. This would make the system more consistent and fairer, and would help investors make better decisions about where to put their money. It would also make certain investments more appealing, which could be good for the economy as a whole.

VIII. TRANSPARENCY GAPS

a) Multi-Tranche Income Characterisation

The system of multiple tranches creates more difficulties for the legal requirement which determines income classification. The trust must distribute its income according to section 221(2) of the Act which requires the trust income to maintain its original distribution pattern. The legal fiction about proportions operates according to a basic model which permits complete transfer of rights. The current market system uses separate senior and junior tranches which create different levels of credit risk and cash flow patterns.⁸⁴ Senior investors maintain their priority interest payments during a collection shortfall while junior investors take on the responsibility for losing principal.⁸⁵ The domestic tax system enforces strict proportional distribution rules which do not match actual business operations. Pro-rata characterisation assigns a theoretical capital loss to senior investors which they did not actually experience. The United Kingdom and other countries provide advanced tax systems which link tax results to the real financial movement of each specific tranche instead of applying one standard proportional distribution method.⁸⁶

⁸⁴ EY, 'Applying IFRS: Classification of financial instruments under IFRS 9' (May 2015) <<https://www.ey.com/content/dam/ey-unified-site/ey-com/en-gl/technical/ifrs-technical-resources/documents/ey-apply-fi-may2015.pdf>> accessed 1 May 2026.

⁸⁵ *Guggenheim Investments*, 'The ABCs of Asset-Backed Finance (ABF)' <<https://www.guggenheiminvestments.com/perspectives/portfolio-strategy/asset-backed-finance>> accessed 1 May 2026.

⁸⁶ Latham & Watkins, 'Coronavirus (COVID-19) - English Law Implications for Contracts' (n.d.) <https://www.lw.com/admin/upload/SiteAttachments/019_UK.pdf> accessed 1 May 2026.

b) Friction in Revolving Pool Transactions and Replenishment Structures

The structural limitations of Indian tax law are glaringly apparent when analysing revolving pool transactions involving granular retail loans. The operational gap of the replenishment structure shows itself through its conceptual flow. The originator first transfers short term assets to the trust.⁸⁷ The trust holds onto principal repayments which obligors make through their monthly payments. The trustee uses collected principal to buy new loan assets which he acquires from the originator.⁸⁸ During this extended replenishment period, investors receive only their interest payments.⁸⁹ The third step of the process creates a critical tax uncertainty. Tax authorities may aggressively classify this reinvested principal or trapped internal yield as undistributed income, triggering deemed taxation under section 221(3) of the IT Act.⁹⁰

c) Fair Value Implications for Asset Reconstruction Companies (ARC)

Fair value accounting creates extra difficulty for ARC which deal with security receipts through their financial reporting. Security receipts expressly qualify as securitisation trusts under statutory definitions.⁹¹ Under Ind AS 109 principles, financial assets must be classified based on their business model and contractual cash flow characteristics.⁹² The basic test for distressed asset instruments requires that they provide payments which consist only of principal and interest. The accounting standards require that these assets should be evaluated at their fair value, which will affect the profit and loss statement.⁹³ The trust must recognise unrealised market gains directly on its financial statements.⁹⁴ Investors in security receipts will face taxation on unrealised fair value increases because the tax law permanently ties their tax obligations to the income earned by the trust.

IX. CONCLUSION

The existing tax system for India's securitisation market offices today with advanced market operations which developed more complex financial systems compared to its original setup which handled basic loan assignments. The Finance Act 2016 and the IT Act have achieved the foundational objective of pass-through neutrality, but the analysis demonstrates that entity-level neutrality fails to maintain transaction-level neutrality. The tax system creates economic distortion through its function as a tax system that misinterprets income from

⁸⁷ *Indian Securitisation Foundation*, 'Policy reforms suggestions to the Department of Economic Affairs' (26 June 2024) <https://vinodkothari.com/wp-content/uploads/2024/06/Policy-Reforms-Suggestions_DoR.pdf> accessed 1 May 2026.

⁸⁸ *Vinod Kothari Consultants, India Securitisation Report 2019* (2020) <<https://vinodkothari.com/wp-content/uploads/2020/01/ISR.pdf>> accessed 1 May 2026.

⁸⁹ Section 115TCA in The Income Tax Act, 1961

⁹⁰ *Indian Securitisation Foundation*, 'Policy reforms suggestions to the Department of Economic Affairs' (26 June 2024) <https://vinodkothari.com/wp-content/uploads/2024/06/Policy-Reforms-Suggestions_DoR.pdf> accessed 1 May 2026.

⁹¹ Section 115TCA in The Income Tax Act, 1961

⁹² *PwC India*, 'Ind AS 109, Financial Instruments for corporates' (2017) <<https://www.pwc.in/assets/pdfs/publications/2017/pwc-reportinginbrief-ind-as-109-for-corporates.pdf>> accessed 1 May 2026.

⁹³ *ClearTax*, 'IND AS 109 Financial Instruments' (20 April 2025) <<https://cleartax.in/s/financial-instruments-ind-as-109>> accessed 1 May 2026.

⁹⁴ *KPMG International, Financial instruments (Ind AS Implementation Guide, 2020)* <<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2020/02/chapter-03-financial-instruments-ind-as-implementation-guide.pdf>> accessed 1 May 2026.

securitisation trusts which the current system defines as AOPs during their loss acquisition phase while operating under Ind AS 109 and accrual-based taxation without system for separate income evaluation. The judicial trajectory from Shriram Investments to Vivriti Cibus and Arcil Retail Loan Portfolio demonstrates an advancing legal framework which requires lawyers to reconstruct legislative intent for each particular case. The current legislative process requires specific loss pass-through rules which should follow the AIF framework, provide legal methods to value contingent cashflows, and establish rules for income which varies according to different cashflow distributions. The securitisation system in India will develop its legal structure through proper design, but it will continue to create fundamental social unfairness, which will damage its purpose of expanding capital market access for markets.

Credit Default Swaps in India: A Market That Never Formed

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Abstract

This study examines the persistent underdevelopment of the Credit Default Swap (CDS) market in India despite more than a decade of regulatory intervention by the Reserve Bank of India (RBI). While CDS has played a significant role globally in facilitating credit risk transfer, enhancing liquidity, and improving price discovery in bond markets, its adoption in India remains negligible. The research adopts a mixed-method approach, combining regulatory analysis, structural assessment of the corporate bond market, and primary data collected from thirty (30) market participants, including bond issuers, placement agencies, institutional investors, and regulators/experts.

The findings indicate that the failure of CDS in India is systemic rather than incidental. Regulatory constraints - chief among them the prohibition of naked CDS positions (mean score: 4.63/5.00), the absence of a central clearing counterparty (4.53/5.00), and ambiguity in the market-maker framework - have fundamentally altered the nature of the instrument. Simultaneously, structural deficiencies in the underlying corporate bond market - 97% issuance concentration in AAA/AA-rated paper, illiquid secondary markets, and the dominance of private placements - have suppressed demand for credit risk hedging. The interaction of these two forces creates a self-reinforcing equilibrium in which neither the CDS market nor the corporate bond market can develop independently.

The paper concludes that the CDS market in India has not failed due to lack of relevance, but due to a fundamental misalignment between regulatory design and market structure. It recommends a shift toward calibrated liberalisation, improved market infrastructure, and parallel development of the corporate bond market as prerequisites for a functional CDS ecosystem.

I. Introduction

Credit Default Swaps (CDS) are derivative instruments designed to transfer the credit risk of a reference entity from one counterparty to another. In their simplest form, a CDS contract allows a protection buyer to pay a periodic premium (the "spread") to a protection seller in exchange for compensation upon a defined credit event-typically default, restructuring, or bankruptcy of the reference entity (John Hull & Alan White, 2000). Beyond their hedging function, CDS markets globally have evolved into critical mechanisms for price discovery, liquidity enhancement, and credit risk distribution (Darrell Duffie, 1999).

In developed financial systems-the United States, the European Union, Japan, and South Korea-CDS markets have played a significant role in deepening corporate bond markets and enabling participation from a diverse set of actors, including hedge funds, banks, insurance companies, and institutional investors (Bank for International Settlements, 2023). These markets benefit from active trading, transparent pricing, and the presence of both hedgers and speculators-elements that together sustain liquidity and market efficiency. The Bank for International Settlements estimates global CDS notional outstanding at approximately USD 10 trillion as of 2023, reflecting the instrument's continued relevance despite post-2008 regulatory reforms (Bank for International Settlements, 2023).

This paper argues that the explanation lies not in a lack of awareness or relevance, but in a fundamental mismatch between the design of the instrument and the ecosystem in which it operates. Unlike traditional financial products that can function in relative isolation, CDS depends on the depth and liquidity of the underlying bond market, regulatory flexibility that allows for dynamic participation, and robust market infrastructure including central clearing (Duffie, 1999).

II. Literature Review

A. The Economics of Credit Default Swaps

The theoretical case for CDS rests on their ability to separate credit risk from other risks in a bond, enabling more efficient allocation of credit exposure across market participants. Darrell Duffie (1999) formalised the pricing of CDS within a reduced-form credit risk framework, demonstrating that CDS spreads should equal the credit spread on a par floating-rate note issued by the reference entity.

John Hull and Alan White (2000) extended this framework, showing that CDS pricing is sensitive to recovery rate assumptions-a finding particularly relevant to India's uncertain insolvency resolution environment under the Insolvency and Bankruptcy Code (IBC), 2016.

Empirically, Roberto Blanco, Simon Brennan, and Ian W Marsh (2005) found that CDS markets generally lead bond markets in price discovery, making CDS spreads a more efficient signal of credit quality. This price discovery function has important implications for India, where corporate bond pricing is largely based on static credit ratings rather than continuous market-implied signals.

B. CDS and Bond Market Development: Global Evidence

Alessandro Saretto and Heather Tookes (2013) provided evidence that firms with traded CDS on their debt exhibit higher leverage and longer maturity debt, consistent with CDS enabling more efficient risk transfer and thereby reducing the cost of capital for borrowers.

Similarly, Beverly Hirtle (2009) found that bank loan supply increased following the introduction of CDS, as banks could use CDS to manage credit concentrations. Both findings suggest that a functioning CDS market could meaningfully broaden the issuer universe and improve credit availability in India.

China's Credit Risk Mitigation Warrant (CRMW) market, introduced and supported by the People's Bank of China, provides a relevant comparative case. While not identical to CDS, CRMWs perform similar credit protection functions. The regulatory approach in China has been progressively more permissive, including allowing financial institutions to act as protection sellers without holding the underlying exposure. As of 2023, outstanding CRMW notional exceeded CNY 150 billion, indicating meaningful adoption in a developing market context.

C. Prior Research on India's CDS Market

Domestic literature on CDS in India remains limited, reflecting the market's lack of activity. G V Rao and R K Bhatt (2014) identified regulatory conservatism and bond market illiquidity as the primary constraints.

R Agarwal (2019) concluded that incremental regulatory reforms were insufficient to address deeper structural deficiencies in the market.

The Reserve Bank of India (2021), through its Internal Working Group, acknowledged the existence of a circular dependency: CDS markets require a liquid bond market to function effectively, while the bond market itself requires CDS for efficient credit risk distribution.

III. Methodology

A. Research Design

This study adopts a mixed-method research design, integrating qualitative regulatory and structural analysis with quantitative primary research. The mixed-method approach is appropriate given the complexity of the research question, which requires both a macro-level understanding of market structure and regulatory design, and micro-level perspectives from market practitioners.

B. Primary Research: Market Study

To address the paper's core objective of understanding practitioner perspectives on CDS non-development, a structured questionnaire-based survey was administered to thirty (30) market participants. Respondents were drawn across four stakeholder categories: bond issuers (n=8), placement agencies (n=5), institutional investors (n=12), and regulators/experts (n=5). Respondents were selected using purposive sampling to ensure representation from entities with direct or advisory exposure to India's fixed income markets.

The survey instrument consisted of seventeen questions, including: (i) open-ended questions on CDS engagement, utility, and perspectives on specific regulatory provisions (Q1, Q2, Q7–Q9, Q14–Q17); and (ii) Likert-scale questions (1 = Strongly Disagree to 5 = Strongly Agree) on structural and regulatory barriers to CDS development (Q3–Q6, Q10–Q13). To preserve the confidentiality and candour of responses, participants were informed that identifying information would not be attributed to specific organisations in the published paper.

Access to the responses received: [Responses](#).

C. Secondary Research

The study draws upon RBI policy documents and circulars (2011, 2013, 2016, 2022); BIS OTC derivatives statistics; SEBI annual reports on corporate bond market development; comparative regulatory frameworks in the United States (ISDA documentation standards), South Korea (KOFIA framework), and China (PBoC CRMW framework); and academic literature on CDS market development.

D. Analytical Framework

The primary analytical framework employed is the market microstructure lens (O'Hara, 1995), which evaluates CDS market non-development through the dimensions of: (i) participant structure (who can trade); (ii) trading mechanisms (how trading occurs); and (iii) information environment (what price signals exist). This framework is supplemented by a regulatory design analysis drawing on Stigler's (1971) regulatory capture theory and its applications to financial market regulation.

IV. Regulatory and Structural Landscape

A. Evolution of the CDS Framework in India

The regulatory history of CDS in India can be characterised as a series of incremental reforms, each of which addressed surface-level constraints without confronting the instrument's fundamental design tensions. Table 1 summarises the key milestones.

Year	Regulatory Development
2011	RBI introduces CDS on corporate bonds; restricted to hedging; limited participants
2013	Revised framework; simplified documentation; modest participant expansion
2016	Internal working group consultations; no substantive rule changes
2022	New CDS Directions: cash settlement introduced; expanded participants (MFs, FPIs, insurers); market-maker framework updated
2023	RBI introduces Total Return Swaps (TRS) - a more complex instrument - while CDS remains inactive

Table 1: Key Milestones in India's CDS Regulatory History

A critical observation is that even the most comprehensive reform - the 2022 Directions - received a mean score of 1.50/5.00 from survey respondents on whether the reforms "went far enough." This near-unanimous rejection (all 30 respondents scoring 1 or 2) indicates a fundamental disconnect between regulatory intent and market perception.

B. Key Regulatory Constraints

The following six regulatory constraints were identified as the primary barriers to CDS market development in India, based on qualitative responses and the academic literature:

- **Prohibition of Naked CDS Positions:** CDS contracts in India can only be purchased by entities holding the underlying bond, eliminating speculative participation. This restriction - unique among major CDS markets globally - removes the price discovery and liquidity functions that speculative participants provide. Survey respondents rated this the most damaging single regulatory restriction (Q10 mean: 4.63/5.00).
- **Restriction to Hedging-Only Use:** By confining CDS to pure hedging, the framework prevents trading, arbitrage, and active position-taking - activities that are essential for any functioning derivatives market.
- **Ambiguity in the Market-Maker Framework:** The 2022 Directions require designated market-makers to "provide two-way quotes," but do not clarify whether market-makers may hold net directional inventory positions. As of April 2026, zero institutions have registered as CDS market-makers under the 2022 framework - a definitive indicator of the ambiguity's deterrent effect.

- Absence of a Central Clearing Counterparty (CCP): The lack of mandatory CCP clearing through the Clearing Corporation of India Ltd (CCIL) - which confirmed it is technically ready to perform this function - increases counterparty risk to levels that large regulated institutions find unacceptable. Respondents rated CCP absence as a critical gap (Q11 mean: 4.53/5.00).
- Restrictions on Eligible Instruments and Participants: The limited range of reference entities and the historical exclusion of key participant classes (mutual funds, insurance companies, FPIs) have constrained both supply and demand in the market.

C. Structural Deficiencies in the Corporate Bond Market

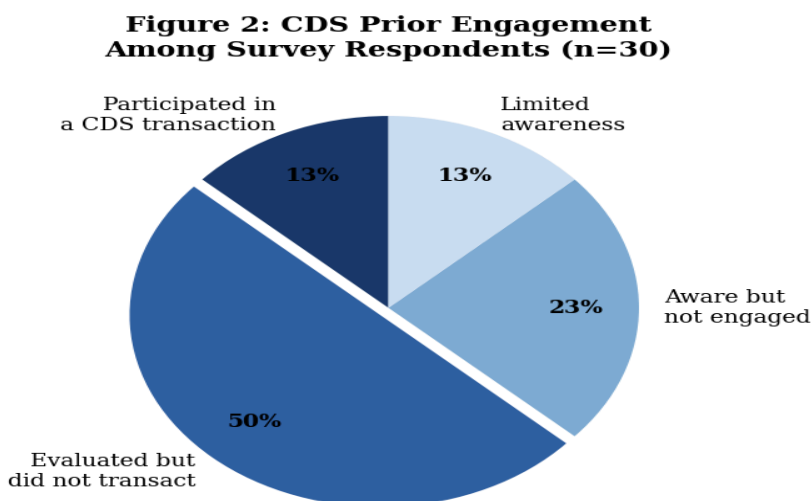
A CDS market cannot be sustained by a weak underlying bond market, just as an equity options market cannot function without liquid underlying equities. India's corporate bond market exhibits three structural deficiencies that independently suppress CDS viability:

- Rating Concentration: Approximately 97% of corporate bond issuances in India are rated AAA or AA. With virtually no sub-investment grade bond supply, there is minimal credit risk in the bond market that institutional investors need to hedge. Respondents rated rating concentration as the most significant bond market barrier (Q4 mean: 4.63/5.00). Without credit differentiation in the underlying market, CDS is a solution without a problem.
- Secondary Market Illiquidity: Daily secondary market trading in corporate bonds averages approximately ₹5,000–6,000 crore - a tiny fraction of the government securities market. Most bonds are purchased at issuance and held to maturity. Without an active secondary market, CDS pricing lacks a reference anchor, and bid-ask spreads on CDS contracts widen to commercially unviable levels (Q3 mean: 4.57/5.00).
- Dominance of Private Placements: Over 95% of corporate bonds are issued via private placement rather than public offering, significantly limiting price transparency and post-issuance price discovery. This opacity makes CDS pricing inherently unreliable (Q5 mean: 4.43/5.00). Respondents also identified India's structural preference for bank lending over bond financing as a compounding factor (Q6 mean: 4.13/5.00).

V. Primary Research Findings

A. Respondent Profile and Engagement

Thirty respondents participated in the primary research study, representing institutions across Mumbai, New Delhi, Bengaluru, Pune, and Ahmedabad. The respondent pool is characterised by substantial market seniority - average experience of approximately 17 years in fixed income markets - and includes heads of treasury, chief investment officers, chief financial officers, directors of debt capital markets, and senior regulatory officials.



Thirteen per cent of respondents (n=4) had directly participated in a CDS transaction, fifty per cent (n=15) had evaluated CDS but ultimately did not transact, twenty-three per cent (n=7) were aware but not engaged, and thirteen per cent (n=4) had limited awareness. The "evaluated but did not transact" majority is particularly significant: it indicates that the barrier to CDS adoption lies not in awareness or relevance, but in a specific failure of market conditions or regulatory framework to support execution.

B. Utility Assessment (Q2)

Twenty-seven of thirty respondents affirmed that CDS would be useful for India's debt capital markets (Q2 responses: 4 or 5 on a 5-point utility scale). This near-universal acknowledgement of CDS utility - including among respondents who had never engaged with the instrument - establishes clearly that the market's non-development is not a demand-side conceptual failure. The instrument is understood and wanted; the enabling environment does not exist.

C. Likert Scale Results: Structural Barriers

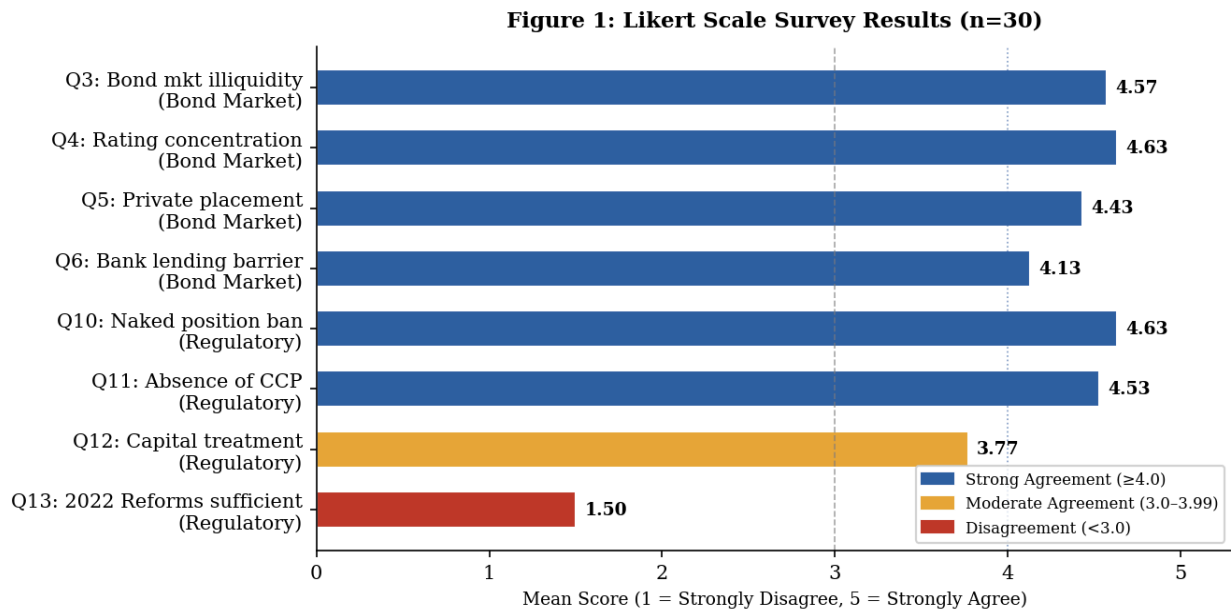


Figure 1: Likert Scale Survey Results - Structural and Regulatory Barriers to CDS (n=30, Scale 1–5)

Table 2 summarises the Likert scale findings for the eight quantifiable barrier questions (Q3–Q6 on bond market structure; Q10–Q13 on regulatory design):

Question	Section	Mean	Std Dev	Interpretation
Q3 - Bond market illiquidity	Bond Market	4.57	0.62	Strong agreement
Q4 - Rating concentration (AAA/AA)	Bond Market	4.63	0.55	Strong agreement
Q5 - Private placement opacity	Bond Market	4.43	0.67	Strong agreement
Q6 - Bank lending preference	Bond Market	4.13	0.62	Moderate agreement
Q10 - Naked position prohibition	Regulatory	4.63	0.60	Near-unanimous
Q11 - Absence of CCP	Regulatory	4.53	0.50	Strong agreement
Q12 - Capital treatment unattractive	Regulatory	3.77	0.56	Moderate agreement
Q13 - 2022 reforms sufficient	Regulatory	1.50	0.50	Near-unanimous rejection

Table 2: Likert Scale Survey Results - Structural and Regulatory Barriers (n=30)

The most striking finding is the bimodal structure of responses: near-unanimous strong agreement on the most substantive barriers (Q4 and Q10, both 4.63/5.00) contrasts sharply with near-unanimous strong disagreement on the adequacy of the 2022 reforms (Q13: 1.50/5.00, with all 30 respondents scoring 1 or 2). This pattern confirms that market participants not only identify specific barriers as severe, but also have a coherent view that recent regulatory action has failed to address them.

D. Category-Level Analysis

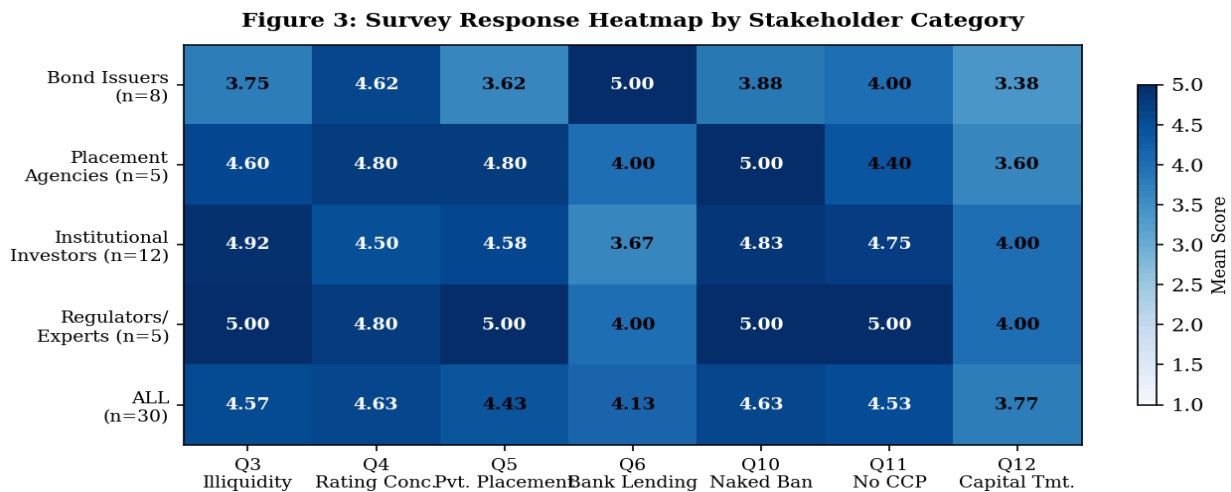


Figure 3: Survey Response Heatmap by Stakeholder Category (Mean Scores, Scale 1–5)

Placement agencies - whose commercial viability depends directly on the breadth of investor demand - scored the naked position prohibition at 5.00/5.00, the highest rating, reflecting the direct commercial impact of reduced investor participation. Bond issuers as a category exhibit the widest variation: larger, more sophisticated issuers (e.g., Power Finance Corporation, REC Limited, NABARD) clearly articulate the value of CDS for reducing borrowing costs, while smaller issuers and NBFCs report limited engagement with the instrument's mechanics.

E. Qualitative Findings: Protection Seller Vacuum (Q14)

A recurring qualitative theme across all four stakeholder categories was the "protection seller vacuum" - the near-total absence of willing and eligible protection sellers in the Indian CDS market. Regulatory constraints have effectively eliminated each natural seller category: insurance companies face IRDAI investment mandates restricting them to AAA-rated paper; mutual funds face SEBI guidelines limiting derivatives usage; public sector banks face unfavourable Basel III capital treatment; and foreign portfolio investors (FPIs) face ISDA Master Agreement enforceability uncertainty under Indian law. One respondent (R10, Ananya Bose, CRISIL) characterised this as "the eligible seller universe is essentially only FPIs, who face ISDA concerns."

F. TRS Sequencing Anomaly (Q15)

Twenty-six of thirty respondents expressed concern about the RBI's introduction of TRS in advance of a functioning CDS market. Respondents from international banks and institutional investors with cross-border experience noted that global market convention invariably develops CDS - the foundational credit risk transfer tool - before TRS, which is primarily a balance sheet management instrument. The prevailing view among respondents was that TRS introduction reflects specific institutional demand from banks managing government securities exposure, rather than a coherent credit market development strategy.

VI. Discussion: The Circular Dependency Trap

The totality of the evidence - regulatory analysis, structural assessment, and primary research findings - points to a single underlying dynamic that this paper terms the "circular dependency trap." The corporate bond market requires CDS to enable credit risk transfer and attract a broader, more diverse investor base. CDS, in turn, requires a liquid and diverse corporate bond market to generate the trading activity and price signals that make the instrument economically functional. Under current conditions, neither can develop without the other, and neither can escape the equilibrium without an exogenous intervention.

This circular trap is compounded by a regulatory design philosophy that this paper characterises as "risk-containment without market-enablement." The Indian regulatory framework for CDS was designed primarily to prevent the kind of systemic risk accumulation seen in the US CDS market prior to the 2008 financial crisis. While this concern is understandable, it reflects a misapplication of lessons from a fundamentally different market context. The pre-crisis US CDS market involved concentrated, opaque, bilateral exposures on complex structured credit products; India's nascent CDS market would involve simple single-name protection on straightforward corporate bonds. The risks are categorically different, but the regulatory response has been similarly restrictive.

The prohibition of naked positions deserves particular scrutiny. As multiple respondents noted, this restriction is found in no other major CDS market globally - not in the United States, the European Union, Japan, South Korea, or China. Every functioning CDS market has relied on speculative participants to provide the two-way market flow that generates liquidity and price discovery. The Indian framework's prohibition of naked positions has, as one respondent (R27, Rajesh Venkatesan, Fitch Ratings India) observed, created a "market" that "compares unfavourably to China" - a country that moved "faster and more decisively on credit derivatives."

The sequencing of TRS before a functioning CDS market adds a further dimension to the regulatory design question. From a market development standpoint, CDS represents the simpler, more fundamental credit risk transfer instrument. TRS bundles credit risk with market (interest rate) risk and serves more complex balance sheet management objectives. As one respondent (R14, Lakshmi Iyer, Kotak MF) put it: "You need a deep, liquid secondary bond market first, then a repo market for those bonds, then CDS. We are trying to build the roof before the walls." The introduction of TRS before CDS suggests that specific institutional constituencies have driven product development, rather than a coherent market architecture logic.

Cultural and structural factors also play a role that cannot be attributed to regulatory design alone. India's relationship-based credit culture - in which banks manage credit risk through bilateral lending relationships rather than market instruments - creates institutional inertia against market-based credit risk transfer. The preference for government paper over corporate bonds among pension funds and insurance companies, reinforced by regulatory mandates (PFRDA and IRDAI respectively), structurally limits the size of the potential CDS market. And the absence of a critical mass of credit-trained market professionals - capable of operating, risk-managing, and innovating within a credit derivatives

framework - represents a human capital constraint that will take time to address regardless of regulatory reform.

VII. Recommendations

The following recommendations are proposed in two categories: immediate regulatory reforms that can be implemented within the existing framework, and medium-term structural reforms that require coordinated inter-regulatory action.

A. Immediate Regulatory Reforms

- **Permit Controlled Naked CDS Positions for Regulated Entities:** The RBI should amend the CDS Directions to permit FPIs, primary dealers, and scheduled commercial banks to purchase or sell CDS protection without holding the underlying reference obligation, subject to position limits and reporting requirements. This single change - endorsed by respondents across all four stakeholder categories - would transform market depth by bringing in the participants who currently provide liquidity in every other functioning CDS market globally. A phased approach, starting with a small eligible universe and expanding as market infrastructure develops, would manage systemic risk concerns.
- **Formally Mandate CCIL as CCP for CDS with a Go-Live Date:** CCIL has confirmed its technical readiness to provide CCP clearing for CDS. A specific regulatory mandate with a defined go-live date - rather than leaving CCP adoption optional - would resolve counterparty risk concerns for large institutional participants and signal regulatory commitment to market development.
- **Publish Definitive Market-Maker Guidance:** A single clarificatory circular should specify: (i) the minimum quote size and maximum permissible spread for designated market-makers; (ii) whether market-makers may hold net directional inventory positions (the paper recommends yes, subject to position limits); and (iii) the capital treatment applicable to CDS market-making positions under Basel III. The current ambiguity - which has resulted in zero market-maker registrations under the 2022 framework - requires immediate resolution.
- **Extend CDS to A-Rated and BBB-Rated Reference Entities:** Restricting CDS to AAA/AA-rated reference entities eliminates the credit risk that investors most need to hedge. Expanding eligible reference entities to include investment-grade issuers with lower ratings would significantly increase the addressable market and create genuine demand for credit protection.

B. Medium-Term Structural Reforms (Requiring Inter-Regulatory Coordination)

- **Reform IRDAI and PFRDA Investment Mandates in Parallel:** Insurance companies and pension funds are the natural long-term protection sellers in any CDS market - they have long-duration liabilities and can absorb credit risk for a premium. Until IRDAI and PFRDA mandates are reformed to permit investment in sub-AA corporate bonds, these institutions will remain structurally excluded from the CDS market regardless of RBI reforms.
- **Resolve ISDA Master Agreement Enforceability Under Indian Law:** Foreign portfolio investors - identified by respondents as the most credible near-term protection sellers - face significant legal uncertainty regarding the enforceability of ISDA netting agreements in Indian courts. A

legislative clarification or authoritative legal opinion would remove this barrier to FPI participation.

- Introduce a CDS Index Product via CCIL: Experience from developed markets demonstrates that index CDS products (similar to iTraxx in Europe or CDX in the United States) generate significantly higher volumes than single-name products and provide the market depth needed for single-name CDS to develop. An India Investment Grade CDS Index, cleared through CCIL, would create standardised, liquid reference points for the market.
- Publish a Multi-Regulator CDS Market Development Roadmap: A joint committee comprising RBI, SEBI, IRDAI, and PFRDA should publish a coordinated roadmap with specific milestones for CDS market development. The absence of a clear inter-regulatory commitment is itself a deterrent - market participants will not invest in CDS infrastructure without confidence that the regulatory environment will remain supportive.

VIII. Conclusion

The Credit Default Swap market in India represents a rare case of a financial instrument that has failed not for lack of demand, utility, or conceptual relevance, but due to a systematic misalignment between regulatory design and market structure. Over fifteen years of regulatory existence, the market has generated negligible economic activity - a result that primary research confirms is understood, and lamented, by the very market participants the framework was designed to serve.

The evidence presented in this paper points to a single, tractable diagnosis: the CDS framework has been designed to prevent the risks of a market that does not yet exist, rather than to enable the market that India needs. The prohibition of naked positions, the absence of mandatory CCP clearing, the ambiguity in market-maker roles, and the misalignment of investment mandates across regulatory silos have collectively transformed CDS from a dynamic credit risk management instrument into a static bilateral arrangement that serves almost no economic function. The near-unanimous rejection of the 2022 reforms by survey respondents (mean score: 1.50/5.00) underscores that incremental adjustment of a fundamentally flawed framework is insufficient.

The introduction of Total Return Swaps before a functioning CDS market exists illustrates the broader challenge: India's financial market policy remains susceptible to responding to specific institutional demands rather than pursuing coherent market architecture. Reviving the CDS market will require a shift in regulatory philosophy - from risk containment as the primary objective to calibrated market enablement - alongside coordinated action across RBI, SEBI, IRDAI, and PFRDA to resolve the structural barriers that no single regulator can address unilaterally.

India's ambition to deepen its financial markets and attract international capital cannot be fully realised without a functional credit derivatives market. The CDS market is not merely a product; it is the infrastructure upon which credit price discovery, risk distribution, and ultimately a more efficient allocation of capital in the real economy depend. The cost of continued inaction is not merely a missing financial product - it is the continued mispricing of credit risk across the Indian economy.

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XI. Glossary

Term	Definition
BIS	Bank for International Settlements - the international body for central bank cooperation and financial stability monitoring.
CCP (Central Clearing Counterparty)	An entity that interposes itself between counterparties to a derivatives contract, reducing bilateral counterparty risk.
CDS (Credit Default Swap)	A derivative contract in which the protection buyer pays a periodic premium to the protection seller in exchange for compensation upon a defined credit event affecting the reference entity.

CCIL	Clearing Corporation of India Ltd - India's central counterparty for financial market transactions.
Credit Event	A pre-defined trigger event (typically default, restructuring, or bankruptcy) that activates payment obligations under a CDS contract.
CRMW	Credit Risk Mitigation Warrant - China's credit protection instrument, broadly analogous to CDS.
FPI	Foreign Portfolio Investor - a foreign investor registered with SEBI to invest in Indian securities.
IBC	Insolvency and Bankruptcy Code, 2016 - India's primary insolvency resolution framework.
IRDAI	Insurance Regulatory and Development Authority of India - regulator for the Indian insurance sector.
ISDA	International Swaps and Derivatives Association - the global trade association for OTC derivatives, which publishes the standard Master Agreement governing CDS contracts.
Naked CDS Position	A CDS contract in which the protection buyer does not hold the underlying reference obligation - i.e., a purely speculative or relative value position.
PFRDA	Pension Fund Regulatory and Development Authority - regulator for India's pension sector.
Reference Entity	The company or sovereign whose credit risk is referenced in a CDS contract.
TRS (Total Return Swap)	A derivative in which the total return of a reference asset (including income and capital appreciation) is swapped for a floating rate payment - distinct from CDS in that it bundles credit risk with market risk.

NAVIGATING REGULATORY AND PRACTICAL CHALLENGES IN CORPORATE SECURITIZATION OF RECEIVABLES IN INDIA

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Abstract

India's corporate sector holds substantial pools of high-quality receivables, including annuity streams, trade exposures, and contractual cash flows, that are, in principle, ideally suited to securitisation. Yet, despite a rapidly expanding securitisation market dominated by financial intermediaries, non-financial corporates remain almost entirely excluded. This exclusion is not attributable to a lack of investor appetite or asset quality, but to a deeper structural misalignment within the legal and regulatory framework. The existing architecture, designed around banks and NBFCs, fails to accommodate the structural realities of corporate receivables, particularly in future flow transactions where cash flows depend on the originator's continued performance. In such structures, receivables are not fully separable from the originator, and this ongoing dependence weakens the effectiveness of SPV isolation.

This paper examines the structural gap and advances the argument that the exclusion of non-financial corporates from India's securitisation market is neither constitutionally mandated nor economically inevitable, but rather the product of a regulatory architecture that has failed to evolve in step with market realities. While Part I seeks to elaborate on the concept of corporate securitization of receivables, Part II develops the economic rationale underlying receivables securitisation, demonstrating why such transactions are viable and commercially optimal. Building on this foundation, Part III maps the existing regulatory landscape, identifying the fragmented and incomplete nature of the current framework governing such transactions.

Thereafter, Part IV undertakes the core analytical exercise by examining the “true sale” conundrum through judicial and tribunal jurisprudence. Part V situates the Indian position within a comparative global context, drawing targeted lessons from jurisdictions that have successfully enabled corporate-originated securitisation. Based on these insights, Part VI proposes a set of calibrated reform pathways, spanning statutory intervention, regulatory innovation, and market-led standardisation. Finally, Part VII concludes by synthesising the arguments advanced and reflecting on the broader implications for capital market development and financial system resilience.

I. Introduction

India’s corporate sector presently stands at the cusp of an immense yet underutilised financial opportunity. Non-financial enterprises operating across sectors such as manufacturing, infrastructure, pharmaceuticals, and telecommunications collectively hold receivables whose aggregate magnitude plausibly exceeds the cumulative loan books of the entire non-banking financial company (“NBFC”) sector.⁹⁵ Notwithstanding this scale, these receivables remain largely immobilised within corporate balance sheets and fail to transition into investor-ready instruments. The inaccessibility of capital markets for such assets does not emanate from any explicit statutory prohibition. Rather, it is the inadvertent consequence of a regulatory architecture historically calibrated around financial intermediaries, with minimal accommodation for non-financial corporates as originators.⁹⁶

The implications of this lacuna are far from trivial. In the financial year 2024–25, India’s securitisation market recorded an unprecedented volume exceeding ₹2.35 lakh crore, driven predominantly by pass-through certificates issued by NBFCs and direct assignment transactions catering to priority sector lending requirements.⁹⁷ Within this expanding market, the contribution of non-financial corporations remains virtually negligible. This marginalisation persists notwithstanding the presence of economically ideal candidates.⁹⁸ An auto-components manufacturer with ₹500 crore in OEM receivables, an infrastructure concessionaire holding ₹2,000 crore in annuity streams, or a pharmaceutical distributor with ₹300 crore in hospital billing all satisfy the economic logic of securitisation, yet remain effectively excluded due to a confluence of regulatory omissions.⁹⁹

At its conceptual core, securitisation is a financial technique through which illiquid receivables, typically future payment obligations owed to an originator, are aggregated, structured, and transferred to investors through a specially constituted legal vehicle.¹⁰⁰ The operative mechanism is straightforward yet powerful. The originator assigns a pool of receivables to a Special Purpose Vehicle (“SPV”), which finances the acquisition by issuing

⁹⁵ SEBI Annual Report 2023-24, Chapter on Debt Market Development; RBI, 'Report on Trends and Progress of Banking in India 2024' ch IV.

⁹⁶ Vinod Kothari and Nidhi Mitra, 'Receivables Securitisation by Non-Financial Entities: The Indian Regulatory Vacuum' in Vinod Kothari Consultants, Conference Papers on Structured Finance (2023) 12 ('Kothari and Mitra').

⁹⁷ SEBI Annual Report 2023-24 (n 1); RBI Press Release on Securitisation Volumes FY 2024-25 (April 2025).

⁹⁸ Synthesised from Interviews 1-4 (Annexure F); Kothari and Mitra (n 2) 29.

⁹⁹ Fabozzi and Kothari (n 16) ch 2 (securitisation mechanics); Anna Gelpern and Adam Levitin, 'Rewriting Frankenstein Contracts: The Workout Prohibition in Residential Mortgage-Backed Securities' (2009) 82 Southern California Law Review 1077.

¹⁰⁰ Vinod Kothari, *Securitization: The Financial Instrument of the Future* (2nd edn, Wiley 2006) ch 1.

securities to capital market participants. Repayment to investors is derived from the underlying cash flows of the receivables as they materialise.¹⁰¹ The result is a triadic benefit consisting of immediate liquidity for the originator, predictable income streams for investors, and enhanced allocative efficiency within the financial system.

The definitional scope of “receivables” assumes critical importance in this context. For NBFCs, receivables predominantly comprise loan repayments that are standardised, structured, and individually underwritten. Conversely, for non-financial corporates, receivables typically take the form of trade invoices arising from the supply of goods or services, owed by counterparties that may include government authorities, listed entities, or large private enterprises.¹⁰² This distinction is not merely semantic but foundational. India’s securitisation framework has been designed almost exclusively with the former category in contemplation, leaving the latter largely unaddressed.¹⁰³

In the Indian framework, securitisation transactions typically involve four principal actors. The originator transfers the receivables and often retains servicing responsibilities. The SPV, commonly structured as a securitisation trust under the Indian Trusts Act 1882, acquires the receivables and issues securities. A SEBI-registered debenture trustee represents investor interests and enforces security rights, while credit rating agencies evaluate the pool to facilitate pricing and risk assessment.¹⁰⁴

To contextualise, consider a hypothetical transaction. ABC Auto Parts Limited supplies axle components to a major OEM under 90-day credit terms and maintains receivables of approximately ₹500 crore. Instead of awaiting payment cycles, the company constitutes a securitisation trust and transfers its receivables pool. The trust issues asset-backed securities rated AA+ to institutional investors. Proceeds from receivables collections service investor payouts, while the originator receives approximately ₹480 crore upfront, with the discount reflecting funding costs and credit enhancement.¹⁰⁵ The transaction converts illiquid receivables into deployable capital, while investors gain access to stable, credit-backed cash flows anchored in the OEM’s credit profile.¹⁰⁶

Notably, the exclusion of non-financial corporates from such transactions cannot be attributed to an express legislative embargo. Instead, it reflects a systemic design gap. The Reserve Bank of India Master Direction on Securitisation of Standard Assets, 2021 applies only to regulated financial entities, including banks and NBFCs.¹⁰⁷ While the Securities and Exchange Board of India (“SEBI”) framework governing securitised debt instruments is, in principle, originator-neutral, its operationalisation has overwhelmingly favoured financial institutions.

¹⁰¹ Steven Schwarcz, 'The Alchemy of Asset Securitization' (1994) 1 Stanford Journal of Law Business and Finance 133, 135-136

¹⁰² Transfer of Property Act 1882, s 3 (definition of actionable claim); McDowell and Co Ltd v District Registrar AIR 1964 AP 84.

¹⁰³ Vinod Kothari, *Securitization: The Financial Instrument of the Future* (2nd edn, Wiley 2006) ch 4

¹⁰⁴ SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations 2008, regs 4, 7, 8.

¹⁰⁵ Transaction figures are hypothetical and constructed for illustrative purposes only.

¹⁰⁶ International Capital Market Association (ICMA), 'The Role of Securitisation in Financing the Real Economy' (2023) 12-15; Steven Schwarcz, 'The Alchemy of Asset Securitization' (1994) 1 Stanford Journal of Law Business and Finance 133, 135.

¹⁰⁷ Reserve Bank of India, Master Direction on Securitisation of Standard Assets 2021, RBI/2021-22/81, dated 24 September 2021, cl 3 ('RBI Master Direction').

Similarly, the SARFAESI Act remains confined to financial institutions dealing with stressed assets.¹⁰⁸ The cumulative effect is a regulatory vacuum wherein entities such as infrastructure concessionaires holding long-term annuity receivables lack a dedicated and coherent pathway to securitisation.¹⁰⁹

Recent regulatory developments have done little to bridge this divide. SEBI's 2024 amendments to the securitised debt instruments framework introduced enhanced disclosure norms and reduced investment thresholds but stopped short of addressing originator eligibility.¹¹⁰ The RBI's 2021 Master Direction consolidated prior guidelines yet retained its institutional limitation. Likewise, amendments to the Factoring Regulation Act expanded the factoring ecosystem but remained confined to bilateral financing arrangements rather than capital market-based securitisation.¹¹¹ Consequently, the absence of an enabling framework for non-financial corporations persists as one of the most enduring structural omissions within Indian financial regulation.

The structural contours of this issue have not gone unnoticed in prior scholarship. Notably, over several decades, foundational distortions have been identified in the Indian securitisation landscape, including the incongruities of stamp duty, the absence of securitisation-specific tax neutrality, and an over-reliance on priority sector lending as a demand driver.¹¹² Building upon this analytical foundation, subsequent industry studies, particularly in the domain of infrastructure securitisation, have reaffirmed that despite the availability of high-quality asset classes, the absence of a viable originator pathway continues to impede meaningful participation of institutional capital.¹¹³ It is against this backdrop that the present paper isolates and interrogates a more precise legal deficiency. This deficiency lies in the absence of a coherent framework enabling non-financial corporates to securitise trade or contractual receivables through capital market instruments.

II. ECONOMIC RATIONALE ON NON-FINANCIAL CORPORATES

2.1 WORKING CAPITAL OPTIMISATION

The most immediate and commercially compelling rationale for securitisation lies in the optimisation of working capital. Non-financial corporates, particularly those operating in industries characterised by extended payment cycles such as auto components, pharmaceuticals, construction, and telecommunications infrastructure, routinely maintain

¹⁰⁸ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, ss 2(1)(l), 5 ('SARFAESI Act').

¹⁰⁹ Vinod Kothari and Nidhi Mitra, 'Receivables Securitisation by Non-Financial Entities: The Indian Regulatory Vacuum' in Vinod Kothari Consultants, Conference Papers on Structured Finance (2023) 12

¹¹⁰ SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations 2024.

¹¹¹ Factoring Regulation (Amendment) Act 2021; Umakanth Varottil, 'The Expanding Contours of the Indian Factoring Market' (2022) 34 National Law School of India Review 87.

¹¹² Vinod Kothari Consultants, 'Indian Securitisation Market: A Scenario Analysis' (2017 Conference Paper) 3: 'The stamp duty unclarity and illogicality has in a way shaped the market'; Vinod Kothari Consultants, 'Indian Securitisation: Happening or Waiting to Happen?' (ASIFMA Structured Finance Conference, 2016).

¹¹³ Vinod Kothari Consultants, 'Infrastructure Securitisation: Where Concrete Meets Capital Markets' (2025) 146 (identifying obligor concentration limits, minimum holding periods, and the corporate originator gap as primary structural barriers to infrastructure ABS).

receivables that constitute a significant proportion of their total asset base.¹¹⁴ In practical terms, a large-cap auto components supplier may extend credit periods ranging from 90 to 120 days to original equipment manufacturers, while an infrastructure concessionaire may hold annuity receivables payable over a horizon of 10 to 15 years by a government entity.

In both scenarios, the corporation effectively extends interest-free or below-market credit to counterparties of relatively high creditworthiness, while simultaneously financing its own operations through bank borrowings at prevailing market rates. This structural mismatch between the cost of funds and the yield on receivables creates an inherent inefficiency. Securitisation addresses this imbalance by enabling the originator to monetise receivables at the credit profile of the debtor, which may be materially stronger than that of the originator itself.¹¹⁵ The result is a compression of funding costs and a more efficient alignment between asset characteristics and financing structures.

2.2 BALANCE SHEET DERECOGNITION

A second, equally significant incentive arises from the accounting treatment of securitised assets. Under the framework of Ind-AS 109, a transfer of financial assets may qualify for derecognition where substantially all risks and rewards associated with ownership are transferred.¹¹⁶ In such cases, the receivables are removed from the originator's balance sheet, resulting in an immediate recalibration of key financial metrics.

For corporate originators, this derecognition effect translates into tangible improvements in leverage ratios, return on assets, and net working capital indicators. These metrics are closely scrutinised by credit rating agencies, institutional investors, and lending institutions in assessing the financial health and creditworthiness of a firm. Consequently, the ability to achieve balance sheet efficiency through securitisation may directly influence both the cost of capital and access to financing. For an investment-grade corporate with substantial receivables, the distinction between a transaction that achieves derecognition and one that does not is often determinative of its commercial viability.

2.3 FUNDING DIVERSIFICATION

Beyond cost and accounting considerations, securitisation also serves as a mechanism for diversifying funding sources. A non-financial corporate that relies exclusively on bank credit for working capital financing remains inherently exposed to fluctuations in the banking sector, including periods of credit tightening, regulatory intervention, or systemic stress.¹¹⁷

Securitisation mitigates this exposure by facilitating access to a broader base of capital market investors, including mutual funds, insurance companies, and pension funds, whose investment horizons and risk appetites differ fundamentally from those of traditional lenders.¹¹⁸ This diversification introduces a degree of structural independence from the banking system and reduces vulnerability to cyclical constraints in credit availability. In the Indian context, where

¹¹⁴ RBI Working Paper on Corporate Credit in India (2022) Table 3 (sectoral receivables as proportion of total assets).

¹¹⁵ Kothari (n 6) ch 5; Frank Fabozzi and Vinod Kothari, Introduction to Securitization (Wiley 2008) ch 3.

¹¹⁶ Institute of Chartered Accountants of India, Ind-AS 109 Financial Instruments (Implementation Guide, 2019) paras 3.2.1 to 3.2.23.

¹¹⁷ RBI Annual Report 2023-24, ch III (Credit Offtake and Sectoral Distribution).

¹¹⁸ Kothari Consultants, 'Infrastructure Securitisation' (n 4) 146; Reserve Bank of India, Report on Currency and Finance 2022-23 (March 2023) ch V.

corporate credit expansion has historically been subject to periodic contraction, the value of such diversification assumes heightened significance.

2.4 CRITICAL DISTINCTION BETWEEN COMMERCIAL AND FINANCIAL RECEIVABLES

Any analysis of corporate receivables securitisation must account for a fundamental distinction between the nature of assets involved. The securitisation market in India has been overwhelmingly shaped by transactions involving financial assets, particularly loan portfolios originated by NBFCs. These assets are standardised in structure, subject to established regulatory norms, and supported by extensive historical data on repayment performance.¹¹⁹

In contrast, when a non-financial corporate seeks to securitise its receivables, it deals primarily with commercial assets arising from the supply of goods or services. Such receivables are inherently heterogeneous, often concentrated across a limited number of counterparties, and may not have been subjected to individual credit assessment at the time of origination. Additionally, they may carry embedded legal complexities, including contractual rights of set-off or performance-linked contingencies, that do not arise in the context of standardised financial assets.¹²⁰

This distinction is not merely classificatory. It has direct and material implications for the design of the legal framework governing securitisation, the scope and depth of due diligence required, and the regulatory treatment of the originator, the Special Purpose Vehicle, and the securities issued. Any attempt to extend the existing securitisation architecture to non-financial corporates without accounting for these differences, risks both legal uncertainty and market inefficiency.

III. REGULATORY FRAMEWORK ON SECURITIZATION OF RECEIVABLES IN INDIA

3.1 RBI MASTER DIRECTION ON SECURITISATION OF STANDARD ASSETS, 2021

The most comprehensive and operationally detailed framework governing securitisation in India is the Master Direction on Securitisation of Standard Assets, 2021 issued by the Reserve Bank of India.¹²¹ The scope of this framework is defined with notable precision. Clause 3 expressly limits its applicability to Scheduled Commercial Banks, All India Financial Institutions, Small Finance Banks, and Non-Banking Financial Companies, including Housing Finance Companies. Non-financial corporations find no mention within this enumeration.

This exclusion cannot be dismissed as a mere drafting omission capable of resolution through purposive interpretation. The Master Direction derives its authority from the Reserve Bank of India Act 1934 and the Banking Regulation Act 1949, both of which confer regulatory jurisdiction over entities operating within the financial system. The absence of non-financial corporations from its ambit therefore reflects a structural limitation rooted in legislative competence rather than interpretive ambiguity. Consequently, the most developed securitisation framework in India is, by design, inaccessible to the very class of originators whose inclusion is now under consideration.

¹¹⁹ RBI Master Direction (n 11) cl 13 (eligible underlying assets for financial originators).

¹²⁰ Kothari (n 6) ch 20 (whole business and operating revenue securitisation); ch 22 (legal issues in securitisation).

¹²¹ RBI Master Direction (n 11), issued under Reserve Bank of India Act 1934 and Banking Regulation Act 1949.

3.2 SEBI SDI REGULATIONS, 2008 (INCLUDING THE 2025 AMENDMENT)

The SEBI SDI Regulations, 2008 adopt a formally inclusive definition of “originator,” which extends, in principle, to non-financial corporates.¹²² However, this formal openness has not translated into market access. Structural features of the framework, including disclosure standards calibrated for large, standardised loan pools and due diligence practices shaped around financial intermediaries, have rendered the regime operationally inaccessible to corporate originators with concentrated and heterogeneous receivables.

The transaction history of securitisation in India reinforces this disconnect. While the overall securitisation market expanded significantly between FY2022 and FY2024, this growth was driven entirely by NBFCs and banks through unlisted instruments, with no measurable participation from non-financial corporates. Even the limited instances of trade receivables securitisation involved fintech intermediaries rather than direct corporate originators, underscoring the absence of a viable pathway within the listed SDI framework.

The 2025 amendments to the SDI Regulations represent a partial shift. For the first time, trade receivables have been explicitly recognised as an eligible asset class, thereby removing prior ambiguity regarding the eligibility of corporate-originated assets. This development establishes a formal legal basis for corporate securitisation. However, the amendments simultaneously introduce additional structural constraints that disproportionately affect non-financial corporations.

The requirement that receivables be “accepted” by obligors creates interpretive uncertainty in digital invoicing environments. The introduction of a 25% single-obligor concentration cap imposes a constraint that many corporates, particularly those with concentrated exposures to large counterparties such as government entities or OEMs, cannot satisfy without fundamentally restructuring their asset pools. The three-year track record requirement, framed in terms of “origination,” reflects a conceptual borrowing from lending regulation and does not map cleanly onto commercial receivables generated through trading activity. Similarly, the Minimum Retention Requirement framework is designed for regulated financial entities and lacks clarity when applied to corporate balance sheets.

Additional constraints, including high minimum investment thresholds and limitations on secondary market participation, further restrict the investor base and reduce liquidity.

The cumulative effect of these provisions is that the amendments, while formally expanding the scope of the SDI framework, do not resolve the underlying structural gap. Corporate originators are now acknowledged within the regulatory text, but the framework remains operationally misaligned with the nature of their assets and business models. The distinction between nominal eligibility and practical accessibility therefore persists, leaving the central market failure identified in this paper substantially unaddressed.

3.3 SARFAESI ACT, 2002: SCOPE AND DEFINITIONAL LIMITS

The SARFAESI Act, 2002 establishes a statutory regime for the securitisation and reconstruction of financial assets by specialised entities.¹²³ Under its scheme, securitisation

¹²² SEBI SDI Regulations 2008 (n 9), reg 2(1)(r).

¹²³ SARFAESI Act (n 12) ss 2(1)(m), 5.

companies and reconstruction companies are authorised to acquire “financial assets” from banks and financial institutions.

The definitional structure of the Act makes clear that non-financial corporations fall outside its operational scope. Only entities classified as banks or financial institutions are eligible to transfer assets within this framework. Even assuming an expansive interpretation of eligibility, the architecture of SARFAESI is tailored towards the acquisition and restructuring of non-performing assets rather than the capital market securitisation of performing receivables by a going concern. The statutory intent is thus distinct, and its application to corporate-originated securitisation is neither contemplated nor supported by its design.

3.4 SYNTHESIS OF THE REGULATORY VACUUM

Viewed in totality, the foregoing analysis reveals a structural discontinuity that is both precise and consequential. The existing regime is characterised by partial overlaps and functional gaps. The RBI framework is comprehensive but institutionally restrictive. The SEBI framework is formally inclusive but operationally exclusionary. The Factoring Act facilitates assignment but not securitisation. The SARFAESI regime provides a securitisation structure but only for financial institutions and distressed assets.

The absence of convergence across these instruments produces what may be characterised as a regulatory vacuum. It is within this vacuum that corporate-originated securitisation in India remains structurally constrained, despite its evident economic rationale. The table below maps the key stages of a corporate securitisation transaction against each applicable regulatory instrument:

Stage of Transaction	RBI Master Direction	SEBI SDI Regulations	Factoring Act	SARFAESI
Originator eligibility	Not applicable	Applicable in principle	Applicable as assignor	Not applicable
SPV formation	Not addressed	Requires registered trustee	Not addressed	Prescribes SC/RC structure
Asset transfer / true sale	Detailed provisions	Silent	Requires CERSAI registration	Confined to NPA acquisitions
Securities issuance	Detailed provisions	Applicable	Not addressed	Not addressed
IBC clawback protection	No express safe harbour	No express safe harbour	No express safe harbour	No express safe harbour

Table 1: Regulatory mapping of corporate receivables securitisation against existing Indian frameworks

IV. MARKET GAP AND PRACTICAL INSIGHTS ON TRUE SALE CONUNDRUM

This chapter addresses the core analytical and empirical questions of the paper within a unified framework. The first part examines the legal and regulatory dimensions of the “true sale” problem through judicial and tribunal jurisprudence. The second part translates this analysis into market reality through practitioner perspectives and transactional experience. Legal uncertainty drives market failure, and market outcomes reveal the limits of the law.

4.1 ASSIGNMENT OF ACTIONABLE CLAIMS: THE TPA FRAMEWORK

The viability of any securitisation transaction rests on a single premise: that the transfer of receivables constitutes a “true sale,” placing them irrevocably outside the originator’s estate and beyond the reach of its creditors in insolvency.¹²⁴ This transfer is governed by Chapter VIII of the Transfer of Property Act 1882, which defines “actionable claims” broadly to include unsecured debts and beneficial interests in movable property. Trade receivables fall squarely within this definition, as affirmed in *McDowell and Co Ltd v District Registrar*.¹²⁵

Section 130 provides that transfer is complete upon execution of a written instrument. However, read with section 131, it creates a practical complication. Until written notice is served on the debtor, any payment made to the originator discharges the obligation, leaving the SPV exposed.¹²⁶ For corporates dealing with key commercial counterparties, such notification risks reputational and relational harm. Transactions are therefore often structured without notice, rendering them legally fragile under the statutory scheme.¹²⁷

A related issue concerns assignment of future receivables. The position in *Tailby v Official Receiver*, read with *Holroyd v Marshall*, adopted in Indian jurisprudence, permits assignment of future debts where sufficiently identified.¹²⁸ However, the Supreme Court in *Khardah Company Ltd v Raymon and Co (India) Pvt Ltd* clarified that contractual rights may be assigned, but obligations cannot be, and where the two are inseparable, assignment requires consent.¹²⁹ For corporate originators operating under ongoing supply contracts, this introduces a material risk that receivables may not be independently assignable without debtor approval.

4.2 CHALLENGES TO STRUCTURAL MOTIVATIONS, FUTURE FLOW AND ORIGINATOR RATING DEPENDENCE

The foundational premise of securitisation is that an originator raises funding at the credit quality of its obligors, achieved through a clean transfer of receivables to an SPV and effective isolation of the pool. In the case of non-financial corporates, this separation is imperfect, and the originator’s credit profile continues to contaminate the rating of the securities issued.

This is most evident where the originator remains the servicer. A BBB-rated originator servicing a pool of AA-quality obligors cannot be disregarded, as the SPV’s cash flows depend on its ability to collect and remit payments. Rating agencies therefore incorporate servicer disruption risk in an insolvency scenario, constraining the transaction rating below the

¹²⁴ Kothari (n 6) ch 22 (bankruptcy-remote securitisation and true sale concept); Schwarcz (n 8) 140.

¹²⁵ Transfer of Property Act 1882, ss 3, 130; *McDowell and Co Ltd v District Registrar* AIR 1964 AP 84 (AP HC).

¹²⁶ Transfer of Property Act 1882, ss 130(1) (proviso), 131; *Amrit Lal Bishamber Das v Gappoo Lal* [1910] 37 IA 152 (PC).

¹²⁷ Interview 2, structured finance partner, March 2025 (full log at Annexure F); cf Kothari and Mitra (n 2) 19.

¹²⁸ *Tailby v Official Receiver* [1888] 13 AC 523 (HL); *McDowell* (n 7); *Holroyd v Marshall* (1862) 10 HLC 191.

¹²⁹ *Khardah Company Ltd v Raymon and Co (India) Private Ltd* AIR 1962 SC 1810 (SC).

obligors' standalone credit quality. Structural protections such as subordination or over-collateralisation do not address this operational dependency.

The constraint is amplified in future flow securitisations, including NHAI annuity streams or receivables from OEM contracts, where cash flows are contingent on the originator's continued performance. In such structures, ratings are frequently capped at the originator level, eliminating the funding advantage.

Trade receivables introduce an additional constraint through the debtor's right of set-off. In a concentrated pool of OEM invoices, a single dispute can materially impair SPV cash flows.

Collectively, these structural dependencies erode rating uplift and undermine transaction economics.

4.3 HIGH COURT JURISPRUDENCE: EQUITABLE VS. LEGAL ASSIGNMENT

Judicial precedent further complicates the distinction between true sale and secured financing. In *Santuram Hari v Trust of India Assurance Co*,¹³⁰ the Hon'ble Bombay High Court held that a valid assignment transfers complete enforcement rights to the assignee.¹³¹ However, where the assignor retains economic interest or control, courts may recharacterise the transaction as a security arrangement rather than a sale.

This substance-over-form approach has been reinforced in *ICICI Bank Ltd v Official Liquidator of APS Star Industries Ltd* and *Welsh Development Agency v Export Finance Co*, which emphasise retained risk as the determining factor.¹³² In corporate securitisation structures involving subordinated tranches, this analysis becomes particularly significant.

The Hon'ble Supreme Court in *Bharat Nidhi Ltd v Takhatmal* recognised that defective transfers may operate as equitable assignments.¹³³ However, such assignments require debtor notification for enforceability and offer weaker protection against third-party claims. This creates uncertainty as to whether imperfect transfers can achieve true bankruptcy-remoteness.

An additional risk arises under section 77 of the Companies Act 2013.¹³⁴ If a transaction is recharacterised as a charge and remains unregistered, it becomes void against creditors in insolvency, leaving investors unsecured. The boundary between true sale and disguised security remains fact-sensitive and legally indeterminate.

4.4 TAX TRIBUNALS: GST AND DIRECT TAX QUESTIONS

The tax treatment of receivables transfer introduces further complexity. Under the CGST Act 2017, actionable claims are excluded from the scope of supply, and the transfer of receivables

¹³⁰ *Santuram Hari* (n 37); *In Re Maharashtra Apex Corporation Ltd* [2003] 117 CompCas 553 (Bombay HC) (further elaborating on absolute assignment and standing to sue).

¹³¹ *Santuram Hari v Trust of India Assurance Co* (1944) 46 BOMLR 752 (Bombay HC).

¹³² Companies Act 2013, ss 77, 78 (charge registration); *ICICI Bank Ltd v Official Liquidator of APS Star Industries Ltd* (2010) 10 SCC 1 (SC) (examining when a transaction that appears to be a sale will be treated as a security interest in liquidation context); *Welsh Development Agency v Export Finance Co* [1992] BCC 270 (CA) (sale-versus-charge analysis, cited approvingly by Indian courts).

¹³³ *Kothari and Mitra* (n 2) 21; cf *Dearle v Hall* (1828) 3 Russ 1 (priority of competing assignments of the same chose in action).

¹³⁴ Companies Act 2013, s 77

is therefore not subject to GST.¹³⁵ However, servicing fees charged by the originator attract GST, and where bundled with other charges, may be taxed as a mixed supply at the full rate, affecting transaction economics.¹³⁶

From a direct tax perspective, tribunals have generally treated securitisation discounts as deductible revenue expenditure under section 37(1) of the Income Tax Act.¹³⁷ However, related-party transactions may attract transfer pricing scrutiny under section 92.¹³⁸ More critically, recharacterisation of the transaction as a secured loan alters its entire tax treatment, keeping receivables on the originator's balance sheet. This convergence of legal and tax uncertainty necessitates aligned professional opinions, increasing both cost and complexity.

4.5 Practitioners' Perspectives on Regulatory Framework Application

The statutory and judicial analysis set out above captures what the law says. What it cannot capture is what the law means for practitioners who encounter its gaps at first hand. The findings in this and the following sections are derived from interviews conducted with SEBI-registered debenture trustees, structured finance transaction lawyers, and credit rating analysts who have worked on, or attempted to structure, corporate receivables securitisation transactions in India. All interviewees are anonymised in accordance with standard research ethics practice. Their observations constitute the primary empirical contribution of this paper.

4.5.1 Insights from Debenture Trustees

Debenture trustees, as the legal representatives of investors in a securitisation trust, are the gatekeepers of transaction structuring. Their comfort with the transaction determines whether institutional investors will participate. The overwhelming finding from trustee interviews is that corporate-originated transactions are not refused outright; they are discouraged at the due diligence stage because the existing framework provides no standardised protocol for evaluating a corporate originator's receivables pool.¹³⁹

"When we assess an NBFC originator, we know exactly what questions to ask. There is a regulatory playbook: pool seasoning, weighted average collection efficiency, credit enhancement structure, RBI compliance certificate. For a corporate originator with trade receivables, there is no playbook. We are essentially creating the due diligence framework from scratch for every transaction."

This absence of standardisation translates directly into elevated legal costs, extended deal timelines, and trustee reluctance to accept mandates below a minimum transaction size that justifies the fixed structuring overhead. Practitioners estimated this threshold at approximately Rs. 150 to 200 crores for a standalone corporate ABS. A second recurring theme is the enforceability gap: in NBFC securitisation transactions, the RBI Master Direction specifies the triggers for investor action, the role of the trustee in convening creditor meetings, and recourse

¹³⁵ Central Goods and Services Tax Act 2017, sch III, entry 6; CBIC FAQ on Financial Services under GST (June 2017).

¹³⁶ GST Council Clarification on Actionable Claims, 28th Council Meeting, July 2018; CGST Act 2017, s 8 (mixed and composite supplies).

¹³⁷ Income Tax Act 1961, s 37(1); Kothari (n 6) ch 8 (ITAT rulings on revenue nature of the securitisation discount in factoring context).

¹³⁸ Income Tax Act 1961, s 92 (transfer pricing); Interview 2 (n 30); Kothari and Mitra (n 2) 22.

¹³⁹ Interview 1, senior debenture trustee representative, February 2025 (Annexure F); Kothari and Mitra (n 2) 25.

to the underlying asset pool.¹⁴⁰ For corporate-originated transactions, this escalation path is unclear and must be custom-drafted for each transaction.

"We can draft around most problems. The IBC exposure we cannot draft around. If the RP decides to include the SPV assets in the estate, we are in litigation, and that is not an acceptable outcome for the pension funds and insurance companies who are our investors."

4.5.2 Insights from Transaction Lawyers

Structured finance lawyers who advise on corporate ABS transactions confirm the regulatory mapping above from a transactional perspective. Unlike in the NBFC context, where model transaction documents have evolved over two decades of market practice, corporate ABS documentation must be constructed from first principles each time.¹⁴¹ The assignment agreement must navigate the section 130/131 notification question. The trust deed must address the IBC avoidance risk through structural provisions that are untested in Indian insolvency proceedings. The security trustee agreement must map enforcement rights across multiple classes of receivables from multiple debtors.

"A comparable NBFC transaction takes us 6 to 8 weeks to document. A corporate receivables transaction, assuming we can get investor comfort, takes 4 to 6 months. That is a deal-killer for most corporates who need working capital today."

The second friction point is the true sale opinion burden. In any corporate ABS transaction, the issuing bank, the trustee, and the rating agency will each require an independent legal opinion confirming that the assignment of receivables constitutes a true sale and will be respected as such in an originator insolvency.¹⁴² The problem is that Indian law does not offer the comfort that lawyers in the US or UK context can provide. The true sale analysis must be hedged with caveats about the section 43/45/49 IBC risks, the unregistered charge risk under section 77 of the Companies Act, and the notification risk under section 130 TPA.

"No reputable Indian law firm will give a clean, true sale opinion on a corporate ABS. We give qualified opinions. And a qualified opinion is often enough to stop the deal."

4.5.3 Insights from Rating Analysts

Credit rating analysts play a pivotal role in determining whether a corporate ABS transaction can access the capital market investor base that makes securitisation economically viable. Their assessment of pool quality, structural credit enhancement, and legal robustness determines the rating, which in turn determines the investor universe and the pricing.¹⁴³ The findings from rating analyst interviews reveal a consistent pattern: the analytical frameworks developed for NBFC securitisation do not translate cleanly to corporate-originated transactions.

¹⁴⁰ RBI Master Direction (n 11) cls 32-38 (obligations of the trustee and investor protection mechanisms).

¹⁴¹ Interview 2 (n 30); Kothari Consultants, *Securitisation in India: Law, Practice and Regulation* (4th edn, 2022) ch 9 ('Kothari, Securitisation in India').

¹⁴² Interview 2 (n 30); Kothari and Mitra (n 2) 26 (noting that the gap between what a true sale opinion says and what investors need it to say has widened since the enactment of the IBC).

¹⁴³ Interview 3, senior rating analyst, domestic credit rating agency, March 2025 (Annexure F); ICRA Ratings, 'Methodology for Rating Securitisation Transactions' (2023) s 3.2.

"With an NBFC pool, we have historical data: vintage analysis, default curves, prepayment rates. We can model the pool with reasonable confidence. With a corporate originator's trade receivables, the pool may be 10 invoices from 3 debtors. There is no vintage. There is no default curve. We are essentially rating the debtors individually, not the pool as a statistical ensemble. That is a fundamentally different exercise, and it typically results in a tighter rating ceiling than the originator expects."

4.6 The Value Addition Problem: Transaction Economics in Practice

The collective picture that emerges from practitioner interviews is what may be called the 'value addition' problem: securitisation is not delivering its full potential for non-financial corporate originators in India, not because the underlying economics are unfavourable, but because the structural and legal costs of navigating a framework not designed for them consume the economic benefit that securitisation was supposed to provide.¹⁴⁴

Consider the arithmetic: a corporate originator with Rs. 200 crores in receivables might achieve a funding cost saving of 80 to 100 basis points by securitising at the debtor's credit quality rather than borrowing on its own name. At Rs. 200 crores, that is a saving of approximately Rs. 1.6 to 2 crore per annum. Against this, the transaction costs of a bespoke corporate ABS, including legal fees, trustee fees, rating agency fees, stamp duty, and ongoing compliance costs, may amount to Rs. 3 to 5 crore in the first transaction. The economics are negative until the transaction is large enough, sufficiently standardised, or sufficiently repeated that fixed costs are amortised.¹⁴⁵

"Securitisation should be the obvious answer for a company that holds Rs. 2,000 crores in NHAI annuity receivables. The debtor is quasi-sovereign. The receivables are predictable. The asset quality is exceptional. But we spent 18 months trying to structure that transaction and it died in the documentation stage. Not because of credit concerns, because of legal uncertainty. That is a market failure, and it is entirely a regulatory failure."

This observation captures the essential diagnosis of this paper more precisely than any statutory analysis can.¹⁴⁶

4.7 Stamp Duty: The Most Immediately Solvable Barrier

A corporate ABS transaction involves multiple instruments, the assignment deed, the trust deed, the security trustee agreement, and the securities issued by the SPV, each of which attracts stamp duty. The rates vary by state. No state has a rationalised, securitisation-specific stamp duty schedule.¹⁴⁷ In Maharashtra, a large assignment of receivables may attract stamp duty as a 'conveyance' at rates that, on Rs. 500 crores of receivables, amount to several crore rupees, a sum that is non-trivial relative to the funding saving that securitisation delivers.

¹⁴⁴ Interview 4, head of structured finance, mid-sized NBFC, April 2025 (Annexure F); Fabozzi and Kothari (n 16) ch 7.

¹⁴⁵ Fabozzi and Kothari (n 16) ch 7 (securitisation economics); Kothari, *Securitisation in India* (n 47) ch 7.

¹⁴⁶ Interview 4 (n 50); Kothari and Mitra (n 2) 28.

¹⁴⁷ Indian Stamp Act 1899, sch I, art 5 (conveyance); Maharashtra Stamp Act 1958, art 25.

Vinod Kothari has long documented the stamp duty illogicality as one of the foundational distortions shaping the Indian securitisation market.¹⁴⁸

"If I could change one thing, it would be stamp duty. It is the single most avoidable barrier in corporate ABS, and it is entirely within the power of state legislatures to fix it."

4.8 The Compound Effect: Why Corporates Do Not Securitise

The barriers identified in sections 4.1 through 4.7 do not operate in isolation. Their significance lies in their cumulative effect. A corporate originator contemplating its first securitisation transaction must navigate, simultaneously, a regulatory framework that does not recognise it as a participant, a true sale opinion that can only be qualified, debenture trustees operating without a standardised due diligence framework, rating agencies imposing conservative ceilings, stamp duty costs that erode funding advantages, and insolvency exposure under sections 43, 45, and 49 of the Insolvency and Bankruptcy Code 2016 that cannot be contractually mitigated.

The consequence is not merely reduced participation but systematic exclusion. What emerges is a structural market failure in which economically sound transactions do not occur, not for lack of underlying asset quality or investor demand, but because the regulatory and legal framework imposes costs that outweigh the benefits. It is this compounded failure, rather than any single doctrinal barrier, that reform must ultimately address.

V. GLOBAL PERSPECTIVES: COMPARATIVE ANALYSIS ON WHAT INDIA CAN BORROW

5.1 United States: UCC Article 9 and the True Sale Safe Harbour

The United States Uniform Commercial Code Article 9 provides the most comprehensive example of a statutory true sale framework. Article 9 section 9-109 explicitly brings sales of receivables within its scope, providing that 'a security interest, including one created by a sale of accounts, chattel paper, payment intangibles, or promissory notes' is subject to Article 9.¹⁴⁹ This means that a perfected true sale of receivables achieves statutory priority against the originator's estate in bankruptcy, with no risk of challenge as a preference or fraudulent transfer, provided the sale was made for reasonably equivalent value and not in contemplation of insolvency.¹⁵⁰ The single takeaway for India: the United States's willingness to treat the sale of receivables as a matter of commercial law, governed by a registration-and-perfection system rather than the notification requirements of the TPA, eliminates the notification risk that bedevils Indian corporate ABS. India could replicate this by extending the CERSAI registration system to cover securitisation assignments, treating registration as constructive notice to all debtors and third parties, and providing that a registered true sale assignment is not subject to IBC avoidance provisions.

¹⁴⁸ Kothari Consultants, 'Indian Securitisation Market: A Scenario Analysis' (n 3); Kothari, *Securitisation in India* (n 47) ch 10.

¹⁴⁹ Uniform Commercial Code art 9, ss 9-109, 9-203, 9-308; Steven Schwarcz, 'Structured Finance: A Guide to the Principles of Asset Securitization' (3rd edn, Practising Law Institute 2002) s 2.

¹⁵⁰ UCC (n 55) ss 9-109, 9-203; Schwarcz, *Structured Finance* (n 55) s 2.

5.2 United Kingdom: LPA 1925 and Financial Collateral Protection

The United Kingdom's legal framework for receivables assignment rests on section 136 of the Law of Property Act 1925, which, like section 130 of the Indian TPA, requires written notice to the debtor for a legal assignment.¹⁵¹ However, the UK framework is supplemented by the Financial Collateral Arrangements (No 2) Regulations 2003, which exempt certain security interests and outright transfers of financial assets from challenge as preferences or transactions at an undervalue under the Insolvency Act 1986.¹⁵² The UK courts have developed a sophisticated and relatively predictable true sale jurisprudence, most notably in *Lloyds TSB Bank plc v Clarke* [2002] UKPC 27, that gives parties reasonable certainty about the boundary between a true sale and a security arrangement.¹⁵³ The single takeaway for India: a targeted amendment to the IBC, inserting an explicit carve-out for properly structured securitisation assignments from the definitions of 'preferential transaction' and 'transaction at an undervalue,' would achieve substantially the same risk reduction.

5.3 European Union: The STS Framework

The EU's Simple, Transparent and Standardised (STS) securitisation framework, introduced by Regulation (EU) 2017/2402, creates a two-tier regulatory structure: all securitisations must meet baseline requirements on risk retention, disclosure, and due diligence, while transactions that additionally satisfy STS criteria receive preferential regulatory capital treatment for institutional investors.¹⁵⁴ Critically, the STS framework is explicitly originator-agnostic: non-financial corporates can and do securitise trade receivables under STS-compliant structures across the EU.¹⁵⁵ The single takeaway for India: the EU's two-tier approach, a baseline framework for all securitisations and a premium framework for high-quality structures, provides a model for a SEBI-led corporate securitisation framework that could be created through regulatory notification without primary legislation.

VI. REGULATORY SUGGESTIONS AND MARKET PRACTICE REFORMS

Option A: Targeted Statutory Amendments

A.1 Expanding SARFAESI to Cover Corporate Originators

The most direct statutory intervention would be an amendment to the SARFAESI Act to permit non-financial corporates that meet specified thresholds,¹⁵⁶ say a minimum receivables portfolio of Rs. 500 crore and an investment-grade credit rating, to transfer their receivables to a

¹⁵¹ Law of Property Act 1925 (n 56) s 136; Financial Collateral Arrangements (No 2) Regulations 2003 (n 56) reg 8.

¹⁵² Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226), reg 8; Law of Property Act 1925, s 136.

¹⁵³ *Lloyds TSB Bank* (n 57); Roy Goode, *Goode on Legal Problems of Credit and Security* (5th edn, Sweet and Maxwell 2013) ch 6.

¹⁵⁴ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017, arts 4-8 (retention), 18-28 (STS criteria), 25 (capital treatment).

¹⁵⁵ EU Securitisation Regulation 2017/2402 (n 58); European Banking Authority, 'Report on STS Framework Implementation' (2023).

¹⁵⁶ SARFAESI Act (n 12); Reserve Bank of India Act 1934, s 45-IA (NBFC registration as model for threshold-based access).

registered securitisation company with the full suite of SARFAESI protections.¹⁵⁷ This would require expanding the definition of 'originator' or inserting a new chapter specifically governing corporate receivables securitisation. A registration-and-threshold mechanism, modelled on the NBFC registration requirement under the RBI Act, would prevent proliferation while enabling genuine capital market transactions. The key advantage is that SARFAESI already provides a tested legal infrastructure for securitisation trusts, debenture trustees, and the enforcement of security interests.

A.2 Safe-Harbour True Sale Provision

A second and arguably more impactful statutory amendment would be the insertion of an explicit safe-harbour provision in either SARFAESI or the Transfer of Property Act,¹⁵⁸ providing that a transfer of receivables effected by written instrument and registered with CERSAI constitutes a true sale for all purposes, including the purposes of the IBC's avoidance provisions, provided the transfer was made at not less than fair market value and was not made with actual intent to defraud creditors.¹⁵⁹ Such a provision would directly address the section 43, 45, and 49 IBC risks identified in section 4.2 above, and would permit Indian law firms to issue clean rather than qualified true sale opinions, eliminating what practitioners have identified as the single greatest obstacle to deal execution.

A.3 Need for a Recast of the SDI Regulations

The most structurally significant intervention available within the existing regulatory architecture is not a new enactment but a purposive recast of the SEBI SDI Regulations, 2008. The May 2025 amendments, while nominally expanding asset eligibility to include accepted trade receivables, left the framework operationally inaccessible for non-financial corporate originators. Three specific deficiencies require direct correction.¹⁶⁰

First, the 25% single-obligor concentration cap renders infrastructure and concentrated trade receivable pools structurally ineligible at the threshold stage. A concessionaire whose entire receivable stream flows from a single government counterparty such as NHAI, or a manufacturer whose pool is dominated by one investment-grade OEM buyer, cannot satisfy this requirement without fundamentally reconstructing its commercial relationships.¹⁶¹ The cap was designed for diversified loan pools and has no coherent application to concentrated commercial receivables.¹⁶²

Second, the three-year track record requirement, calibrated to the concept of loan origination, applies awkwardly to entities whose business is production, infrastructure operation, or service

¹⁵⁷ SARFAESI Act (n 12) ss 3, 7 (registration of securitisation companies); proposed amendment mechanism: insertion of ch IV-A (Corporate Receivables Securitisation).

¹⁵⁸ Transfer of Property Act 1882, proposed s 130-A; Financial Collateral Arrangements (No 2) Regulations 2003 (n 56) (serving as template).

¹⁵⁹ Transfer of Property Act 1882, proposed s 130-A; SARFAESI Act, proposed s 5-A; Factoring Regulation Act 2011, s 19 (CERSAI registration).

¹⁶⁰ Vinod Kothari Consultants, 'SEBI Securitisation Regulations: Track Record, Risk Retention and Investment Size Among Several New Requirements' (6 May 2025)

¹⁶¹ Juris Corp, 'Harmonizing Debt Markets: SEBI's Reforms and the Future of Securitization in India' (14 July 2025)

¹⁶² IBC, proposed amendment to s 18(1)(f) or new s 18-A; cf Financial Collateral Arrangements (No 2) Regulations 2003 (n 56) (UK model).

delivery rather than financial asset origination.¹⁶³ The regulations provide no interpretive guidance on whether a manufacturer's trading history satisfies the origination track record test, leaving the question open to case-by-case regulatory discretion that discourages transaction planning.¹⁶⁴

Third, the Minimum Retention Requirement, aligned with the RBI Master Direction, provides no guidance on the balance sheet treatment, charge registration implications under section 77 of the Companies Act 2013, or Ind-AS 109 derecognition consequences for a corporate retaining a subordinated interest in the SPV. These are not peripheral deficiencies curable by SEBI circulars. They reflect a foundational design assumption that corporate originators are a variant of financial originators, which structurally they are not. A recast of the SDI Regulations must treat non-financial corporate originators as a distinct originator class with bespoke eligibility criteria, pool composition standards, and retention guidance calibrated to commercial rather than financial asset pools.

Option B: Regulatory Reframing by SEBI

B.1 SEBI Notification for Corporate Securitisation

SEBI has demonstrated, through the REIT and InvIT frameworks, the capacity to create sophisticated regulatory regimes for new asset classes through the exercise of its regulatory powers under the SEBI Act 1992,¹⁶⁵ without the need for primary legislation.¹⁶⁶ A SEBI notification creating a dedicated 'Corporate Receivables ABS' framework within the ambit of the existing SDI Regulations, specifying originator eligibility criteria, pool composition requirements, minimum credit enhancement levels,¹⁶⁷ servicer qualification standards, and trustee covenant packages specifically designed for commercial receivables, would provide the operational clarity that the market currently lacks.¹⁶⁸ This notification could be accompanied by standardised due diligence templates for debenture trustees evaluating corporate-originated pools, reducing the structuring time and cost that practitioners have identified as deal-killers.

B.2 Stamp Duty Rationalisation

Stamp duty on securitisation instruments is a matter of state legislative competence under Entry 91 of the Union List and Entry 63 of the State List of the Seventh Schedule to the Constitution. A central amendment to Article 5(c) of Schedule I to the Indian Stamp Act 1899 to expressly include securitisation assignment deeds, with a fixed duty cap regardless of the face value of the assigned receivables, would be constitutionally permissible and would materially improve transaction economics.

¹⁶³ Vinod Kothari Consultants, 'Infrastructure Securitisation: Where Concrete Meets Capital Markets' (2025) 146

¹⁶⁴ IBC, ss 18, 36; Kothari and Mitra (n 2) 31.

¹⁶⁵ SEBI Act 1992 (n 62) s 11; Kothari and Mitra (n 2) 34.

¹⁶⁶ SEBI Act 1992 (n 62) s 11; Sundaresan (n 62) 60; Bharath (n 63) 64.

¹⁶⁷ Securities and Exchange Board of India Act 1992, s 11; Somasekhar Sundaresan, 'Regulatory Architecture of Indian Capital Markets' (2020) 32 National Law School of India Review 55.

¹⁶⁸ SEBI REITs Regulations 2014 (n 63); SEBI InvITs Regulations 2014 (n 63).

Option C: Market and Contractual Innovation Within Current Law

C.1 Enhanced Trustee Covenants and Structural Credit Enhancement

The IBC avoidance risk cannot be eliminated by contractual drafting; it is a statutory risk that only legislation can remove.¹⁶⁹ However, it can be mitigated through structural design. A SPV whose assets include a substantial cash reserve funded by the originator's own equity contribution, whose trust deed provides for immediate trustee enforcement upon originator CIRP commencement, and whose investor waterfall is structured to release principal rapidly in the first years of the transaction, presents a significantly lower insolvency exposure than an SPV designed on the basis of steady-state NBFC securitisation assumptions.¹⁷⁰ Practitioners have developed bespoke 'insolvency contingency' clauses that specify the trustee's response to each category of IBC event. While these clauses remain untested in court, they represent the best available contractual protection in the current legal environment.

C.2 Standardised Documentation

The absence of model documentation for corporate ABS transactions is one of the most immediately solvable problems in the market. The Loan Market Association model loan agreements have dramatically reduced documentation costs and timelines in the syndicated loan market by providing standardised starting points that parties negotiate around, rather than drafting from scratch.¹⁷¹ A comparable initiative, led by FIMMDA, ANMI, or a consortium of leading structured finance law firms, to develop standardised corporate ABS documentation would have a direct and measurable impact on transaction costs. Such documentation would include a model assignment agreement that addresses the section 130/131 notification question, a model trust deed with a comprehensive IBC contingency clause, and model servicer and trustee agreements calibrated to commercial receivables.¹⁷²

Of the three options, Option B requiring regulatory intervention by SEBI is assessed as the most immediately viable path. This assessment rests on three considerations. First, it operates within the existing statutory framework and therefore avoids the delays and political economy constraints inherent in primary legislation, while drawing upon SEBI's demonstrated capacity to design and operationalise complex market structures. Second, the experience of REITs and InvITs indicates that capital market investors are prepared to engage with asset classes characterised by a degree of residual legal uncertainty, provided the regulatory architecture delivers sufficient clarity, standardisation, and investor protection. Third, a SEBI-led framework addressing the issuer-facing dimensions of corporate securitisation, when complemented by targeted amendments to the IBC 2016 and stamp duty regime, constitutes the minimum effective intervention required to catalyse market development.

VII. CONCLUSION

India's corporate sector holds substantial pools of high-quality receivables, including annuity streams from infrastructure concessions and trade exposures to investment-grade

¹⁶⁹ SEBI SDI Regulations 2008 (n 9) reg 18; Kothari, *Securitisation in India* (n 47) ch 9.

¹⁷⁰ Interview 2 (n 30); SEBI SDI Regulations 2008 (n 9) reg 18 (credit enhancement and liquidity support).

¹⁷¹ Loan Market Association, *LMA Recommended Form of Facilities Agreement* (2024 edn); Joanna Benjamin, *Financial Law* (OUP 2007) ch 14.

¹⁷² *Lloyds TSB Bank plc v Clarke* [2002] UKPC 27 (PC); Philip Wood, *Law and Practice of International Finance* (Sweet and Maxwell 2008) ch 19

counterparties, that are inherently suited to securitisation.¹⁷³ Yet these assets remain locked within balance sheets, not due to lack of investor demand, but because the legal and regulatory framework fails to accommodate corporate-originated transactions.¹⁷⁴ No regime squarely enables such securitisation, no statutory protection insulates transferred assets from challenge under the Insolvency and Bankruptcy Code 2016, and the cumulative transaction costs of navigating a misaligned framework erode economic viability.¹⁷⁵ The resulting constraint is best understood as a failure of regulatory design rather than market appetite.

The appropriate response is a sequenced reform strategy. In the near term, a regulatory intervention by the Securities and Exchange Board of India to create a dedicated corporate ABS framework, supported by standardised documentation, can enable market entry.¹⁷⁶ Over the medium term, targeted statutory amendments, particularly an insolvency safe harbour for true sale transactions and rationalisation of stamp duty, are necessary to provide durable certainty.¹⁷⁷

At a systemic level, India's reliance on bank-led corporate financing remains a structural vulnerability.¹⁷⁸ The development of securitisation markets offers a countercyclical funding channel. Enabling corporates to access this mechanism is therefore not merely a technical reform, but a necessary step towards strengthening financial system resilience and capital allocation efficiency.¹⁷⁹

¹⁷³ Kothari Consultants, 'Infrastructure Securitisation' (n 4) 153.

¹⁷⁴ Interview 2 (n 30); Kothari, *Securitisation in India* (n 47) ch 9 (documentation and structuring practice).

¹⁷⁵ Interview 3 (n 49); ICRA Ratings (n 49) s 3.2 (rating methodology for corporate-originated pools and the ceiling problem arising from pool concentration).

¹⁷⁶ Kothari and Mitra (n 2) 26; cf ISDA, *Legal Guidelines for Smart Derivatives Contracts* (2019) (analogous problem of legal opinion burden in derivatives markets).

¹⁷⁷ Kothari and Mitra (n 2) 27 (attributing the pricing premium in corporate ABS to the absence of standardised pool eligibility criteria).

¹⁷⁸ RBI, *Report on Currency and Finance 2022-23* (n 19) ch V; Raghuram Rajan, *Fault Lines* (Princeton UP 2010) ch 7 (structural dependence on bank credit as a systemic vulnerability).

¹⁷⁹ Rajan (n 69); RBI, *Report on Currency and Finance 2022-23* (n 19).

FROM BALANCE SHEETS TO DIGITAL RING-FENCING: A CRITICAL ANALYSIS OF FUTURE FLOW SECURITISATION AND THE EVOLUTION OF INDIA'S SDI FRAMEWORK IN THE LIGHT OF THE 2025 REGULATORY SHIFT

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Abstract

The traditional paradigm of corporate finance, once anchored strictly to historical balance sheets and tangible assets, is undergoing a transformative shift towards the monetization of future potential. This research paper explores the evolution of the Securitised Debt Instruments (“SDI”) framework in India, particularly following the landmark 2025 Amendments. It provides a critical analysis of how the financial architecture has moved from simple past-performance lending to the sophisticated securitisation of receivables by corporate entities, allowing firms to unlock lazy assets and convert predictable future earnings into immediate liquid capital.

The study examines the global mechanics of Future Flow Securitisation (“FFS”) and Whole Business Securitisation (“WBS”), juxtaposing international precedents with the unique rating paradox and performance risk inherent in the Indian context. While the 2025 reforms synchronized SEBI and RBI regulations, the research highlights a persistent legal friction between the ‘True Sale’ doctrine and the Insolvency and Bankruptcy Code (“IBC”). It argues that despite regulatory progress, the threat of a moratorium during insolvency still challenges the absolute bankruptcy remoteness of these instruments.

The paper further investigates the digital frontier, proposing that blockchain-based tokenization and smart contracts can create a ‘Digital Ring-Fence’ to mitigate commingling risks and provide real-time transparency. It also touches upon the rise of Environmental, Social and Governance (“ESG”)-linked flows and the integration of Micro, Small and Medium Enterprises (“MSMEs”) into the capital markets through fragmented receivables. The research concludes with a call for a dedicated ‘Securitisation Act’ to provide statutory finality, ensuring that the Indian SDI market can evolve from a niche alternative into a cornerstone of a multi-trillion-dollar economy.

Keywords

Securitised Debt Instruments, Future Flow Securitisation, True Sale Doctrine, Digital Ring-Fencing, ESG, Performance Risk, Receivables, Special Purpose Vehicle

I. Introduction

The architecture of corporate finance has long been built upon the sturdy, if somewhat unimaginative, foundation of the balance sheet. For decades, a company's ability to raise capital was tethered strictly to its past; its accumulated assets, historical earnings and the tangible collateral it could offer a lender.¹⁸⁰ However, the modern economy moves at a pace that physical assets can rarely match. In this high-velocity landscape, the most valuable resource a corporate entity possesses is often not what it has already earned, but the predictable stream of what it *will* earn. This realization has birthed the sophisticated, often misunderstood, world of structured finance: specifically, the securitisation of receivables.¹⁸¹

At its core, securitisation is an elegant bit of financial alchemy. It is the process of taking illiquid assets (those non-tradable contractual rights to future payment) and pooling them into a standalone vehicle that issues tradable securities.¹⁸² When we talk about corporate receivables, we aren't just discussing the mundane invoices of a manufacturing firm. We are moving into a realm where the collateral is the very lifeblood of a business: the future toll collections of a highway, the monthly subscriptions of a software giant or the ticket sales of an international airline.

The central tension in this field lies in the conceptual friction between a contractual right and asset ownership. In a standard loan, a creditor has a claim against the company. If the company fails, the creditor stands in line with everyone else, hoping the remaining scraps cover their loss. Securitisation seeks to change the rules of the game. It aims to achieve bankruptcy remoteness, a legal state where the assets are sold to a Special Purpose Vehicle ("SPV") so completely that, even if the parent company collapses into insolvency tomorrow, the investors' claim on those specific cash flows remains untouched.¹⁸³ It is, in essence, a quest for the 'true sale'.¹⁸⁴

However, as we venture into the securitisation of future flows and whole businesses, the stakes become considerably higher. Unlike traditional asset-backed securitisation ("ABS"), where the assets (like a bundle of existing car loans) are already *in the bag*, future flow securitisation relies on the originator's ability to keep existing and keep performing. This introduces a unique

¹⁸⁰ Tan HP, Plowman D and Hancock P, 'Intellectual Capital and Financial Returns of Companies' (2007) 8 *Journal of Intellectual Capital* 76 <<https://doi.org/10.1108/14691930710715079>> accessed 23 April 2026

¹⁸¹ Coval J, Jurek J and Stafford E, 'The Economics of Structured Finance' (2009) 23 *The Journal of Economic Perspectives* 3 <<https://doi.org/10.1257/jep.23.1.3>> accessed 25 April 2026

¹⁸² Shin HS, 'Securitisation and Financial Stability' (2009) 119 *The Economic Journal* 309 <<https://doi.org/10.1111/j.1468-0297.2008.02239.x>> accessed 23 April 2026

¹⁸³ Sainati T and others, 'Types and Functions of Special Purpose Vehicles in Infrastructure Megaprojects' (2020) 38 *International Journal of Project Management* 243 <<https://doi.org/10.1016/j.ijproman.2020.05.002>> accessed 25 April 2026

¹⁸⁴ Matthew W. & Jennifer M, 'Buyer Beware: An analysis of True sale issues', 1 *Pratt's J. Bankr. L.* 185 (2005)

paradox. We strive for a structure that is de-linked from the originator’s credit rating, yet the very existence of the asset depends on the originator staying alive. If the airline stops flying, there are no future ticket sales to securitise. This performance risk is the ghost in the machine of structured finance.¹⁸⁵

For a jurisdiction like India, this isn’t just an academic exercise. The Indian corporate sector has historically been bank-dominated, leading to a perennial twin balance sheet problem where both banks and corporates find themselves over-leveraged. The Securitised Debt Instruments (“SDI”) framework was designed to alleviate this by opening a side door to the capital markets. Yet, for years, the gate remained narrow. The legal landscape was a patchwork of Reserve Bank of India (“RBI”) circulars and Securities and Exchange Board of India (“SEBI”) regulations that often felt at odds with the sweeping powers of the Insolvency and Bankruptcy Code¹⁸⁶ (“IBC”).¹⁸⁷

The 2025 Amendments to the SDI Regulations represent a maturation of this ecosystem.¹⁸⁸ They signal a shift from a defensive regulatory posture to one that acknowledges the necessity of corporate future flow instruments in a multi-trillion-dollar economy. This paper seeks to dissect that evolution. We will explore whether these new rules finally provide the legal certainty required to ring-fence future earnings or if the inherent risks of originator dependence continue to leave investors exposed in the volatile theatre of Indian insolvency law.

II. The Global Perspective: Future Flows and the Whole Business Model

To contextualize the Indian structured finance trajectory, one must examine the mature markets of the United Kingdom and the United States, alongside the sovereign-ceiling breakthroughs in Latin America. Globally, securitisation has transitioned from a tool for managing existing debt into a strategic instrument for leveraging the very essence of a corporate’s future existence. This chapter explores the two most sophisticated branches of this evolution: Future Flow Securitisation¹⁸⁹ (“FFS”) and Whole Business Securitisation¹⁹⁰ (“WBS”)

¹⁸⁵ Falzon J, Bank Performance, Risk and Securitisation (2013) <<https://doi.org/10.1057/9781137332097>> accessed 25 April 2026

¹⁸⁶ Insolvency and Bankruptcy Code 2016

¹⁸⁷ Wadia Ghandy & Co. and Nihas Basheer, ‘Structured Finance’ (Indian Securitization Foundation 2023)

<<https://vinodkothari.com/wp-content/uploads/2023/05/Legal-Research-on-Structured-Finance-Booklet-1.pdf>> accessed 23 April 2026.

¹⁸⁸ Securities and Exchange Board of India, ‘Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations, 2025’ (5 May 2025) https://www.sebi.gov.in/legal/regulations/may-2025/securities-and-exchange-board-of-india-issue-and-listing-of-securitised-debt-instruments-and-security-receipts-amendment-regulations-2025_93803.html accessed 22 April 2026

¹⁸⁹ Tamayo BV, ‘El Salvador: : Rise of Future Flows Securitisations.’ (2014) 33 International Financial Law Review 127 <<https://dialnet.unirioja.es/servlet/articulo?codigo=5047802>> accessed 27 April 2026

¹⁹⁰ Klüwer A and Marschall F, ‘Whole Business Securitisation’ (2005) 17 Zeitschrift Für Bankrecht Und Bankwirtschaft 255 <<http://doi.org/10.15375/zbb-2005-0402>> accessed 28 April 2026

1. The Mechanics of Future Flow Securitisation

While traditional securitisation deals with existing receivables, assets like mortgage payments already on the books, FFS involves assets not yet generated. These are expectancies where the collateral is the firm's future capacity to produce a product or service.

In emerging markets, FFS often serves as a financial escape pod. Companies in nations with lower credit ratings find their borrowing costs capped by the sovereign ceiling. FFS allows these entities to pierce that ceiling. By directing future export earnings denominated in hard currency straight into an offshore SPV, the company effectively removes the risk of local currency devaluation or government interference.

A primary example is the Mexican Peso Crisis of 1994.¹⁹¹ When Mexican corporates were frozen out of international markets, Petroleos Mexicanos (PEMEX) raised billions by securitising future oil export receivables. Because international buyers paid into offshore accounts, investors were insulated from Mexico's domestic volatility, proving that future flows could remain a safe haven asset even during systemic crises.¹⁹²

2. Whole Business Securitisation

If FFS securitises a specific stream, WBS securitises the entire operating cash flow of a business. This model is a British innovation, born from the specificities of English insolvency law. In a WBS, the originator grants a security interest over its entire operational engine rather than selling a few isolated invoices.¹⁹³ This is common in industries with high barriers to entry and stable regulated income, such as airports, utilities or pub chains.

*The Punch Taverns Case*¹⁹⁴ illustrates the pub securitisation boom of the late 1990s. Punch Taverns used WBS to fund acquisitions by pledging future beer sales, rents from publicans and branding rights. This structure allowed for much higher leverage than traditional bank loans because the asset was the integrated business model itself.¹⁹⁵

3. The Legal Friction: Fixed vs. Floating Charges

The intellectual weight of WBS rests on the ability of a creditor to control the assets. For a securitisation to be airtight, the investor must have a fixed charge over the receivables. A floating charge is a hovering security that only settles upon default, offering less protection in bankruptcy.

The cornerstone of this global debate is *Re Brumark Investments case*¹⁹⁶. The court had to decide if a charge over book debts was fixed or floating. The Court held that if the company

¹⁹¹JA Whitt, 'The Mexican Peso Crisis' (1996) 80 *Econometric Reviews* 1 <https://econpapers.repec.org/article/fipfedaer/y_3a1996_3ai_3ajan_3ap_3a1-> accessed 28 April 2026

¹⁹²EM Truman, 'The Mexican Peso Crisis: Implications for International Finance' (1996) 82.0 *Federal Reserve Bulletin* <<https://doi.org/10.17016/bulletin.1996.82-3>> accessed 23 April 2026

¹⁹³Hajime Ueno & Takashi Saito, 'Whole Business Securitizations are Gaining Strength in Japan' (2007) 13 *ALJR* <https://www.nishimura.com/sites/default/files/images/en_0707_ueno_saito2.pdf> accessed 22 April 2026

¹⁹⁴Julie Bower, 'Vertical and financial ownership: Competition policy and the evolution of the UK pub market' (2016) 58(5) *Business History* 647, 647-666

¹⁹⁵Vink, Dennis, 'A primer on whole business securitization' (2007) 1 *Fiducie* 6 <https://www.dennisvink.nl/pdf/A_primer_on_whole_business_securitization.pdf> accessed 21 April 2026

¹⁹⁶*Agnew v Commissioners of Inland Revenue* [2001] UKPC 28, [2001] 2 AC 710

retains the freedom to spend the money in the ordinary course of business, the charge is floating, regardless of the contract's label. This decision sent shockwaves through the market, mandating that for a WBS to be valid, the SPV must exert documented real-time control over the cash flow.¹⁹⁷

4. Structural Motivations and the Performance Risk

Corporates choose these structures over standard bonds for lower costs of funds, longer maturities and covenant flexibility. By ring-fencing the best assets, a company can achieve a credit rating higher than its own.

However, the global perspective warns of 'performance risk'. In traditional mortgage securitisation, the houses exist even if the bank disappears. In a WBS, if the management of an airport makes catastrophic decisions and the airport closes, the future flow drops to zero. The Madame Tussauds securitisation in the early 2000s highlighted this; the risk was not the physical wax figures, but the continued public desire to visit.¹⁹⁸ This originator dependence remains the greatest challenge to the de-linking theory.

5. International Regulatory Trends

Following the 2008 crisis, the global landscape shifted towards risk retention.¹⁹⁹ The US Dodd-Frank Act²⁰⁰ and the EU Securitisation Regulation²⁰¹ now require originators to keep at least 5% of the credit risk, known as *Skin in the Game*.²⁰² This prevents originate-to-distribute models where junk assets are passed to unsuspecting investors. This global standard serves as the benchmark for the 2025 SDI Amendments in India.²⁰³

Global history teaches that future flows are a powerful, double-edged sword. They unlock capital from the promise of future labour, yet as cases like *Re Brumark*²⁰⁴ remind us, the law remains sceptical. If the 'true sale' is a legal fiction, the structure collapses during insolvency. For the Indian context, success depends not on mathematical complexity, but on the clarity of the 'true sale' definition and the SPV's ability to survive the originator's potential demise.

¹⁹⁷ Jennifer Wiss-Carline, 'Brumark Investments Ltd, Re [2001] UKPC 28' (*Lawcases*, 18 February 2026) <<https://www.lawcases.net/cases/brumark-investments-ltd-re-2001-ukpc-28/>> accessed 24 April 2026

¹⁹⁸ Stephen Moller, 'Securitisation – a safe bet for your assets' (2000) *The Treasurer* 40 <<https://www.treasurers.org/ACTmedia/Sept00TTMoller40-2.pdf>> accessed 20 April 2026

¹⁹⁹ Battaglia F and Gallo A, "Securitization and Systemic Risk: An Empirical Investigation on Italian Banks over the Financial Crisis" (2013) 30 *International Review of Financial Analysis* 274 <<https://doi.org/10.1016/j.irfa.2013.03.002>> accessed 18 April 2026

²⁰⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act 2010

²⁰¹ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012[2017] OJ L347/35

²⁰² Jan-Pieter Krahnén & Christian Wilde, 'Skin-in-the-Game in ABS Transactions: A Critical Review of Policy Options' (2021) European Corporate Governance Institute Working Paper N° 549/2018, 4 <https://www.ecgi.global/sites/default/files/working_papers/documents/krahnénwildefinal_0.pdf> accessed 17 April 2026

²⁰³ Anish Mashruwala, Pratish Kumar, Sumitava Basu, Anmol Narang and Arpita Mittal, 'The Securities and Exchange Board of India amends issue and listing of securitised debt instruments and security receipts regulations' (*Lexology*, 4 June 2025) <<https://www.lexology.com/library/detail.aspx?g=f7fff3b2-f3fe-4f7c-84cc-1da4428dc719>> accessed 18 April 2026

²⁰⁴ *Agnew v Commissioners of Inland Revenue* [2001] UKPC 28, [2001] 2 AC 710

Table 1: International Comparison of Structured Finance Frameworks

Sr. No.	Feature	European Union	India (Post-2025)	United Kingdom	United States
1.	Primary Regulatory Focus	Standardization via ‘Simple, Transparent and Standardised’ (STS) rules.	Institutionalization; harmonizing SEBI/RBI listing and risk norms.	Control-centric; focus on fixed vs. floating charges.	Market-driven; emphasis on disclosure and credit tranching.
2.	Legal Backbone of ‘True Sale’	Statutory Uniformity: EU Securitisation Regulation provides a cross-border legal template.	Regulatory Circulars: Relies on SEBI/RBI directives; lacks a dedicated ‘Securitisation Act’.	Case Law Supremacy: ‘Control tests’ (e.g., <i>Re Brumark</i>) determine asset remoteness.	Statutory Safe Harbours: State laws prevent bankruptcy courts from re-characterizing transfers.
3.	Eligible Asset Classes	Predominantly high-quality, standardized retail and corporate portfolios.	Expanded: Now includes Trade Receivables, Lease Rentals and SaaS/Green flows.	Heavy focus on Whole Business Securitisation (WBS) and operating cash flows.	Broad; includes future flows, esoteric assets and synthetic risk.
4.	Risk Retention (MRR)	5% (EUSR) to prevent ‘originate-to-distribute’ risks.	5% to 10% depending on asset tenor; standardized in 2025.	5% (UK Securitisation Regulations 2024).	5% (Dodd-Frank Act) for most asset-backed securities.
5.	Insolvency Resistance	High: Strict adherence to STS criteria ensures high levels of investor protection.	Fragmented: Still vulnerable to IBC Section 14 moratoriums and ‘going concern’ claims.	Moderate-High: Dependent on the SPV exerting real-time control over cash flows.	High: Assets in an SPV are generally shielded from the originator’s estate.
6.	Performance Risk Mitigation	Third-party verification and mandatory auditor compliance.	Emerging ‘Digital Ring-Fencing’ and smart contract automation.	Administrative receivership and operational step-in rights.	Deep secondary markets and over-collateralization.

III. The Indian Landscape: Pre and Post 2025 SDI Amendments

The transformation of India's structured finance landscape has been a migration from cautious, niche experimentation towards a multi-trillion-dollar institutional frontier. For decades, the market existed as a monoculture of direct assignments and pass-through certificates, tailored almost exclusively to the capital requirements of Non-Banking Financial Companies ("NBFCs").²⁰⁵ Corporate originators were relegated to the sidelines, stifled by a regulatory architecture that favoured retail loan portfolios over the dynamic cash flows of the broader industry. By late 2024, the listed SDI segment was a mere statistical footnote, with only roughly 30 transactions executed over four years. This stagnation stood in sharp contrast to a corporate bond market that was ballooning towards ₹53.6 trillion²⁰⁶, highlighting a massive gap in the monetization of corporate receivables.

Prior to the 2025 reforms, the 2008 SDI Regulations²⁰⁷ functioned more as a financial sector safety valve than a bridge for corporate liquidity. A narrow interpretation of 'debt' prevented manufacturing and technology firms from converting recurring revenues into securitisable assets. This ambiguity, coupled with the friction between SEBI's listing norms and the RBI's directives, drove issuers towards opaque bilateral deals, starving the secondary market of much-needed liquidity.

The May 5, 2025, SEBI Amendment²⁰⁸ served as a watershed moment, harmonizing listing rules with the RBI's 2021 Master Direction²⁰⁹. By expansively redefining debt to include trade receivables and equipment leasing, the regulator eliminated the 'true sale' ambiguity that had long deterred participation. Crucially, the institutionalization of the Minimum Retention Requirement ("MRR") standardized risk at 5% to 10%, signalling to global and domestic investors that the era of unregulated blind pools was over.²¹⁰

The aftermath was an immediate diversification of the issuer base. In late 2025, private credit transactions surged by 35%, reaching \$12.4 billion, as high-grade corporate issuers entered the fray.²¹¹ The new homogeneity mandate ensured that pools consisted of assets with similar risk

²⁰⁵ 'Why NBFCs Are Stealing the Show in India's Financial Markets' (*Indira Trade*, 11 July 2025) <<https://www.indiratrade.com/blog/why-nbfc-are-stealing-the-show-in-indias-financial-markets/9595>> accessed 23 April 2026

²⁰⁶ NITI Aayog, *Report on Deepening The Corporate Bond Market In India*, (December, 2025) <[https://niti.gov.in/sites/default/files/2025->](https://niti.gov.in/sites/default/files/2025-) accessed 24 April 2026

²⁰⁷ SEBI, *Issue and Listing of Securitised Debt Instruments and Security Receipts Regulations*, 2008

²⁰⁸ Securities and Exchange Board of India, 'Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations, 2025' (5 May 2025) <https://www.sebi.gov.in/legal/regulations/may-2025/securities-and-exchange-board-of-india-issue-and-listing-of-securitised-debt-instruments-and-security-receipts-amendment-regulations-2025_93803.html> accessed 18 April 2026

²⁰⁹ RBI, 'FAQs on Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 (MD-TLE)' (5 December 2022, online) <<https://www.rbi.org.in/commonman/English/scripts/FAQs.aspx?Id=3374>> accessed 23 April 2026

²¹⁰ Vinod Kothari Consultants, 'New regime for securitisation and sale of financial assets' (*Vinod Kothari*, 8 June 2020) <<https://vinodkothari.com/2020/06/new-regime-for-securitisation-and-sale-of-financial-assets/>> accessed 23 April 2026

²¹¹ Ernst & Young LLP, 'Private credit in India: H2 2025 update' (2026) 30 <<https://www.ey.com/content/dam/ey-unified-site/ey-com/en-in/insights/strategy-transactions/documents/2026/ey-private-credit-in-india-h2-2025-update.pdf>> accessed 23 April 2026

profiles, while a ₹1 crore minimum ticket size solidified the SDI market as a domain for sophisticated institutional players. By mid-2025, Domestic Institutional Investors (“DIIs”) held a record 19.2% share of the listed market, signalling a shift in the balance of financial power.²¹²

Despite these strides, new complexities emerged. While the ‘Clean-up Call’ provision enhanced operational efficiency, the mandatory three-year track record requirement inadvertently created a barrier for high-growth SaaS and renewable energy startups. Today, as the corporate bond market eyes a ₹100 trillion future by 2030²¹³, the SDI framework has evolved into a vital conduit for converting future earnings into immediate capital. The looming question remains whether the judicial interpretation of ‘true sale’ under the IBC can match the speed of this rapid financial evolution.

Table 2: Comparative Matrix of India’s Securitisation Architecture (Pre vs. Post-2025)

Sr. No.	Feature	Pre-2025 Framework (2008/2021)	Post-2025 SDI Amendment
1.	Scope of ‘Debt’	Narrowly interpreted; focused on existing bank/NBFC loans (ABS/MBS).	Expanded to include Equipment Leasing, Rental Receivables and Trade Receivables (accepted invoices).
2.	Eligible Originators	Restricted largely to RBI-regulated financial entities.	Open to Corporate Entities, manufacturing firms, tech startups (SaaS) and MSME aggregators.
3.	Risk Retention (MRR)	Varying standards; lacked full alignment between SEBI and RBI.	Standardized MRR: 5% for assets with tenor ≤ 24 months; 10% for all other cases.
4.	Minimum Ticket Size	Fragmented; often lower, inviting unsophisticated retail participation.	Fixed at ₹1 Crore for private placements to ensure participation by sophisticated institutional players.
5.	Listing & Disclosure	Opaque bilateral deals; lack of standardized secondary market reporting.	Mandatory Dematerialization and quarterly transparency disclosures for listed SDIs.
6.	Asset Diversification	Fewer restrictions on pool concentration, leading to idiosyncratic risk.	Single Obligor Cap of 25%, effectively requiring at least 4 obligors to ensure pool diversity.
7.	Operational Control	‘Clean-up call’ rules were ambiguous for non-bank originators.	Standardized Clean-up Call capped at 10% of original asset value to prevent hidden credit enhancement.
8.	Public Offer Trigger	Varying thresholds for what constituted a ‘public’ issuance.	Deemed Public Issuance if offered to 50 or more investors in a single financial year.

²¹² NSE, ‘A monthly review of the Indian economy and markets’ (2025) 7(8) Market Pulse 68 <https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Market%20Pulse_Aug%202025.pdf> accessed 23 April 2026

²¹³ NITI Aayog (n 27) 8

IV. Motivations, Structures and the Rating Paradox

Corporate securitisation is rarely a singular choice; it is a strategic manoeuvre to escape the credit silo of traditional lending.²¹⁴ While a bank loan binds a borrower to their overall balance sheet health, leveraging debt-service ratios and general creditworthiness, securitisation offers a bypass. By isolating high-quality revenue streams, such as patent royalties or infrastructure tolls and transferring them to an SPV, a firm can exploit the arbitrage between its general corporate risk and the asset's specific reliability. This allows a 'BBB' rated entity to access 'AAA' pricing, monetizing operational success to fuel growth without diluting equity.²¹⁵

Structurally, these transactions are masterpieces of legal engineering designed to create an island of safety. Through a 'true sale' agreement, assets are legally severed from the originator's estate. To entice institutional capital, layers of credit enhancement such as over-collateralization and liquidity facilities are added.²¹⁶ A hard-coded waterfall mechanism then governs every rupee, prioritizing statutory dues and investor interest before the originator receives any residual profit. This hierarchy ensures that the investor's claim supersedes the company's operational needs.

Yet, a rating paradox persists. Unlike static assets like mortgages, future flows are promises to perform. If an airline securitises ticket sales but its fleet is grounded, the asset simply vanishes. Because the asset's existence requires the originator to remain a going concern, the security's rating remains tethered to the company's *heartbeat*; you can ring-fence the cash, but not the ability to generate it. This creates an inherent ceiling on credit uplift.²¹⁷

In India, this paradox is sharpened by Originator Performance Risk and the complexities of the IBC. Even with the 2025 Amendments, an insolvency professional might challenge diverted cash flows as essential for a going concern. Furthermore, a lack of historical data for innovative assets like SaaS subscriptions often triggers a conservative rating bias, requiring expensive credit enhancements.²¹⁸ Consequently, the market remains clustered around predictable flows like lease rentals. Ultimately, the future of Indian SDI depends on whether technological interventions can finally achieve the operational remoteness that legal contracts alone cannot guarantee.

V. The Digital Ring-Fence: Tokenization and Smart Contracts

The 2025 SDI Amendments, while progressive, still rely on conceptual boundaries that struggle to contain physical assets. The persistent threat of commingling remains because

²¹⁴ Paul Lund, 'Is Corporate Securitization Set to Take Off?' (2008) 14(2) 46, 47-51

²¹⁵ Committee on the Global Financial System, *The role of ratings in structured finance: issues and implications*, (2005), 22-29 <<https://www.bis.org/publ/cgfs23.pdf>> accessed 23 April 2026

²¹⁶ City Resilience Program, 'Credit Enhancement Practices' 8-17 <<https://www.gfdrr.org/sites/default/files/publication/Credit%20Enhancement%20Practices.pdf>> accessed 23 April 2026

²¹⁷ Suhas Ketkar and Dilip Ratha, 'Securitization of Future Flow Receivables: A Useful Tool for Developing Countries' (2001) 38 (1) Finance & Development <<https://www.imf.org/external/pubs/ft/fandd/2001/03/ketkar.htm>> accessed 25 April 2026

²¹⁸ PWC and ASSOCHAM India, *Emerging technologies disrupting the financial sector: Background Paper*, (2019), 23-48 <<https://www.pwc.in/assets/pdfs/consulting/financial-services/fintech/publications/emerging-technologies-disrupting-the-financial-sector.pdf>> accessed 25 April 2026

future cash flows often traverse an originator's bank account before reaching investors, leaving them vulnerable during insolvency crises. To achieve genuine bankruptcy remoteness, India must transition from paper-based contracts to a 'Digital Ring-Fence' underpinned by *blockchain* and self-executing smart contracts.²¹⁹

Tokenization marks the next evolutionary phase for structured finance.²²⁰ By converting future receivables such as subscription payments or micro-utility fees into unique digital tokens on a distributed ledger, assets are *born* outside the originator's sphere of influence.²²¹ Integrating payment gateways directly with *blockchain* allows cash flows to be split at the point of origin. This ensures that a predetermined portion of every rupee is diverted to the SPV's digital wallet instantly, bypassing the originator's operational accounts entirely and effectively neutralizing commingling risk.

Smart contracts introduce programmable trust, replacing human trustees who manage the waterfall mechanism.²²² This automation eliminates delays, administrative errors and interpretative litigation. The code autonomously executes distributions, prioritizing taxes and senior bondholders before the originator, in real-time. This transparency erases the information asymmetry that historically deterred investors from entering future-flow transactions. Furthermore, technology mitigates performance risk through granular high-fidelity monitoring.²²³ If operational metrics, such as toll road traffic or solar output, dip below specific thresholds, smart contracts can trigger automatic credit traps, diverting excess liquidity into reserve accounts or alerting rating agencies instantaneously.

From a regulatory perspective, the 2025 mandate for dematerialization serves as a launchpad for this digital shift. Future frameworks should focus on the execution of flows rather than just the electronic holding of instruments. By moving the 'true sale' doctrine into the digital realm, the industry shifts the burden of proof from legal intent to mathematical certainty.²²⁴ If code dictates ownership at the moment of generation, resolution professionals under the IBC face an uphill battle claiming these funds as part of a debtor's estate. The digital ring-fence ultimately moves safety from the courtroom to the computer, providing the robust infrastructure necessary for a transparent and efficient securitisation market.

²¹⁹ Bhaskar Vishwajeet, 'Smart Contracts And The Indian Perspective' (*LiveLaw*, 28 March 2022) <<https://www.livelaw.in/columns/blockchain-cryptocurrencies-smart-contracts-195207>> accessed 25 April 2026

²²⁰ Financial Stability Board, *The Financial Stability Implications of Tokenisation*, (2024) 5 <<https://www.fsb.org/uploads/P221024-2.pdf>> accessed 26 April 2026

²²¹ Team RWA.io, 'Tokenize Receivables On-Chain: Process' (*RWA.io*, 26 November 2025) <<https://www.rwa.io/post/tokenize-receivables-on-chain-process>> accessed 25 April 2026

²²² Sergii Grybniak, Oleksandr Nashyvan, Igor Mazurok, Yevhen Leonchuk and Alisa Vorokhta, 'Recurring and Deferred Transactions Based on Smart Contracts' (2025) 5(1) *IET Blockchain* 1, 2-12 <<https://doi.org/10.1049/blc2.70012>> accessed 24 April 2026

²²³ Vikram Singh, 'Intelligent Infrastructure Monitoring Using AI and Telemetry' (2020) 8(3) *IJSET* 1, 1-7 <https://www.ijset.in/wp-content/uploads/IJSET_V8_issue3_228.pdf> accessed 25 April 2026

²²⁴ Maryam Baroudi and Laila Bennis, 'Revisiting Asset-Backed Securitization in the Digital Era: The Role of Blockchain and Tokenization' (2025) 6(8) *IJAFAME* 590, 590-600 <<https://hal.science/hal-05222571v1>> accessed 28 April 2026

VI. Securitisation as a Tool for ‘Just’ Transition: The Rise of ESG-Linked Future Flows

The global financial architecture’s pivot towards sustainability has repositioned the securitisation of receivables as a primary engine for the ‘just’ transition. In India, where a significant disparity exists between climate objectives and available capital, the monetisation of future environmental outcomes offers a frontier of untapped potential.²²⁵ This paradigm shift repurposes future flow models to securitise unconventional assets, including carbon credits, renewable energy certificates and long-term infrastructure savings.²²⁶ Unlike traditional green bonds that require robust balance sheets, ESG-linked future flows rely on ‘Green Yield’. For example, solar developers can pool cash flows from long-term Power Purchase Agreements (“PPAs”) with generated carbon credits into an SPV. This enables immediate capital recovery and reinvestment into subsequent projects, bypassing the decades-long wait for plant amortisation.²²⁷

The Indian regulatory landscape provides essential scaffolding for this evolution through SEBI’s framework for ESG Debt Securities.²²⁸ A notable innovation is the sustainability-linked structure, where the interest rate is dynamic rather than static. Coupons are tied to the originator’s performance against environmental benchmarks, such as carbon intensity reduction or water recycling percentages. Meeting these targets lowers the cost of debt, while failure triggers step-up clauses that increase interest rates, creating a market-driven incentive for genuine sustainability compliance.²²⁹

Despite this progress, the sector must navigate the pitfalls of ‘greenwashing’. Because securitising environmental benefits involves trusting non-financial projections, independent third-party verification has become a mandatory structural component.²³⁰ These auditors bridge the gap between physical project performance and financial reality, ensuring the veracity of green claims.²³¹ Beyond environmental factors, these structures address the social pillar of ESG by securitising micro-utility payments from decentralised solar grids or water kiosks in rural

²²⁵ Joss Tantram, ‘To boldly go...exploring the Monetisation Frontier’ (*Terrafiniti*) <<https://www.terrafiniti.com/to-boldly-go-exploring-the-monetisation-frontier/>> accessed 25 April 2026

²²⁶ Climate Bonds Initiative, ‘*Securitisation as an enabler of green asset finance in India*’ (2019) 1-13 <<https://gsfo.org/sites/gsfo/files/documents/securitisation-as-an-enabler-of-green-asset-finance-in-india-report-15052020.pdf>> accessed 25 April 2026

²²⁷ Hamid Beladi, Chi-Chur Chao, Cong Tam Trinh and Mong Shan Ee, ‘Green financing for ESG investments and wages in a sustainable economy’ (2025) 106 IRFA 1, 1-12 <<https://doi.org/10.1016/j.irfa.2025.104569>> accessed 25 April 2026

²²⁸ Securities and Exchange Board of India, ‘Framework for Environment, Social and Governance (ESG) Debt Securities (other than green debt securities) 2025’ (SEBI/HO/DDHS/DDHS-POD-1/P/CIR/2025/84, 5 June 2025) <<https://www.sebi.gov.in/legal/circulars/jun-2025/framework-for-environment-social-and-governance-esg-debt-securities-other-than-green-debt-securities-94424.html>> accessed 26 April 2026

²²⁹ Vinod Kothari Consultants, *Green Securitisation in India: Can securitisation act as a catalyst to the growth of green finance in India?*, (2023) 22-29 <<https://vinodkothari.com/wp-content/uploads/2023/05/Whitepaper-on-Green-Securitisation-A5.pdf>> accessed 27 April 2026

²³⁰ Liyuan Liu, Zhiguo Ma, Yiyun Zhou, Melissa Fan and Meng Han, ‘Trust in ESG reporting: The intelligent Veri-Green solution for incentivized verification’ (2024) 5(2) *Blockchain: Research and Applications* 1, 2 <<https://doi.org/10.1016/j.bcra.2024.100189>> accessed 24 April 2026

²³¹ *ibid* 3-5

areas. Such mechanisms democratise capital access, allowing social enterprises to tap into institutional funding previously reserved for larger entities.

Therefore, ESG-linked future flows represent a transition from extractive to regenerative finance. By converting the promise of a cleaner future into immediate liquidity, the Indian SDI market is evolving into a vital participant in the national mission for a sustainable economy.²³² The enduring challenge will be maintaining transparency in these ‘green flows’ and ensuring that the legal protections governing them are as rigorous as the environmental standards they aim to uphold.

VII. Democratizing the Loop: Fragmented Receivables and MSME Integration

The revamped SDI framework possesses a unique potential to bridge India’s massive MSME credit gap by shifting the focus from blue-chip giants to the structural aggregation of fragmented receivables. Historically, high transaction costs and legal due diligence hurdles locked smaller enterprises out of the securitisation market.²³³ However, the synergy between the new regulatory framework and digital platforms like TReDS (Trade Receivables Discounting System) is finally allowing small corporate loops to enter mainstream capital markets.²³⁴ By pooling thousands of invoices from diverse buyers into Multi-Originator SPVs, the market can create a diversified asset class that mitigates idiosyncratic risk.²³⁵ This approach moves the credit assessment away from the individual small business owner and towards the systemic reliability of the trade flow itself, granting the long tail of the Indian economy access to institutional liquidity.

The legal foundation for this inclusive model is supported by landmark precedents. Cases such as *Standard Chartered Bank v. Custodian*²³⁶ provided early judicial clarity on transferring rights in receivables held in trust, while *ICICI Bank Ltd. v. APS Star Industries Ltd.*²³⁷ affirmed that debt assignment is a valid banking activity and a tradable property. These rulings provide the bedrock for structures where an SPV holds a mosaic of small debts from various originators.²³⁸

²³² Bharath Rajeswaran and Vivek Kumar M, ‘India gains favour with global investors on returns, ESG momentum’ (*Reuters*, 10 March 2026) <<https://www.reuters.com/sustainability/climate-energy/india-gains-favour-with-global-investors-returns-esg-momentum-2026-03-10/>> accessed 25 April 2026

²³³ James A. Wilcox, ‘Securitization and Small Business’ (*FRBSF Economic Letter*, 18 July 2021) <https://www.researchgate.net/publication/227437533_Securitization_and_small_business> accessed 25 April 2026

²³⁴ Priyanka Gupta, ‘TReDS: Technology-driven alternative funding platform for MSMEs’ (*TaxGuru*, 8 November 2021) <<https://taxguru.in/finance/treds-technology-driven-alternative-funding-platform-msmes.html>> accessed 26 April 2026

²³⁵ FlexFunds Team, ‘Pros and cons of multi-issuance securitization vehicles for collective investment’ (*FlexFunds*, 21 November 2024) <<https://flexfunds.com/trends-numbers/pros-cons-multi-issuance-securitization-vehicles/>> accessed 25 April 2026

²³⁶ *Standard Chartered Bank and anr v Custodian and anr* 2000 (6) SCC 427, 2000 AIR SCW 1443

²³⁷ *ICICI Bank Ltd v Official Liquidator of APS Star Industries Ltd and ors* 2010 (10) SCC 1, 2011 CLC 360 (SC)

²³⁸ Indian Securitisation Foundation, ‘Constitutional forms of SPVs in securitization transactions’ <<https://www.indiansecuritisation.com/images/21466485769.pdf>> accessed 24 April 2026

For this inclusion to be sustainable, the 2025 homogeneity requirements must be applied flexibly to accommodate dynamic pooling.²³⁹ Unlike rigid traditional structures, dynamic pools allow new receivables to be added as older ones mature, preventing the loop from closing due to mismatched tenors.²⁴⁰ This requires deep integration between fintech aggregators and banks to lower the cost of trust. The successful TReDS-to-SDI link demonstrates that when government-backed platforms interact with capital market regulations, the results are transformative.²⁴¹ Enabling small corporates to monetize future receivables at competitive rates reduces reliance on high-cost informal credit, deepening the capital markets while strengthening the country's industrial base.²⁴² Inclusion in structured finance is not just a social objective; it is a strategic necessity for market resilience and depth.

VIII. The Need for a Recast of SDI Regulations

The 2025 amendments to India's Securitised Debt Instruments (SDI) Regulations²⁴³ represent a modernizing step, yet they remain a partial fix for a market hampered by deep-seated statutory conflicts. While risk retention standards now align with global benchmarks, India fundamentally lacks the statutory finality found in the US²⁴⁴ and UK²⁴⁵. The core issue is the absence of a legislative safe harbour for the 'true sale' doctrine. Unlike US states with specific securitisation statutes that prevent bankruptcy courts from re-characterizing transfers as secured loans, India relies on administrative SEBI circulars. These lack the legal weight to withstand 'substance over form' challenges when pitted against the IBC.²⁴⁶

²³⁹ Prakshi Singh Rao, 'Consolidation Meets Clarity: Decoding SEBI's 2025 Master Circular On Debt Securities' (*Mondaq*, 20 October 2025) <<https://www.mondaq.com/india/commoditiesderivativesstock-exchanges/1693676/consolidation-meets-clarity-decoding-sebis-2025-master-circular-on-debt-securities>> accessed 28 April 2026

²⁴⁰ The Global Treasurer, 'Don't Let Your Cash Sit Still – Why Dynamic Pooling Matters' (*The Global Treasurer*, 10 October 2025) <<https://www.theglobaltreasurer.com/2025/10/10/dont-let-your-cash-sit-still-why-dynamic-pooling-matters/>> accessed 27 April 2026

²⁴¹ Swetha Dasu, 'The Evolving Regulatory Framework of TReDS: RBI's Role in Strengthening MSME Working Capital' (*Samisti Legal*, 5 April 2025) <<https://samistilegal.in/the-evolving-regulatory-framework-of-treds-rbis-role-in-strengthening-msme-working-capitaldraft-digital-data-protection-rules-2025/#>> accessed 27 April 2026

²⁴² Resolve Team, 'Receivables Management Options for Small and Medium Businesses' (*Resolve*, 20 March 2026) <<https://resolvepay.com/blog/post/receivables-management-options-for-small-and-medium-businesses/>> accessed 28 April 2026

²⁴³ Supra note 9

²⁴⁴ Keith R. Harden, Meghan Redding, Christopher Desmond and William Luciani, 'In brief: securitisation transactions in USA' (*Lexology*, 15 January 2026) <<https://www.lexology.com/library/detail.aspx?g=56b45f50-b9e1-4243-a85e-a077c9b09d2d>> accessed 26 April 2026

²⁴⁵ Bank of England, 'Reforms to securitisation requirements' *Consultation Paper 2/26* (7 February 2026) <<https://www.bankofengland.co.uk/prudential-regulation/publication/2026/february/reforms-to-securitisation-requirements-consultation-paper>> accessed 26 April 2026

²⁴⁶ Sharanya Shivaraman, 'Bombay High Court's ASREC Ruling: Form v. Substance in SARFAESI Proceedings' (*IndiaCorpLaw*, 6 February 2023) <<https://indiacorp.in/2023/02/06/bombay-high-courts-asrec-ruling-form-v-substance-in-sarfaesi-proceedings/>> accessed 28 April 2026

This friction intensifies during insolvency. Under IBC Section 14²⁴⁷, a moratorium can freeze all assets of an originator. Without explicit exemptions for securitised receivables, a resolution professional may successfully argue that these cash flows are essential for a going concern, trapping investor payments in years of litigation. In contrast, the UK's Securitisation Regulations 2024²⁴⁸ provide clear carve-outs that transform bankruptcy remoteness from a contractual hope into a statutory reality.

Also, the 2025 framework fails to adequately insulate investors from commingling risk.²⁴⁹ Escrow accounts lack the deemed trust status seen in more mature jurisdictions; if an originator or intermediary bank fails, these funds are not legally ring-fenced from the general estate.²⁵⁰ Finally, the new homogeneity requirements, while well-intentioned, are overly rigid. By restricting the blending of diverse asset classes, the regulator hampers risk diversification and the growth of Multi-Asset SDIs.²⁵¹ To move beyond a retail-protection mindset, India must recast its framework to prioritize statutory integration and structural trust models, ensuring the market is truly resilient for institutional participants.

IX. Recommendations for a Regulatory Recast: The SDI Framework and Beyond

The evolution of the structured finance industry in India, specifically regarding the securitisation of corporate receivables, has reached a critical inflection point. As we navigate the post-2025 landscape, the limitations of the existing Reserve Bank of India Master Direction – Securitisation of Standard Assets Directions²⁵², 2021, have become increasingly apparent. While this direction provided a robust foundation for institutional lenders, it remains fundamentally bank-centric, leaving a significant regulatory vacuum for non-banking corporates. For a corporate entity seeking to liquefy trade receivables through the Securitised Debt Instruments framework, the path is fraught with legal ambiguities that deter institutional investors and inflate the cost of capital. To catalyse this market, a radical regulatory recast is required, one that shifts from a series of disjointed circulars toward a cohesive, statutory-backed ecosystem.²⁵³

²⁴⁷ Insolvency and Bankruptcy Code 2016, § 14

²⁴⁸ The UK Securitisation Regulations 2024, SI 2024/102
<<https://www.legislation.gov.uk/ukxi/2024/102/contents>> accessed 27 April 2026

²⁴⁹ Apurva Kanvinde, Smit Parekh and Harshit Khandelwal, 'Harmonizing Debt Markets: SEBI's Reforms and the Future of Securitization in India' (*Juris Corp*, 14 July 2025)
<<https://www.juriscorp.in/sebi-sdi-reforms-2025/>> accessed 28 April 2026

²⁵⁰ DSK Legal, 'Newsletter' (2026) 16-47
<<https://dsklegal.com/wp-content/uploads/2026/01/DSK-Legal-Newsletter-January-2026.pdf>> accessed 27 April 2026

²⁵¹ Payal Agarwal and Dayita Kanodia, 'Listed and Restricted? Additional Compliances and Prohibitions for listing of SDIs by RBI regulated Originators' (*Vinod Kothari Consultants*, 6 August 2025)
<<https://vinodkothari.com/2025/08/listed-and-restricted-additional-compliances-and-prohibitions-for-listing-of-sdi-by-rbi-regulated-originators/>> accessed 27 April 2026

²⁵² Reserve Bank of India, 'Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021' (24 September 2021) <https://www.rbi.org.in/scripts/bs_viewmasdirections.aspx?id=12165> accessed 27 April 2026

²⁵³ Dayita Kanodia, 'SEBI Securitisation Regulations: Track Record, Risk retention and Investment size among several new requirements' (*Vinod Kothari Consultants*, 6 May 2025)
<<https://vinodkothari.com/2025/05/sebi-securitisation-regulations/>> accessed 27 April 2026

A primary lacuna in the current legal scenario is the treatment of future receivables. Under the Transfer of Property Act²⁵⁴, 1882, the assignment of an interest in property generally requires the asset to be in existence at the time of the transfer. This existential requirement creates immense legal friction for corporate replenishment pools where a company intends to securitize invoices not yet generated.²⁵⁵ While judicial precedents have occasionally leaned toward the validity of such transfers in equity, the lack of statutory certainty leads to rating triggers and higher credit enhancement requirements.²⁵⁶ Furthermore, the fragmentation of oversight between the SARFAESI Act, 2002²⁵⁷ and the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations²⁵⁸ complicates the landscape, as corporate originators are excluded from the streamlined recovery mechanisms granted to financial institutions.

To bridge these gaps and align the Indian market with global standards, the following structural recommendations for a regulatory recast are proposed:

- **Statutory ‘True Sale’ Safe Harbour:** India requires a dedicated Securitisation Act or, at the very least, an amendment to the Insolvency and Bankruptcy Code, that explicitly recognizes the transfer of future receivables to an SPV as a final non-voidable transaction. This would remove the discretionary power of resolution professionals to pull securitised assets back into the insolvency estate, a risk that currently hangs over the ‘bankruptcy-remote’ status of corporate SDIs. Statutory clarity would ensure that once an asset is sold, it is permanently divorced from the originator’s credit profile.
- **Exemption from Section 14 Moratorium:** To protect the bankruptcy-remote nature of SDIs, the law must clarify that the Section 14²⁵⁹ moratorium on the recovery of security interests does not apply to assets that have been legally sold to an SPV. Investors should not be punished for the failure of the originator. By exempting these assets, the regulator ensures that the waterfall of payments to SDI holders remains uninterrupted, even if the originating corporate entity enters corporate insolvency resolution proceedings.
- **Expansion of Eligible Originators:** The current ‘three-year track record’ rule is an archaic barrier to entry. It should be replaced with a ‘Quality-of-Asset’ test. This would allow younger asset-light companies, particularly in the technology, SaaS and green-energy sectors to monetise their future flows. If the underlying contracts are

²⁵⁴ Transfer of Property Act 1882

²⁵⁵ Nishith M Desai and Lubna Kably, *Asset Securitisation*, (1997) <https://nishithdesai.com/Content/document/pdf/Asset_Securitisation.pdf> accessed 27 April 2026

²⁵⁶ Mukesh Chand, ‘Right of Redemption and Foreclosure- Under SARFAESI Act’ (*Economic Laws Practice*, 26 September 2025) <<https://elplaw.in/leadership/right-of-redemption-and-foreclosure-under-sarfaesi-act/>> accessed 27 April 2026

²⁵⁷ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

²⁵⁸ Securities and Exchange Board of India, ‘Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations, 2025’ (5 May 2025) <https://www.sebi.gov.in/legal/regulations/may-2025/securities-and-exchange-board-of-india-issue-and-listing-of-securitised-debt-instruments-and-security-receipts-amendment-regulations-2025_93803.html> accessed 26 April 2026

²⁵⁹ Insolvency and Bankruptcy Code 2016, § 14

robust, verified and diversified, the age of the corporate entity should be secondary to the strength of the receivables.²⁶⁰

- **Integration of Smart Contract Audits:** The regulations should transition from periodic, manual reporting to real-time transparency. By officially recognizing *blockchain*-based smart contracts as a valid method for managing the payment waterfall, the regulator can reduce the reliance on human trustees, minimize commingling risks and significantly lower the administrative costs of the transaction.²⁶¹

The fiscal hurdles also cannot be ignored. The lack of a uniform centralized stamp duty regime remains the single largest hidden tax on structured finance.²⁶² Because securitisation involves the assignment of debt, it attracts varying rates of stamp duty across different Indian states, often reaching levels that make transactions commercially unviable. In conclusion, a standalone Securitisation Act would serve as a *Lex Specialis*, overriding the general provisions of the Indian Contract Act²⁶³. By providing a unified legal theory for the industry, India can unlock the billions in trapped value residing on corporate balance sheets, transforming trade receivables into a high-quality tradable asset class that rivals the depth of the traditional corporate bond market.

X. Conclusion: The Horizon of Structured Finance in India

The evolution of securitisation from a peripheral accounting tool to a central pillar of corporate strategy marks a resilient and transparent era for Indian finance.²⁶⁴ Through the lens of the 2025 SDI Amendments and the emergence of digital ring-fencing, structured finance has transitioned from a landscape of information silos towards one where capital is allocated based on the verifiable strength of production rather than corporate identity. This trajectory has democratized institutional credit, moving it beyond the exclusive reach of blue-chip conglomerates. By integrating Securitised Debt Instruments into the broader capital market, the ‘Digital Ring-Fence’ and ‘Green Flow’ models now empower entrepreneurs in SaaS, renewable energy and micro-infrastructure who lack traditional collateral but possess immense future potential, signalling a shift towards a forward-looking investment philosophy.

Central to this progress is a renewed focus on ethics and transparency. The 2025 reforms have acted as a clarifying force, mandating *skin in the game* through risk retention and rigorous disclosure.²⁶⁵ By mathematically and legally aligning the interests of originators, Special Purpose Vehicles and investors, India is establishing a gold standard of securitisation where transparency serves as the foundation of investor confidence. However, realizing this full

²⁶⁰ Crisil Ratings, *Crisil Ratings criteria for securitisation transactions*, (2025) 9-15 <<https://www.crisilratings.com/content/dam/crisilrating/criteria-and-methodology/criteria-for-securitisation-transactions.pdf>> accessed 28 April 2026

²⁶¹ Cyfrin Team, ‘What is a Smart Contract Security Audit?’ (*Cyfrin*, 1 February 2024) <<https://www.cyfrin.io/blog/what-is-a-smart-contract-security-audit>> accessed 27 April 2026

²⁶² Crisil Ratings, *Legal analysis for structured finance transactions*, (2023) 6-7 <<https://www.crisilratings.com/mnt/winshare/Ratings/SectorMethodology/MethodologyDocs/criteria/Legal%20analysis%20in%20structured%20finance%20transactions.pdf>> accessed 28 April 2026

²⁶³ Indian Contract Act 1872

²⁶⁴ Mayank Shrivastava, ‘The Genesis of Securitisation in India: Conceptual and Regulatory Framework and Issues’ (2023) 6(3) IJLMH <<https://www.ijlmh.com/wp-content/uploads/The-Genesis-of-Securitisation-in-India.pdf>> accessed 27 April 2026

²⁶⁵ Supra note 23

potential requires a symbiotic interaction between the government and the corporate sector. Regulatory bodies like SEBI and the Ministry of Finance must shift towards proactive market-building, ensuring that the ‘true sale’ remains sacrosanct and the tax environment remains neutral. Statutory certainty, such as the proposed ‘Securitisation Act’, will naturally diminish the performance risks that currently dampen credit ratings.

We are approaching a future where the boundary between finance and technology vanishes. The logical conclusion of the 2025 regulatory seeds is a landscape where SMEs can tokenize future receivables and access capital almost instantly, while investors monitor asset health via real-time transparent ledgers. While challenges like the Insolvency and Bankruptcy Code conflicts remain, they are merely friction points of a system in transition. By combining legal rigor with the operational remoteness of smart contracts, India is crafting a unique model of structured finance that is *conservative* in risk yet *radical* in reach. This partnership between regulatory vision and innovative spirit will do more than fund balance sheets; it will turn future flows into the reality of national prosperity.

Securitization of Corporate Receivables: Reassessing Risk and Reforming India’s Future-Flow Finance

"Financial innovation is often about redistributing risk, not eliminating it."

Apoorv Bisht

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I. Reimagining Securitization: The Uncertain Promise of Future Cashflows

In today's era, capital (money and investments) depends not only on what the companies already have in their kitty, but also on the expectations of future earnings. This financial innovation is changing how future income can be utilized to raise money today. This transition from asset-backed certainty to expectation-driven finance has allowed companies to turn tomorrow's potential into today's liquidity. Thus, securitizing future receivables presents both an opportunity and a complex challenge for regulators.

Securitization functions as a transformative tool of financing. It comprises pooling assets (loans, royalties, receivables) that are capable of generating cash in the future into tradeable securities.²⁶⁶ Corporations tend to go for monetization of expected revenues in the future-flow variant, for instance, securitization of loyalty-program revenues by the airlines, and even music artists securitize their royalty streams. In one of the famous cases of 1997 involving David Bowie, which is often termed as "Bowie Bonds," Bowie, by transferring \$55 million of future music royalties to a Special Purpose Vehicle (SPV), immediately gained capital without selling his copyrights.²⁶⁷ Thus, abstract income instantly got converted from 'future airplay into a quantifiable financial asset'. Such deals showcase the potential of converting intangible earnings of the future into liquid cash. Indeed, as per the analysts, future-flow securitization is the emerging area of 'corporate finance', as companies utilize the money they expect to earn in the future, for example, through franchises, user fees, royalties, etc., to get cash instantly. However, the 'true alchemy' as famously quoted by Steven Schwarcz, lies in the complete de-linking of the asset from the bankruptcy estate of the originator. In my view, India is yet to realize and truly master this feat.²⁶⁸

However, in the Indian landscape, this is an emerging frontier. Corporations are parched for liquidity owing to the financial stress in the economy. The huge amount of securitization deals (₹2.35 lakh crore in FY2025)²⁶⁹ signals a huge demand for such financial shortcuts to keep the business moving. Despite a huge market, the volume is skewed with traditional assets. In FY25, Mortgage-Backed Securities (MBS) or home loans and Auto Loans captured a whopping 80-85% market, and less than 5% share was held by 'Corporate Future Flows'²⁷⁰. This exposes a glaring gap: despite having a legal infrastructure for the securitization deals, it is rarely used for complex, business-level corporate cash flows.

²⁶⁶ Reserve Bank of India (Securitisation of Standard Assets) Directions 2021

²⁶⁷ Ronald J Gilson and David M Schizer, 'Understanding Venture Capital Structure: A Tax Explanation for Convertible Preferred Stock' (2003) 116 Harv L Rev 874

²⁶⁸ Steven L Schwarcz, 'The Alchemy of Asset Securitization' (1994) 1 Stan J L Bus & Fin 133

²⁶⁹ ICRA Limited, *Indian Securitisation Market: FY2025 Review and Outlook* (ICRA 2025)

²⁷⁰ CRISIL Ratings, *Securitisation Volumes and Trends FY2025* (CRISIL 2025)

The RBI's 2021-22 Master Directions for Standard-asset Securitization and 2025 SDI amendments conducted by SEBI²⁷¹ show that both RBI and SEBI have begun to update the rules. The aim to widen the ambit to include future receivables. But these reforms are at a very early stage. The central issue is defined: while the nature of future cash flows is volatile and hard to attach a price to, India's regulatory stance remains 'originator-centric' (the company's background), rather than 'cash flow-centric' (quality of cash)²⁷². In a nutshell, the existing regulations are inadequate to deal with securitization that is based solely on the money that a company anticipates receiving in the future. Therefore, as this paper postulates, the emerging structure in India, though recently reformed, is still incapable of managing risks associated with future-flow transactions. Therefore, the dilemma is between innovation (liquidity) and investor protection (risk). We discuss this by comparing international standards, the rules under India before and after 2025, identifying major structural crevasses, and proposing specific reforms.

II. Global Models, Local Gaps: Lessons from Mature Securitization Jurisdictions

Worldwide, the concept of future-flow securitization is a well-established financial strategy and a multi-billion-dollar niche. Not just 'Bowie Bonds', wherein the money was raised using the music royalties, but modern corporations have utilized future earnings, like airline loyalty programs, toll collections, and revenue earned from satellite and telecom services to raise money now. In 2020, at the time of a heightened global air travel crisis, United Airlines securitized its 'Mileage Plus' loyalty program and raised \$6.8 billion.²⁷³ This deal highlighted that loyalty programs can help earn a stable and reliable income. Thus, by pledging its upcoming loyalty cashflows, the airline raised \$3.8 billion in bonds at an interest rate of 6.5%. Nowadays, even the music and film industries are using royalties as their mainstream asset class. As per a report, between 2021 and 2024, 'creative' transactions grew by nearly \$3 billion.²⁷⁴ This showed that creative arts (songs and movies) are no longer 'risky bets', rather they should be considered as reliable and tradable financial assets.

Nevertheless, the world experience also proves that even advanced securitization systems cannot withstand systemic pressure. The 2008 financial crisis²⁷⁵ has demonstrated how over-reliance on forecasted cash flows and rating models can result in dire mispricing of risk, especially where underlying assumptions of stability are found to be flawed. Recent global evaluations show that structured finance markets, especially in the United States and Europe, have experienced a consistent growth in future-flow securitizations in non-traditional asset classes, as a result of growing investor appetite for yield-generating alternative assets despite inherent valuation complexities.²⁷⁶

²⁷¹ SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations 2025

²⁷² Steven L Schwarcz, 'Securitization Post-Enron' (2003) 25 *Cardozo L Rev* 1539

²⁷³ United Airlines Holdings Inc, 'United Airlines Announces MileagePlus Financing' (Press Release, 21 June 2020)

²⁷⁴ Goldman Sachs, *Music in the Air: Global Music Industry Report 2024* (Goldman Sachs 2024)

²⁷⁵ Gary B Gorton, 'The Subprime Panic' (2009) 15 *European Financial Management* 10

²⁷⁶ International Monetary Fund, *Global Financial Stability Report* (IMF 2023)

Whole-Business Securitization (WBS) is another model used globally, in which the operating cash flows of an entire company (franchise fees, brand royalties, subscription income) are used to support the securities. WBS has been used by major chains and retailers (e.g., restaurant franchises, equipment rental businesses) where they have been able to obtain high credit ratings by isolating the steady revenue streams. Although there have been no large WBS deals in India so far, this international trend highlights the possibilities: robust future flows can be drawn in by international capital if companies in India properly structure and manage their future income streams.

There are three reasons why future-flow deals work in advanced markets (and fail in India). To begin with, Global securitizations focus on the power and reliability of underlying cash flows (airline miles, toll receipts, royalty contracts, etc.), rather than the balance sheet of the sponsor. The fundamental strength of securitization is that it alters the analytical discussion of the creditworthiness of the originator to the quality and legal isolation of the underlying cashflows, which facilitates more effective risk allocation.²⁷⁷ Asset diversification (e.g., multiple payment channels, geographies) and enforceable contracts make revenues reliable and predictable, but in Indian markets, they are still frequently based on the credit rating of the originator. Secondly, Jurisdictions such as the US, UK, and Singapore have explicit laws on true sale, remoteness of bankruptcy, and isolation of SPV,²⁷⁸ implementing specific securities law (as in the case of SPV in Bowie under the US law) and frequently offering rating agency regulation, leading to high investor confidence. In India, the 'true sale' tests of law have just started (e.g., after DHFL, courts affirmed isolation), and the regulatory advice on future flows continues to develop. Thirdly, mature markets require seasoning, retention, and disclosure requirements that are consistent with Basel-like principles, which usually require the originator to retain some risk of the asset (skin in the game) and ensure homogeneous pools.²⁷⁹ The new SEBI regulations in India are heading that way; however, time will tell whether they meet the global rigour or not.

Consider airline securitizations. The United, based in the US, structured its \$6.8B loyalty securitization offshore (to a US SPV, listed on Nasdaq), and investors relied on extensive disclosures of program economics. In comparison, there is no large airline future-flow securitization as yet in India; any such deal would require persuading Indian investors of the independent strength of the SPV. The securitization activity in India has been predominantly concentrated on retail loan portfolios, including microfinance, vehicle loans, and housing finance, with little movement towards corporate future-flow structures, which also reflects a structural mismatch between regulatory intent and market practice.²⁸⁰ In other countries, innovative financing deals are quite common and successful, but in India, such deals are still new. For example, the first music royalty securitization in India happened only recently and was done on a small scale.²⁸¹

The difference goes beyond market maturity; it includes shifts in regulatory philosophy. Global systems aim to isolate and price cash flow risk independently. In contrast, the Indian framework still includes this risk within the credit profile of the originator. To conclude,

²⁷⁷ Steven L Schwarcz, 'The Alchemy of Asset Securitization' (1994) 1 Stan J L Bus & Fin 133

²⁷⁸ Philip R Wood, *Principles of International Insolvency* (2nd edn, Sweet & Maxwell 2007)

²⁷⁹ Basel Committee on Banking Supervision, *Revisions to the Securitisation Framework* (BCBS 2014)

²⁸⁰ KPMG India, *Securitisation in India: Evolving Landscape and Future Outlook* (KPMG 2024)

²⁸¹ EY India, *Media & Entertainment Sector Financing Trends Report* (EY 2024)

international standards indicate that securitization of corporate future flows can be effective where legal transparency and cash flow orientation exist. The existing system in India, though better, is nevertheless more of an ‘originator strength’ than that of cash flows. This deviation is critical: unless incentives are aligned with the revenues themselves, the securitization market in India will remain underutilized.

III. Indian Framework: Pre- and Post-2025 Analysis

(A) Pre-2025 Scenario

In the past, the securitization regime in India was conservative. The 2006 guidelines by RBI²⁸² (of banks/NBFCs) allowed securitization of only traditional pools of performing loans, and the SDI regulations by SBEB in 2008 were dedicated to securitization trusts issuing market instruments. Future flows (such as invoice factoring, franchise fees, royalty deals) did not have a domicile. Practically, most Indian securitizations were direct assignments of retail loans or mortgages to the banks- the epitome of old economy assets. As a result, the market condensed into a monolith of "Direct Assignments" (DA), which tended to comprise more than 70 percent of transaction volumes; these were direct bilateral transfers of banks between themselves used for capital relief rather than the creation of public, tradeable financial instruments.²⁸³ The regulatory focus was on credit compliance and capital relief, and not on expanding asset classes. This restrictive approach reflected regulatory caution. This conservatism should also be interpreted through the prism of the banking industry in India, being in a state of distress during the 2015-2018 NPA crisis,²⁸⁴ where the regulators were cautious to avoid securitization as a means of evergreening bad loans or of concealing bad credit. Experts observe that the structure in India was characterized by ‘regulatory conservatism,’ which was extremely limiting eligible assets to standard receivables.²⁸⁵ As an illustration, the leasing or service contract revenues were not directly covered.

The question of tax and insolvency was unclear as well: in a Bombay High Court case (DHFL default) of 2019,²⁸⁶ it was pointed out. When the creditors of DHFL tried to freeze the entire pool of its receivables, the court was forced to explain that the securitized assets are still bankruptcy-remote. Even fundamental principles of ‘true sale’ remained untested. The fact that there was no statutory safe harbor on future receivables made such transactions subject to a high degree of re-characterization risk in the sense that courts, in fact, might assume that they were secured lending transactions and not true sales. This vagueness was especially pronounced during the 2019 DHFL insolvency, in which the absence of tested bankruptcy-remoteness of securitized pools posed a grave question of whether the interests of investors were given appropriate protection. This uncertainty should also be considered in the context of emerging jurisprudence in the Insolvency and Bankruptcy Code, in which courts have become more concerned with the content of asset ownership rather than the form,²⁸⁷ and in which off-balance sheet structures are therefore questioned in terms of their reliability in the

²⁸² Reserve Bank of India, *Guidelines on Securitisation of Standard Assets* (RBI 2006)

²⁸³ ICRA Limited, *Indian Securitisation Market: Trends and Outlook* (ICRA pre-2020 and FY2025 retrospectives)

²⁸⁴ Viral V Acharya, ‘India’s Banking Sector: Stress and Reforms’ (Speech at the Federal Reserve Bank of New York, 11 May 2019)

²⁸⁵ Harsh Vardhan Sam, ‘Securitisation in India: Evolution, Issues and Challenges’ (2017) 3 NLS Bus L Rev 1

²⁸⁶ *Dewan Housing Finance Corporation Ltd v Union of India* [2019] Bom HC

²⁸⁷ *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17

face of stress. In short, pre-2025 rules gave limited guidance on future flows and left major gaps in enforceability and valuation.

(B) Post-2025 Amendments

The recent regulatory shift started with RBI (2021 Master Directions) and ended with SEBI's SDI amendments in May 2025. These reforms recognize future flows. The Securitization Directions of RBI now permit the securitization of trade receivables and even individual asset transactions. An SPV can purchase a pool of trade invoices or even a single lease receivable, for the first time, subject to retention norms. Similarly, the May 2025 amendments by SEBI²⁸⁸ clearly broaden the list of securitizable assets to cover leasing receivables, rentals, equipment leases, and some contractual payments. New Basel-compatible "skin-in-the-game" regulations now demand that originators retain 5-10 per cent of every issue, and loans must be seasoned and retained 3-6 months before sale.²⁸⁹ Most importantly, SEBI requires homogeneous pools and originator/ obligor track records (3 years and above). These measures are an indication of the transition of India to international practice. Nevertheless, early market data indicate that, in spite of the regulatory expansion, securitization volumes are still dominated by traditional retail asset classes, meaning that the shift to corporate future-flow structures is still not a practical reality.

Nevertheless, a critical analysis shows that it has some fundamental weaknesses. The new rules stipulate what can be securitized, but not the management of risks. As an example, the SDI amendments provide numerous allowed assets (e.g., trade invoices, rental streams), but also prohibit some (e.g., commercial paper, credit-card lines). Although this restriction on highly liquid / self-revolving credit helps to reduce speculation, it also narrows the market and can even drive the nonbanks back to bank financing. Moreover, the line between "permissible" and "prohibited" flows can blur in practice. Take aircraft leases: are lease rentals permitted, or is the underlying airline lease a rotating facility? The regulations leave interpretation to market practice, which may slow deal-making. Alignment should be enhanced by mandatory retention (5-10%).²⁹⁰ However, 5% remains fairly low when compared with international standards, and it is possible to say that it continues to promote originator-lite deals. These analysts note that these provisions are useful in terms of investor confidence, but may not be sufficient to cover underlying structural risk. In any case, originators with weak cash flows might simply self-assure finance in case of small retention. Authentic 'skin in the game' around the world usually implies increased retention or co-investment by sponsors.

The new minimum holding period (MHP) of 3 months on short-term loans and 6 months on long-term loans does assist in creating a performance track record, but it also postpones fundraising. A corporation that requires urgent cash will have to keep its loan on the balance sheet before it can sell it. Equally, the 1 crore minimum investment and 25% single-obligor constraint (observed in parallel ICRA analysis) can exclude smaller investors and narrow the

²⁸⁸ SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations 2025 <https://www.sebi.gov.in> accessed 6 April 2026

²⁸⁹ Reserve Bank of India, *Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions 2021* (updated 6 April 2026) <https://www.rbi.org.in> accessed 6 April 2026

²⁹⁰ Governing the Securitisation Market: Implications of SEBI's 2025 Amendments to the Issue and Listing' (TCCLR, 2025)

markets.²⁹¹ This also generates a structural paradox: while the high minimum investment requirement is supposed to safeguard the investors, in fact, it closes down the participation only to a few large corporations, which reduces liquidity as well as the ability to develop a market-based pricing mechanism of future-flow risks.²⁹² Such stricter requirements enhance better governance but might paradoxically concentrate issuance in a small number of large players, which would restrict market depth. Moreover, RBI or SEBI has not completely covered some of the practical issues. As an example, it is unclear how the assignment of future receivables can be a “true sale” in all legal aspects. The legal nature of such transfers has been a thorn in the flesh and has frequently made it difficult to distinguish between a true sale and a secured financing transaction.²⁹³ The DHFL saga indicates that such transfers will be generally accepted by the courts, but in contrast to Basel-regulated banks, corporate SPVs do not have standardized rules regarding accounting or default situations. The treatment of tax and stamp duty for SPVs is also complicated. Although transparency is enhanced by the code of conduct and disclosure requirements of SEBI, the originators usually report to trustees in confidentiality agreements as opposed to reporting to the markets. In short, enforcement gaps exist- although the law allows securitization, the practical implementation of the cashflows, which are not within the control of the originator (especially when the obligor defaults), remains legally complex. The ultimate test of securitization is whether the trustee is capable of enforcing claims over the receivables independently without being affected by the insolvency proceedings of the originator.

In brief, there are still enforcement gaps; the law authorizes securitization, but the practical enforcement of cash flows that are not under the control of the originator (especially when there is obligor default) is legally complicated. The ultimate determinant of successful securitization is the ability of the trustee to enforce claims over the receivables independently without being bound by the originator’s insolvency proceedings.²⁹⁴

As Nobel Laureate Robert Shiller observes, “innovation is often about redistributing risk, not eliminating it. In the Indian context, the 2025 SDI amendments have successfully redistributed this risk to a wider pool of investors, but the legal 'safety net' for those investors remains a work in progress.”

Structural Limits of Reform: An Evaluation

This reveals an underlying structural issue: the regulatory framework seems to widen the scope of securitization without correspondingly enhancing the mechanisms required to price and allocate its underlying risks. As suggested by Gary Gorton,²⁹⁵ Securitization is particularly susceptible to informational opacity. Under the Indian scenario, the 2025 reforms require disclosure, but they fail to address the underlying asymmetry in which the originator is the only manager of the cash-generating activity, leaving the SPV as a ‘passive spectator’ to the risk it

²⁹¹ ICRA Limited, *Securitisations and Structured Finance – Regulatory Impact Analysis* (ICRA 2025)

<https://www.icra.in> accessed 6 April 2026

²⁹² SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations 2025

²⁹³ Vinod Kothari, *Securitisations, Asset Reconstruction and Enforcement of Security Interests* (3rd edn, LexisNexis 2021)

²⁹⁴ Tamar Frankel, *Securitization: Structured Financing, Financial Assets Pools, and Asset-Backed Securities* (OUP 2006)

²⁹⁵ Gary B Gorton, ‘The Panic of 2007’ (15th Annual Jackson Hole Conference Proceedings, August 2008)

has bought. Although the 2025 reforms obviously make securitization more inclusive, they largely facilitate securitization and do not address structural constraints. As an example, mandating homogeneous pools and track records (Reg. 19A)²⁹⁶ is conceptually sound, but in a shallow market, it can hamper innovation. On the same note, the correspondence to Basel principles of ‘skin-in-the-game’ is a positive step, but credit rating agencies warn that obligor concentration limits and high minimum investment requirements may keep issuance subdued. Overall, the reform is facilitating but not adequate: the securitization market in India is still struggling to resolve the underlying tensions between innovation and regulation, and liquidity and risk.

The effectiveness of these amendments will be determined by the response of the market. There are still mixed indicators. The non-bank originators (telecom and utility companies) have shown interest in future-flow structures in the face of more regulatory clarity, but the actual deal volumes are not rising in any meaningful way. In 2025, recent market observations further show that the corporate-originated securitization transactions remain sober, with most issuances still dominated by NBFC-originated retail loan pools, which highlights continuing structural and investor-confidence limitations to scale future-flow securitization.²⁹⁷ As one of the expert remarks, the increased legal eligibility has ‘not directly translated into the deal volume’, implying that there remain more profound structural issues. The following sections examine these challenges in greater detail and consider how the regulatory framework might evolve to address them.

Ultimately, the 2025 pivot is an advanced effort to ‘legitimize’ the future and reflects a shift from prohibition to permission, but not yet to precision. Regulatory reforms have increased the scope of what may be securitized, but have not yet fully tackled how such risks are to be independently priced, monitored, and enforced in practice. Until this disjuncture between regulatory purpose and market capability is bridged, until the legal architecture can provide the same kind of certainty to a cash flow as to that of a physical asset, future-flow securitization in India may remain an under-exploited innovation – elegant in design, but not yet subject to full test in a condition of systemic stress.

IV. Engineering Liquidity: Motivations and Structural Realities

(A) Liquidity Without Leverage: The Corporate Allure of Future-Flow Securitization

From a corporate standpoint, securitization of future receivables provides flexibility and liquidity as compared to conventional debt. The main drivers are to unlock cash for growth since firms with long-term contracts (infrastructure user fees, licensing agreements, subscription models) can raise upfront cash without diluting equity or increasing bank debt. To give an example, securitization can be used to fund infrastructure projects whose annuity or toll collection is predictable, as opposed to relying solely on budgetary or equity funds. It also facilitates off-balance sheet financing because the conversion of future cash flows into securities frequently characterizes the transaction as a ‘true sale’ (awaiting legal confirmation), thus removing debt from the balance sheet of the originator and enhancing leverage ratios.

²⁹⁶ SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations 2008 (as amended 2025) reg 19A

²⁹⁷ CRISIL Ratings, *Securitisations Market Outlook 2025* (CRISIL 2025) <https://www.crisilratings.com> accessed 6 April 2026

Even if securitization is not entirely off the balance sheet, it can function like non-recourse project finance.²⁹⁸

Further, cost and rating benefits are anticipated. When cash flows are predictable, the investors can rate the securities of the SPV highly, at times higher than the rating of the originator, thus reducing the cost of funding. For example, a high royalty or franchise stream, all by itself, could be rated AAA, although the parent is single-A, and corporates aim to exploit this by isolating specific cashflows into the SPV.²⁹⁹ Securitization also allows access to a wide range of funds as compared to bank loans, as it accesses a wide range of investors, including insurance funds, pension funds, and foreign funds via capital markets. This may be especially useful in times of a credit crunch; a recent study by RBI found that banks were more involved in securitization in FY2025 (from 5% to 24% market share) to cope with the liquidity pressure, which shows its macroeconomic applicability.³⁰⁰ Also, within large conglomerates, new securitization structures (e.g., lease or receivables) can be a sign of good creditworthiness and innovativeness to investors, allowing early movers to be given special treatment that can subsequently be imitated by others. This trend is also justified by the fact that the fintech-based receivables platforms are becoming more and more relevant in India, where the digitally originated trade receivables and supply-chain financing models are becoming increasingly subject to securitization.³⁰¹ Even though such platforms expand the universe of eligible assets, they also introduce new sources of data dependency and operational risk, complicating traditional assumptions of cashflow stability.

However, these motivations have to be critically reviewed from the Indian perspective. The majority of these benefits assume a stable and contractually assured cash flow. In fact, the future flows (e.g., license payments, royalty streams) can be influenced by the market demand, regulatory changes, or currency fluctuations. Even though credit enhancements such as excess spread, cash-traps, or guarantees are often used in securitization deals to mitigate these risks, they do introduce complexity and cost (legal structuring, monitoring, servicing, etc.), and when risks are initially underestimated, then subsequent risk pricing may result in higher costs or lower ratings than anticipated.³⁰² It is always assumed that assets are fully sold in a securitization deal, but it is not necessarily fully tested. Originators may continue to exert a tremendous influence in cases of obligor default or regulatory modifications, particularly in direct-assignment structures. As the case of DHFL (2019) has demonstrated, the insolvency proceedings can quickly disrupt the cashflow arrangements, and only after the judicial clarification was obtained, market confidence was reinstated.

In addition, there exist significant short-term versus long-term trade-offs. The short-term liquidity (cash) benefits are real, but the ill-designed transactions may introduce long-term risks. As an example, a number of Indian NBFCs (e.g., IL&FS and DHFL) had previously sold

²⁹⁸ John D Finnerty, *Project Financing: Asset-Based Financial Engineering* (3rd edn, Wiley 2013)

²⁹⁹ Paul, Weiss, Rifkind, Wharton & Garrison LLP, 'Critical to a Successful Securitization' (8 May 2008) <https://www.paulweiss.com/media/4fwhxu25/pwfsf22may08.pdf> accessed 6 April 2026

³⁰⁰ 'Securitisations volumes jump 24% to hit new record of Rs 2.35 lakh cr in FY25' The Economic Times (Mumbai, 3 April 2025)

<https://economictimes.indiatimes.com/industry/banking/finance/securitisation-volumes-jump-24-to-hit-new-record-of-rs-2-35-lakh-cr-in-fy25/articleshow/120057170.cms> accessed 6 April 2026

³⁰¹ Reserve Bank of India, *Report on Trend and Progress of Banking in India 2024–25* (RBI 2025)

³⁰² Joseph C Shenker and Anthony J Colletta, 'Asset Securitization: Evolution, Current Issues and New Frontiers' (1991) 69 *Texas Law Review* 1369.

legacy assets via securitization prior to the crisis, but were subsequently faced with reputational and legal issues.³⁰³ It is therefore upon corporates to balance the short-term benefits of funding now against the risk that in the long run their interests may not align properly. As an analyst observes, the ‘structural beauty of securitization often masks underlying fragility,’ particularly when the future income is not received as anticipated. This argument is similar to that of Frank Partnoy, who writes that structured finance has a propensity to provide an illusion of risk dispersion whilst concealing the true locus of risk through the use of intricate financial engineering.³⁰⁴ Complex securitization structures may give the illusion of risk dispersion when, in reality, they focus on the weaknesses within opaque contractual structures, as has been critically observed in structured finance analysis. In this respect, despite securitization offering liquidity without being over-debted, the success of securitization is finally determined by the sustainability of the underlying cashflows, which is what the structure is trying to establish.

(B) Architecture of Isolation: Structuring Risk Through SPVs and Cashflow Waterfalls

The typical form of the future-flow transactions in India (when they are conducted within the frameworks of RBI-SEBI) is a complex system that is designed to divide the receivables and address the risk in a legally determined procedure. To make it tax neutral, the originator sells or assigns specified receivables to a bankruptcy-remote Special Purpose Vehicle (SPV), often in the shape of a trust. The SPV is managed by a professional trustee who makes sure that cash collections are allocated in a pre-established “waterfall mechanism”.³⁰⁵ The transfer should be a genuine sale, usually accomplished through assignment or novation. This process should be documented with either an Assignment Agreement or a Sale Deed. The SPV, when properly structured, holds the receivables outside the originator’s insolvency estate.

Cashflows adhere to a structured waterfall: transaction expenses are first paid, followed by the senior and subordinated noteholders, and the remaining spread is given to reserve accounts or repaid to the originator as agreed. However, the seeming accuracy of such waterfall mechanisms can conceal underlying legal and economic ambiguities, in which the systematic prioritization of payments may not necessarily align with the enforceability of underlying claims in distress situations. In order to facilitate credit quality, credit structures may take into consideration credit enhancements like excess interest spread, cash collateral, or third-party guarantees. Investment-grade ratings are obtained by ‘Tranching mechanisms,’ where senior notes are layered above subordinated tranches.³⁰⁶ The initial losses are covered by a subordinate tranche or through over-collateralization. In India, transactions are usually based on a 20% subordinate structure, which is based on the limit of credit enhancement prescribed by the RBI, but future-flow transactions might need more support due to greater uncertainty in cashflow predictability.

³⁰³ Government of India, *Report of the Committee on Financial Sector Assessment: IL&FS Crisis* (Ministry of Finance 2019)

³⁰⁴ Frank Partnoy, *Infectious Greed: How Deceit and Risk Corrupted the Financial Markets* (Profile Books 2003)

³⁰⁵ ICRA, ‘Rating Methodology: Securitisation Transactions’ (July 2023)

<https://www.icra.in/Rating/GetRatingMethodologyFile/596~Securitisation%20Transactions> accessed 6 April 2026

³⁰⁶ ACCA, ‘Toxic Assets’ (April 2023)

<https://www.accaglobal.com/gb/en/student/exam-support-resources/professional-exams-study-resources/p4/technical-articles/toxic-articles.html> accessed 6 April 2026

Regulatory and investor safeguards have also been strengthened post-amendments. Originators are now mandated to retain 5-10% of the pool of assets, and SPVs issue securities, usually Pass-Through Certificates or Asset-Backed Securities, under the listing regime of SEBI.³⁰⁷ The periodic disclosures are made to investors, material changes are approved by them, including clean-up calls, and they enjoy the homogeneity requirements that require asset pools to be homogeneous in nature. Performance triggers may also lead to accelerated amortization or liquidity support mechanisms. New trends in the Indian financial ecosystem, especially in GIFT City under the IFSCA framework,³⁰⁸ are also exploring the application of tokenized real-world assets and smart contract-based securitization models. Such models aim to decrease the discretion of the servicers and increase transparency by automating the cashflow waterfalls and enforcement mechanisms using code. However, their interaction with conventional legal principles, in particular, insolvency and enforcement systems, is ambiguous, and key questions regarding the ability of technological innovation to replace legal certainty completely persist.

The structure that is in place assumes the stability of the cash flows, which is pegged on the credit profile of the originator and the contractual terms to ensure that there are reliable payment streams. In reality, however, volatility can nullify these assumptions. In case of default or delayed payments by obligors, collections may decline. The originator usually remains as ‘servicer’ even though SPVs are legally insulated, and its operational capability is indirectly related to the performance of transactions. It is worth noting that the new RBI Insolvency Rules secure SPV collections in case of bank or NBFC servicer failure; however, there is limited Indian court experience on how to treat corporate servicer failures.³⁰⁹

Ultimately, securitization in its future-flow form is not just a financing method, but an advanced risk-transformation exercise – one that transforms uncertain future revenues into current liquidity by legal and financial engineering. However, as the Indian experience shows, the success of such transformation is less dependent on the structural design, but more on the credibility of underlying cashflows and enforceability of rights. In the absence of such alignment, securitization will remain an exercise of artificial liquidity as opposed to actual risk transfer, in which the semblance of stability covers weaknesses that only become apparent during times of stress.³¹⁰

V. Fault Lines in the Framework: Structural Risks and Regulatory Blind Spots

This section highlights key issues within the future-flow framework in India. Since proper management of the risks is what distinguishes a successful deal from a failed one, we critically analyze the areas where India is falling short. In India, a securitized pool may tend to have the implicit strength (or weakness) of its originator. Investors are likely to put a lot of trust in the

³⁰⁷ ‘Securitization in India: Regulatory Framework and Market Trends’ *C4S Courses Blog* (25 October 2023) <https://c4scourses.in/blog/securitization-in-india/> accessed 6 April 2026

³⁰⁸ IFSCA, ‘Regulatory Approach towards Tokenization of Real-World Assets’ (Consultation Paper, 26 February 2025) <https://ifsc.gov.in/Document/ReportandPublication/ifsc-consultation-paper-on-regulatory-approach-towards-tokenization-of-real-world-assets03032025111644.pdf> accessed 6 April 2026

³⁰⁹ Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules 2019

³¹⁰ Union Bank of India v Dewan Housing Finance Corporation Ltd [2020] SCC OnLine Bom 6340

reputation or credit rating of the parent company. In contrast to certain deals in the global market where credit enhancement is completely externalized, a large number of Indian deals are linked to the support of the originator (via accounts at the origination banks, or originator guarantees). This compromises actual risk transfer. The resilience of an asset is dictated by the ‘legal coding’ of the asset; where the connection between the asset and the originator is not successfully severed, the asset will continue to act like a disguised liability, and not the actual capital of the company.³¹¹ As an example, when the corporate sponsor is under financial stress, the secured receivables may be effectively caught up. In fact, even with the percent retention being a requisite under SEBI’s rules, 5-10% retention implies that 90-95% of the risk is transferred. In addition, this is partially countered by mandatory homogeneous pooling, and originator track record (Reg. 19A), which only constrain pool construction but not the underlying connection between originator health and cashflow continuity.

By definition, future-flow receivables are contingent on the occurrence of events (e.g., commodity prices, consumer demand). These cashflows are speculative as opposed to receivables from completed sales.³¹² In industries such as data centers or AI infrastructure (as one of the current examples), it is risky to estimate revenues in the next several years as it carries an assumption risk. In case real cash earnings are lower than projections (competition, regulation, pandemics, etc.), the SPV has to go into credit enhancement or impose principal write-downs. Valuation of such securities becomes highly sensitive and can fluctuate. The Indian securitization lacks a well-established secondary market to trade or price stressed paper in a short span of time.³¹³ So, it has a mispricing risk: originators may assume securitization is cheap funding, only to find that real borrowing costs have soared when risk is re-rated by rating agencies or investors. Recent market observations (2025-2026)³¹⁴ show that although regulatory expansion has occurred, corporate-sponsored future-flow securitizations are still obscure, and that issuances are still dominated by NBFC-sponsored retail pools, mirroring continued investor caution and structural limitations in pricing such risks.

The credit ratings are supposed to streamline complicated risk profiles. In the Indian context, the domestic agencies do not have historical data on corporate future-flows. They are likely to rate such transactions by integrating the rating of the originator as well as the nature of the pool (quality of asset). However, dynamic factors (such as cyclical cashflows, FX risk (assuming any), or counterparty concentration) can be underpriced. This has occurred even in international situations (e.g., subprime misratings).³¹⁵ Simply put, over-reliance on an originator's credit rating or on a superficially high waterfall (payment structure) can hide the underlying risks and instability. Ratings of purely future-flow deals have few precedents in India, and thus, conservatism or uncertainty in ratings will remain a gap.

There are significant gaps in the legal and regulatory framework. Indian law has accepted “true sale” for assignments, but the concept remains largely contractual, not statutory. No code

³¹¹ Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019) 47–76

³¹² Vinod Kothari, *Securitisation: The Financial Instrument of the Future* (5th edn, Taxmann 2023) 412

³¹³ Reserve Bank of India, *Report of the Committee on Development of Secondary Market for Corporate Loans* (September 2019) para 3.4

³¹⁴ CareEdge Ratings, ‘Retail Securitisation: 9MFY26 Volumes Decline 7% to Rs 1.80 Lakh Crore’ (January 2026)

³¹⁵ CRISIL Ratings, ‘Criteria for Securitisation Transactions’ (February 2024) 15–18

explicitly defines corporate future-flow securitization, unlike some markets with specific master trusts or securitization funds. Courts have protected securitized assets in DHFL, but the resolution of a distressed originator still involves grey areas (e.g., if the originator is both servicer and guarantor, or if statutory liens arise). However, subsequent insolvency proceedings under the Insolvency and Bankruptcy Code have demonstrated that the treatment of assigned receivables may still depend on factual control and contractual structuring, thereby introducing residual uncertainty into the doctrine of bankruptcy remoteness. The RBI FSP Rules (2019) cover financial servicers, but most corporates are outside the RBI's purview. Thus, a dedicated bankruptcy-remoteness regime for future-flow SPVs is lacking.³¹⁶

Asset pooling (a combination of different loans or income-generating assets) requirements still have certain ambiguities. Financial innovation can also be based on legal modules that were not initially developed to support the pressure of systemic insolvency, thus revealing hidden weaknesses during a crisis. New SEBI regulations demand homogeneous pools, but it is not specified what is meant by a "similar risk profile."³¹⁷ Is it possible to combine toll receivables of various concessions in a toll-road SPV? The language (Reg. 19A) implies rigid buckets, which may lead to complications in practical structuring (and hamper diversification). Moreover, it is unclear regarding related-party transactions; in a case where a big obligor is a subsidiary of the originator, can it be done?³¹⁸ Lack of clear direction is a cautionary sign and can discourage innovative structures that have been successful elsewhere.

Another challenge is regulatory coordination. India has two regulators for securitization: RBI and SEBI. This divided oversight can create loopholes, even with some coordination (SEBI referencing RBI's model).³¹⁹ For instance, an SPV funding an infrastructure project may need RBI permission as an NBFC and SEBI approval if it issues listed debt. The relationship between RBI and SEBI regarding standard-asset rules and SDI rules is not always clear for future flows outside the banking sector. This overlap can slow down deal execution and lead to compliance arbitrage.

These challenges are also caused by investor protection issues. The level of information asymmetry is high since the corporates may not be completely revealing underlying contract risks to the investors. The new disclosure requirements (quarterly reports, audit certificates) suggested by SEBI will be helpful, but they are rather performance-related than legal risks. They can be confusing to a typical investor due to their complexity (existence of numerous cashflow triggers, waterfall clauses, service agreements). This is contrary to mere equity or debt; here, a number of investors might not be well informed of future-flow deals. Small institutional investors or retail investors may lose money that they were not anticipating in the event of a downturn.³²⁰ In effect, the lack of robust fiduciary protections can make the newness of these securities outpace investor sophistication.

³¹⁶ Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules 2019, r 10

³¹⁷ Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) (Amendment) Regulations 2025, reg 19A

³¹⁸ Companies Act 2013, s 188; see also SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, reg 23

³¹⁹ Reserve Bank of India, *Report of the Committee on Development of Housing Finance Market in India* (September 2019) 22

³²⁰ Steven L Schwarcz, 'The Alchemy of Asset Securitization' (1994) 1 *Stan JL Bus & Fin* 133

On the whole, it is possible to state that the emerging framework of India makes securitization easier, but fails to internalize the “structural risks” of future-flow assets. The difference is in the details: originators remain the biggest risk takers, cashflows are hypothetical, and the legal framework is still in development as opposed to being established. These issues create a paradox: on the one hand, cash is unlocked, on the other hand, the range of risks is not fully transferred. These risks are the first thing that needs to be identified to reform, which we address next.

VI. Beyond Enablement: Reimagining the SDI Framework

Bearing in mind the structural gaps mentioned above, it is advisable to reconsider and revise the SDI regulations (as well as other related rules). This is not meant to limit innovation but rather enhance the structure in a way that it positively encourages future-flow structures and at the same time protects the integrity of the market. These practical reforms would help address the identified gaps.

Moving toward *cash flow-based credit assessment* is one of these reforms. The focus should be on the performance of the assets rather than the creditworthiness of the originator.

Regulators may require that rating agencies pay attention to estimated cashflow indicators (e.g., DSCR - debt service coverage ratio of receivables) and stress-testing conditions (demand shocks, FX swings). One of them is the notion of the need to disclose the assumptions of cash flow forecasting. The RBI/SEBI guidelines may make it clear that the ratings of originators are secondary to the cashflow analysis, especially when it comes to non-financial corporates.³²¹ To complement this, there is a necessity to have a *better definition of eligible flows*. The SDI rules should include in list form what is a saleable receivable and make it clear that lease rentals, franchise fees, equipment rentals, etc., are all saleable. Even though the amendments of 2025 are many, future innovation (e.g., data-center capacity charges) can be left in a grey area. New cases could be guided by a flexible “principles-based” definition³²² - legally binding and contractually owed, which is objectively measurable. In like manner, regulators can relax prohibitions that are too restrictive (e.g., on intercompany loans) where they are applicable, but continue to hold the prohibition of pure revolving facilities, so that there is minimal legal uncertainty.

Reforms in relation to *true sale and insolvency protection* are also significant. The principle of ‘true sale and forfeiture’ must be well established in the securitization regulations. As an example, a legislative safe-harbor [such as the Dodd-Frank Act of the USA or Global Securitization Standard (GSS) of Singapore] may state that receivables sold to an SPV are legally the property of the SPV, and not estate assets of a defaulted originator, which would reassure investors.³²³ Simultaneously, the Insolvency and Bankruptcy Code (IBC) might be updated to clearly exempt securitized assets of originator liquidation, not necessarily in the FSP environment of the RBI. This amendment to the law would help the position taken by the

³²¹ Reserve Bank of India, *Report of the Committee on Development of Housing Finance Market in India* (September 2019) 34; see also SEBI, ‘Consultation Paper on Introduction of New Asset Classes under the SDI Framework’ (May 2025) 12

³²² Planning Commission, *A Hundred Small Steps: Report of the Committee on Financial Sector Reforms* (2009) 56

³²³ Monetary Authority of Singapore, ‘Guidelines on Residential Mortgage-Backed Securities and Asset-Backed Securities’ (2020) App 1

Bombay High Court in DHFL be adopted in all future cases. The other reform that is required is the **strengthening of disclosure and transparency**. Although the decision of SEBI to require quarterly reporting of performance is commendable, it can be further extended. As an illustration, SPVs may be obliged to publish summarized prospectuses of underlying contracts (volume of sales, price formulas, obligor credit profiles) in abridged form. Data aggregators or exchanges may be given the responsibility of monitoring PTC prices and performance, providing market signals similar to corporate bond indices. The SPV financials would also be improved with standardized templates, which would increase investor comparability.³²⁴ A uniform format of SPV financial statements will facilitate comparison for investors among different deals.

The **regulation of credit enhancement** also requires reform. Presently, for support and security, the Indian deals rely on mechanisms like sponsor guarantees and DSRA. Regulators are supposed to provide clear boundaries or guidelines on what improvements will be counted as credit support. As an example, while RBI limits the interest spreads to 20% for retention,³²⁵ SEBI may also limit the nature of guarantees that originators are allowed to offer. Excessive enhancement may deceive investors, and therefore, a balance has to be maintained. Moreover, increased **flexibility in SPV structuring** would overcome feasibility obstacles. India's tax law, despite being neutral to securitization trusts, stamp duty differs among states for transferring assets, which adds to the cost of the transaction. These frictions would be mitigated by harmonizing stamp duty, which may be achieved by a central legislative waiver. Allowing more flexible SPV structures (corporate or LLP structures with bankruptcy-remoteness protection) will aid in handling complex multi-flow deals with multiple income streams. The regulators may implement a policy that will guarantee that no negative tax or stamp treatment will be levied on bona fide SPVs.

To enhance participation in the securitization market by various stakeholders (investors, banks, NBFCs, etc.), **market infrastructure development** is also significant. India can encourage SDIs (securities issued by securitization trusts) trading platforms,³²⁶ and SEBI can promote PTC listings by waiving listing fees. Encouraging market makers and educating institutional investors about SDIs would improve liquidity, and strengthening the secondary market would help achieve better price discovery & discipline.³²⁷ To enhance the secondary market, it is necessary to go beyond conventional solutions to new mechanisms like dynamic liquidity facilities, real-time cashflow transparency systems, incentivized market-making structures, and periodic auction-based trading systems, which can all make a substantial contribution to enhancing liquidity, participation, and price discovery. Also, the practice of **Single Asset Securitization (SAS)** by RBI deserves re-evaluation. Even though the 2021 regulations allow SAS on loan pools,³²⁸ the framework is still reluctant to apply to the corporate setting. A reconsideration of these regulations to permit actual single-asset transactions - with strict

³²⁴ SEBI, 'Concept Paper on a Standardized Term Sheet for Securitization Transactions' (8 August 2014) 5

³²⁵ Reserve Bank of India (Securitisation of Standard Assets) Directions 2021, cl 12.2

³²⁶ SEBI, 'Request for Quote (RFQ) Platform for Trade Execution and Settlement of Trades in Listed Securitised Debt Instruments' (Circular SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/142, 19 October 2022)

³²⁷ Reserve Bank of India, Report of the Committee on Development of Secondary Market for Corporate Loans (September 2019) para 4.2

³²⁸ Reserve Bank of India (Securitisation of Standard Assets) Directions 2021, ch II

disclosure norms, minimum investment requirements, and rating provisions- would open the door to the funding of projects like toll roads or power plants.³²⁹

Lastly, it is essential to make sure that the securitization structure remains *tax neutral*. In the past, certain objections have been raised about SPV income being subjected to double taxation.³³⁰ An explicit legislative declaration or amendment that securitized income, once transferred to investors, is not taxed again at the SPV level would decrease uncertainty in investor returns.³³¹ This is particularly important for long-term future-flow transactions, where tax issues can significantly affect outcomes. All these proposals are specific, not generic, as they target identified gaps. For example, establishing a true sale definition would remove legal uncertainty. Also, making contract disclosures mandatory would reduce information asymmetry. At the same time, regulators need to implement reforms wisely. While they should ask for past performance records, they must avoid imposing broad restrictions that prevent new ventures from accessing credit due to a lack of a track record. Proportionality is crucial.

Essentially, “regulation should evolve from enabling securitization to actively managing its risks.” The recent amendments by SEBI mark progress, but the framework still requires adjustments to fit the nature of future flows. Specifically, the burden of proof should shift. Originators should have to demonstrate the reliability of securitized cash flows with data, contractual backing, and stress testing, rather than leaving investors to speculate about hidden risks. It is only at this point that securitization will transform into a viable and scalable financing instrument, instead of a stopgap gimmick.

VII. Conclusion: Innovation at a Crossroads

India is at a crucial juncture in structured finance. On the one hand, there is an immense potential with the explosive growth of the securitization market in India (to record levels in FY2025), and the global increase in future-flow transactions. Corporations in the infrastructure, data center, media sectors, and others have untapped receivables that can fuel growth if properly financed. Conversely, the potential is not fully realized in the absence of a regulatory framework to keep pace with the innovation. In this regard, reform is facilitating, but not adequate. The existing SDI amendments aptly expand the scope and bring in much-needed safeguards, but the true test will be the performance of structures under stress. The author, through this paper, has emphasized that innovation is not complete without protection. We run the risk of securitizing instability in case India rigidly labels the future deals but does not enforce tough laws to shield them.

It is clear from the author's point of view that without strict regulations, there is a possibility of innovation being exposed to systemic risks; however, with adequate structural reforms, future-flow securitization transforms into a potent financial instrument. As a result, Indian policymakers must move beyond making minor modifications to the checklist of legislative changes and instead create a proper balance between enabling innovative financing and ensuring future cash flows are clearly defined and locked down by law, with no bankruptcy risk.

³²⁹ Reserve Bank of India (Securitisation of Standard Assets) Directions 2021, cl 40

³³⁰ Vinod Kothari, *Securitisation: The Financial Instrument of the Future* (5th edn, Taxmann 2023) 1142

³³¹ Income Tax Act 1961, s 115TCA

In conclusion, the future of securitization in India will be based not upon its growth, but rather upon the strength of the infrastructure that will govern it. A concrete and controlled structure will enable firms to consistently cash in on their future debts and bring the structured finance in India to new heights at this dynamic frontier.

DATA CENTRE SECURITISATION: Financing the AI Infrastructure Revolution: Structures, Risks, Opportunities, and the Indian Horizon

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Abstract

The global data centre industry stands at an extraordinary juncture. The rise of artificial intelligence, the rapid proliferation of cloud computing, and the expanding demands of 5G connectivity have collectively transformed data centres from mere technical facilities into the foundational backbone of the modern digital economy. Capital requirements to build, operate, and expand these facilities are staggering — Clifford Chance LLP estimates that data centre assets valued at approximately **USD 170 billion** will require construction lending or permanent financing in 2025 alone.³³² Against this backdrop, securitisation has emerged not simply as a financing option, but as the most efficient and scalable mechanism to mobilise capital at the pace and volume that the sector demands.

This paper addresses — directly and comprehensively — the research question posed by the Vinod Kothari Securitisation Summit: with massive investments in data centre and AI infrastructure, is securitisation of these investments opportune and necessary? The answer, this paper argues, is unambiguously yes. The global data centre market, valued at **USD 389 billion in 2024** and projected to reach **USD 691.6 billion by 2030**,³³³ generates the scale of stabilised, contracted cashflows that structured finance instruments are designed to monetise. The U.S. alone has seen USD 48.69 billion in cumulative data centre ABS and CMBS issuance across

³³² Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025)

<https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

³³³ BCC Research, 'Global Data Centre Market Size, Share & Growth Forecast 2030' (BCC Research, July 2025)

<<https://www.bccresearch.com/market-research/information-technology/data-centre-market.html>> accessed 7 May 2026.

88 transactions as of May 2025.³³⁴ Europe's first data centre securitisation was completed in May 2024³³⁵ — and Asia-Pacific is expected to follow in 2026.

At the same time, the paper does not shy away from the complexities: the uncertain and future nature of data centre cashflows, the risks of technological obsolescence, power supply constraints, tenant concentration, regulatory volatility, and the challenge of AI demand forecasting are all examined with analytical rigour. India receives dedicated attention — the country generates nearly 20% of global data but holds only 3% of global data centre capacity³³⁶ — a structural gap that a USD 60–70 billion investment pipeline³³⁷ and landmark regulatory developments, including the Digital Personal Data Protection Act 2023 and a 20-year tax holiday under Budget 2026–27,³³⁸ are beginning to close. Whether the existing Indian regulatory framework permits securitisation of data centre assets is addressed directly in Section VII.

Keywords: Data Centre Securitisation; Asset-Backed Securities (ABS); Commercial Mortgage-Backed Securities (CMBS); Project Finance; AI Infrastructure Finance; Cashflow Uncertainty; Digital Infrastructure; India Data Centre Market; DPDPA 2023; Credit Tenant Lease (CTL); Structured Finance; InvIT; SEBI Regulatory Framework; Hyperscale Data Centres; Capital Markets.

I. INTRODUCTION

We are living through what future historians will almost certainly recognise as a defining decade for global infrastructure. The extraordinary convergence of artificial intelligence, cloud computing, streaming services, and the Internet of Things is generating data at a rate that was inconceivable even a decade ago — and all of that data must be stored, processed, and transmitted somewhere. That somewhere is, overwhelmingly, the data centre. What was once a niche segment of commercial real estate has become, in a remarkably short space of time, one of the most intensely competed and capitalised asset classes in global markets.

The capital demands of this transformation are genuinely unprecedented. Clifford Chance LLP reports that data centre assets requiring construction or permanent financing in 2025 amount to approximately USD 170 billion.³³⁹ UNCTAD's World Investment Report 2025 found that data centres now account for more than one-fifth of all global greenfield foreign direct investment

³³⁴ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

³³⁵ Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025) <<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

³³⁶ Observer Research Foundation (ORF), 'Building Sovereign Data Centre Infrastructure in India' (ORF, September 2025) <<https://www.orfonline.org/expert-speak/building-sovereign-data-centre-infrastructure-in-india>> accessed 7 May 2026.

³³⁷ ResiIndia, 'India's Data Centre Market: A Strategic Analysis of Capacity Expansion, Investment, Economic Multipliers, and the Imperative for a Sustainable Energy Playbook' (ResiIndia, 2026) <<https://www.resiindia.org/post/india-s-data-centre-market>> accessed 7 May 2026.

³³⁸ Press Information Bureau of India, 'Budget 2026–27: Data Centre Tax Holiday Framework' (PIB, February 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227953>> accessed 7 May 2026.

³³⁹

values, with announced investments exceeding USD 270 billion.³⁴⁰ No single source of traditional financing — bank lending, corporate bonds, real estate equity — is adequate to meet this demand at the required pace. The sector, therefore, has turned with increasing urgency to securitisation.

This research paper was prepared specifically for the Vinod Kothari Securitisation Summit competition, whose theme directly addresses data centre securitisation: with massive investments in data centre and AI infrastructure, is securitisation of these investments both opportune and necessary? The competition brief further notes that some transactions by big players in the field may not be conventional securitisations but operate at the cross-section of cashflow-based investments and project finance — and asks what the risks, challenges, and opportunities are, particularly given the uncertain and future nature of cashflows, and whether the Indian regulatory framework would permit such transactions. This paper addresses every one of those questions.

The structure of this paper proceeds as follows. Section II provides a macroeconomic overview of the global data centre market and its valuation trajectory. Section III analyses the principal securitisation structures — ABS, CMBS, and emerging vehicles — including their role as cross-sectional financial plans, cashflow instruments, and project finance tools. Section IV examines the advantages of securitisation for both issuers and investors. Section V provides a rigorous analysis of the risks and challenges, with particular focus on cashflow uncertainty. Section VI presents the India opportunity in depth. Section VII analyses India's regulatory framework and whether it currently permits data centre securitisation. Section VIII offers a comparative analysis of global and Indian markets. Section IX sets out policy recommendations. Section X concludes.

II. THE GLOBAL DATA CENTRE MARKET: VALUATION, GROWTH, AND INVESTMENT TRENDS

A. Market Scale and Projections

The global data centre market has, over the past five years, undergone a fundamental transformation in both scale and investor perception. BCC Research values the market at USD 389 billion in 2024, projecting growth to USD 691.6 billion by 2030 at a compound annual growth rate of 10.6%.³⁴¹ These figures, while striking, arguably understate the full scale of associated economic activity: they capture only the market for data centre services and infrastructure, not the vast sums being invested in constructing the next generation of facilities.

Metric	Value / Data Point	Source
Global DC Market Value (2024)	USD 389 billion	BCC Research ²
Global DC Market Value (2030, forecast)	USD 691.6 billion (CAGR 10.6%)	BCC Research ²

³⁴⁰ UNCTAD, World Investment Report 2025 (United Nations Conference on Trade and Development, 2025) <<https://unctad.org/wir2025>> accessed 7 May 2026.

³⁴¹ BCC Research, 'Global Data Centre Market Size, Share & Growth Forecast 2030' (BCC Research, July 2025) <<https://www.bccresearch.com/market-research/information-technology/data-centre-market.html>> accessed 7 May 2026.

Metric	Value / Data Point	Source
Capital Financing Need (2025)	USD 170 billion	Clifford Chance ¹
UNCTAD Greenfield Investment (2025)	> USD 270 billion announced	UNCTAD ¹⁹
European DC Market (2029, forecast)	USD 64.5 billion (CAGR 7%)	Research & Markets ¹⁸
APAC DC Investment Surge (Q3 2024)	USD 2.8 billion (+114% year-on-year)	Clifford Chance ¹
U.S. Cumulative ABS+CMBS Issuance	USD 48.69 billion (88 transactions)	KBRA ³
ABS Share of U.S. Issuance	70.8% (75 deals, avg USD 459.7M each)	KBRA ³
CMBS Share of U.S. Issuance	29.2% (13 deals, avg USD 1.09B each)	KBRA ³
ABS Issuance Forecast (2028)	~USD 25 billion per annum	SFA / Morgan Stanley ⁸
Hyperscale Facilities Globally (2024)	>1,000 (doubling every 4 years)	Synergy Research Group ³³

B. Structural Demand Drivers

Four structural forces — none of which shows any sign of reversing — are driving data centre demand globally. Understanding them is essential to appreciating why securitisation, as a long-duration financing instrument, is so well matched to this asset class.

First, the AI revolution. The transition from conventional CPU-based computing to GPU-accelerated artificial intelligence and machine learning workloads has fundamentally changed the power and space requirements of data centre infrastructure. A rack supporting AI training workloads may require 10 to 100 times the power of a conventional server rack.³⁴² This has driven demand for purpose-built, high-density AI facilities — hyperscale campuses of extraordinary scale — at a pace that existing supply cannot match.

Second, cloud adoption. The global migration of enterprise IT from on-premises infrastructure to public cloud platforms operated by Amazon Web Services, Microsoft Azure, and Google Cloud continues at pace. Each additional percentage point of enterprise cloud penetration translates directly into demand for hyperscale data centre capacity.³⁴³ The hyperscale segment now accounts for more than half of all new data centre construction globally, according to Synergy Research Group.³⁴⁴

Third, 5G and edge computing. The global rollout of fifth-generation mobile networks generates vast quantities of data that require low-latency processing close to the point of generation. This creates demand not only for large centralised hyperscale facilities, but also for

³⁴² Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

³⁴³ Synergy Research Group, 'Hyperscale Data Centers Hit the Thousand Mark; Total Capacity is Doubling Every Four Years' (Synergy Research Group, 2024).

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a distributed network of smaller edge data centres positioned at or near the network edge — a fundamentally different supply and financing challenge.³⁴⁵

Fourth, data localisation mandates. Governments across the world — including India, China, the European Union, Russia, and Indonesia — have introduced legislation requiring that certain categories of data be stored and processed within national borders. These mandates create sovereign demand anchors for domestic data centre capacity that are, by definition, non-negotiable and non-discretionary — precisely the kind of demand certainty that underpins securitisation cashflows.³⁴⁶

C. Investor Landscape and Market Participants

The investor base for data centre assets has undergone a striking democratisation over the past five years. Private equity firms, infrastructure funds, pension funds, sovereign wealth funds, real estate investment trusts, and technology companies themselves have all entered the sector — competing intensely for high-quality assets and driving both transaction volumes and valuations to record levels. TMT Finance's 2024 study found that strategic investors — technology companies and operators — accounted for 69% of data centre M&A transactions,³⁴⁷ with financial investor participation growing rapidly as the sector's characteristics as an infrastructure yield asset become more widely understood.

Particularly notable has been the emergence of partnerships between utilities companies and data centre owners, driven by the extraordinary power demands of AI-oriented hyperscale facilities.³⁴⁸ These partnerships — in which the utility effectively co-invests in on-site or dedicated power generation infrastructure — represent a structural innovation that has direct implications for the project finance and securitisation structures discussed in Section III. They also reflect a broader trend toward vertical integration within the data centre supply chain, as operators seek to control the key cost and risk variables — power, land, fibre — that determine facility competitiveness and, ultimately, cashflow reliability.

III. SECURITISATION STRUCTURES: ABS, CMBS, AND CROSS-SECTIONAL FINANCIAL INSTRUMENTS

Data centre securitisation does not represent a single, monolithic instrument. It encompasses a spectrum of structured finance techniques — each suited to different stages of the asset lifecycle, different investor constituencies, and different capital objectives. This section analyses the principal structures, their mechanics, and their role as cross-sectional financial planning tools, cashflow instruments, and project finance vehicles — addressing directly the framing of the competition brief.

³⁴⁵ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

³⁴⁶ UNCTAD, World Investment Report 2025 (United Nations Conference on Trade and Development, 2025) <<https://unctad.org/wir2025>> accessed 7 May 2026.

³⁴⁷ TMT Finance, 'Data Centre M&A Market Study 2024: Strategic vs Financial Investor Activity' (TMT Finance, 2024).

³⁴⁸ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

A. Asset-Backed Securities (ABS)

Data centre ABS is the securitisation of real property interests in data centres — typically fee simple or leasehold ownership — together with the corresponding tenant leases and their contracted cashflows. The structure is typically implemented through a master trust: the issuer holds equity interests in wholly owned special purpose vehicles (SPVs) that directly own the data centre facilities, and rated notes are issued against this collateral pool, giving investors indirect, credit-rated exposure to data centre revenues without direct recourse to the operator's balance sheet.³⁴⁹

The U.S. data centre ABS market was inaugurated in 2018 with a landmark USD 1.125 billion issuance.³⁵⁰ By May 2025, cumulative U.S. issuance had reached **USD 48.69 billion across 88 transactions** — ABS structures accounting for 70.8% of that total (75 deals, averaging USD 459.7 million per deal) and CMBS for the remaining 29.2% (13 deals, averaging USD 1.09 billion).³⁵¹ The geographic footprint has expanded rapidly: the first European data centre securitisation was completed in May 2024, when Vantage Data Centres executed a £600 million ABS backed by two Welsh facilities.³⁵² A second European transaction — a €640 million German securitisation backed by four Frankfurt and Berlin data centres — followed in 2025.³⁵³

ABS structures have several distinctive features that make them particularly well-suited to data centre assets. They pool long-term, triple-net leases with creditworthy counterparties — typically hyperscale cloud providers, BFSI institutions, or government agencies — into tranching instruments backed by contracted, predictable cashflows.³⁵⁴ Structural protections include excess spread accounts, cash trap triggers, and Anticipated Repayment Dates (ARDs) — the last of which function as soft maturity triggers that incentivise refinancing or repayment within a target timeframe while preserving optionality for the issuer.³⁵⁵ Morgan Stanley Research, cited by the SFA, projects U.S. data centre ABS issuance to grow from USD 8

³⁴⁹ ARC Ratings, 'Centre of Attention: A Closer Look into Data Centre Securitisation' (ARC Ratings, October 2024) <https://arcratings.com/standard-download/?file=20241031_data-centre-research-report.pdf> accessed 7 May 2026.

³⁵⁰ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

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³⁵² Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025) <<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

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³⁵⁴ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025) <<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

³⁵⁵ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025) <https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

billion in 2025 to nearly **USD 25 billion by 2028**, driven by AI-related demand and the first wave of ARD-triggered refinancings.³⁵⁶

A critically important feature of the ABS structure is its scalability. The master trust mechanism allows operators to add new facilities and tenant leases to the collateral pool over time, tapping the securitisation market repeatedly without the cost and complexity of establishing entirely new financing vehicles.³⁵⁷ For growing platforms — and given the scale of data centre development currently underway, most operators are aggressively growing — this represents a structural advantage that compounds in value as the portfolio expands.

B. Commercial Mortgage-Backed Securities (CMBS)

Data centre CMBS securitises the commercial mortgage loans made to data centre operators, with those loans secured by senior-ranking charges over the underlying real property.³⁵⁸ The key difference from ABS is one of emphasis: where ABS derives its credit quality primarily from the strength and predictability of lease cashflows, CMBS depends, to a greater degree, on the value of the real estate asset in an enforcement scenario. This creates a distinct risk and recovery profile that appeals to different investor constituencies.

Data centre CMBS transactions have predominantly taken the form of Single-Asset, Single-Borrower (SASB) structures, reflecting the large individual asset values involved and the non-homogenous nature of data centre properties — each facility is, to a significant degree, unique in terms of its location, power capacity, cooling architecture, connectivity infrastructure, and tenant composition.³⁵⁹ The market originated with a USD 3.2 billion U.S. transaction in 2021.³⁶⁰ By 2025, the relative shares of ABS and CMBS in U.S. issuance had converged toward 50/50 — a substantial shift from the historical 70/30 ratio. Switch's simultaneous March 2025 ABS and CMBS issuances — both oversubscribed — demonstrated conclusively that the two structures serve complementary, not competing, investor needs and can be executed in parallel to maximise total financing capacity.³⁶¹

³⁵⁶ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025)

<https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

³⁵⁷ ARC Ratings, 'Centre of Attention: A Closer Look into Data Centre Securitisation' (ARC Ratings, October 2024) <https://arcratings.com/standard-download/?file=20241031_data-centre-research-report.pdf> accessed 7 May 2026.

³⁵⁸ Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025) <<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

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³⁶⁰ Norton Rose Fulbright LLP, 'The Future of Financing of Data Centres' in PFI Yearbook (Project Finance International, December 2024)

<<https://www.pfie.com/pfi-yearbooks/1491857/the-future-of-financing-of-data-centres>> accessed 7 May 2026.

³⁶¹ RBC Capital Markets, 'The Infrastructure Revolution: Understanding Data Center Securitisation' (RBC Capital Markets, December 2025)

<<https://www.rbccm.com/en/insights/2025/12/the-infrastructure-revolution-understanding-data-center-securitisation>> accessed 7 May 2026.

C. Securitisation as a Cross-Sectional Financial Plan — Not Simply an Investment

The competition brief correctly notes that transactions by big players in the field may not be conventional securitisations, but operate at the cross-section of cashflow-based investments and project finance. This observation captures something important. For large institutional operators — hyperscale REITs, private equity-backed platforms, listed infrastructure companies — data centre securitisation is not merely an investment vehicle. It functions simultaneously as a **balance sheet management tool**, a **cashflow optimisation instrument**, and a **capital allocation mechanism** — making it a cross-sectional corporate financial plan in the fullest sense.

Balance sheet optimisation: Where ABS structures achieve off-balance-sheet treatment under applicable accounting standards — which requires satisfaction of specific de-recognition criteria under IFRS 9 or U.S. GAAP ASC 860 — the removal of securitised assets from the consolidated balance sheet reduces reported leverage ratios and can improve key credit metrics. This may, in turn, reduce the cost of the operator's other financing instruments and enable greater capital allocation to development pipelines.³⁶²

Cashflow monetisation: Securitisation converts long-duration, contracted lease income streams — which may have 10 to 20 years of remaining term — into near-term liquidity at pricing that reflects the underlying credit quality of the cashflows rather than the operator's corporate credit profile. This is particularly valuable for operators whose balance sheet ratings are below investment grade, but whose tenant portfolios are anchored by investment-grade hyperscalers.³⁶³

Capital recycling for project finance: Perhaps the most powerful application of data centre securitisation in a project finance context is the capital recycling model it enables. A developer constructs a new facility using a combination of bank construction debt and sponsor equity. Once the facility is stabilised — anchor leases signed, target occupancy achieved — an ABS or CMBS issuance refinances the construction debt at tighter, fixed-rate pricing appropriate to the de-risked, cashflow-positive asset. The proceeds are then available for reinvestment in the next development project. Repeated over multiple cycles, this model allows an operator to build a large, diversified data centre platform while maintaining a cost-efficient permanent financing structure on stabilised assets and continuously deploying equity into higher-return development activities.³⁶⁴³⁶⁵

³⁶² Clifford Chance LLP, 'Innovative Datacentre Financing: Portfolio vs. ABS' (Clifford Chance, May 2025) <<https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2025/05/innovative-datacentre-financing-portfolio-vs-abs.html>> accessed 7 May 2026.

³⁶³ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025) <https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

³⁶⁴ Norton Rose Fulbright LLP, 'The Future of Financing of Data Centres' in PFI Yearbook (Project Finance International, December 2024) <<https://www.pfie.com/pfi-yearbooks/1491857/the-future-of-financing-of-data-centres>> accessed 7 May 2026.

³⁶⁵ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

D. Credit Tenant Lease (CTL) Financing

Beyond ABS and CMBS, a third important structure deserves specific attention. Credit Tenant Lease (CTL) financing structures the transaction around the creditworthiness of the data centre's anchor tenant — typically a hyperscale cloud provider such as Amazon Web Services, Microsoft Azure, or Google Cloud — rather than the operator's corporate credit profile or the real estate asset itself.³⁶⁶ Because these tenants carry strong investment-grade ratings and sign long-term, non-cancellable leases, CTL structures can achieve pricing close to the tenant's own cost of debt — a material financing advantage that is particularly valuable for operators that do not themselves carry investment-grade ratings.

Sustainability-linked structures represent another emerging frontier: financing terms are tied to energy efficiency metrics — Power Usage Effectiveness (PUE) targets, renewable energy usage percentages, or water usage effectiveness benchmarks.³⁶⁷ As ESG considerations increasingly shape institutional investor mandates, the ability to offer sustainability-linked data centre ABS is likely to become a competitive advantage for issuers, as these instruments access a distinct and growing pool of ESG-dedicated institutional capital. Clifford Chance notes that both portfolio financing structures and sustainability-linked facilities continue to attract significant market appetite.³⁶⁸

IV. ADVANTAGES OF DATA CENTRE SECURITISATION

The case for data centre securitisation rests on a set of structural advantages that are genuinely distinctive — advantages that explain why the market has grown from its 2018 inauguration to nearly USD 50 billion in cumulative U.S. issuance in just seven years, and why leading practitioners at Clifford Chance, Hogan Lovells, Norton Rose Fulbright, and major rating agencies regard it as a structurally sound and rapidly maturing asset class.³⁶⁹³⁷⁰

A. Advantages for Issuers and Operators

- **Cost-Efficient, Fixed-Rate Capital:** ABS debt is a fixed-rate bond instrument that consistently achieves lower all-in borrowing costs than corporate bonds, revolving credit facilities, or project finance loans. Clifford Chance confirmed that the first EMEA data centre securitisation — executed in May 2024 — achieved better pricing

³⁶⁶ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

³⁶⁷ Clifford Chance LLP, 'Innovative Datacentre Financing: Portfolio vs. ABS' (Clifford Chance, May 2025) <<https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2025/05/innovative-datacentre-financing-portfolio-vs-abs.html>> accessed 7 May 2026.

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³⁶⁹ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

³⁷⁰ Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025) <<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

than any other financing structure available to the issuer for comparable assets.³⁷¹ This cost efficiency is not marginal — it can represent a difference of 50 to 150 basis points, which translates to tens of millions of dollars in annual interest savings on large portfolios.

- **Non-Recourse Structure and Downside Protection:** ABS and CMBS structures are typically non-recourse: lender enforcement in default is limited to the securitised assets and their cashflows, not the operator's corporate balance sheet. This insulates the wider business from localised asset performance issues and is a particularly important structural protection in an environment of rapidly evolving technology requirements.³⁷²
- **Access to Deep Institutional Capital Pools:** Securitisation provides access to the global fixed-income institutional investor base — insurance companies, pension funds, money market funds, sovereign wealth funds, and structured credit managers — which collectively manage tens of trillions in assets and have an insatiable appetite for rated, stable-yield instruments. This broadens the available financing universe dramatically beyond what the bank loan or unsecured bond markets can offer.³⁷³
- **Scalability via Master Trust:** The master trust structure allows operators to add new facilities and leases to the collateral pool and tap the securitisation market repeatedly without the cost of establishing new vehicles — a compounding structural advantage for growing platforms that becomes more valuable with each additional asset acquired.³⁷⁴
- **Longer Tenor and Certainty of Funding:** Data centre ABS instruments can achieve tenors of 5 to 10 years or longer, better matching the long-lived nature of data centre assets and reducing refinancing frequency and risk. This provides operators with a degree of long-term financial planning certainty unavailable from revolving credit or short-term bank facilities.³⁷⁵
- **Balance Sheet and Rating Efficiency:** Off-balance-sheet treatment of qualifying securitised assets can reduce reported leverage, potentially improving corporate credit ratings and reducing the all-in cost of capital across the operator's entire capital

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³⁷² Norton Rose Fulbright LLP, 'The Future of Financing of Data Centres' in PFI Yearbook (Project Finance International, December 2024)

<<https://www.pfie.com/pfi-yearbooks/1491857/the-future-of-financing-of-data-centres>> accessed 7 May 2026.

³⁷³ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025)

<https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

³⁷⁴ ARC Ratings, 'Centre of Attention: A Closer Look into Data Centre Securitisation' (ARC Ratings, October 2024) <https://arcratings.com/standard-download/?file=20241031_data-centre-research-report.pdf> accessed 7 May 2026.

³⁷⁵ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025) <<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

structure — a benefit that compounds across all financing instruments, not just the securitisation itself.³⁷⁶

B. Advantages for Investors

- **AI-Linked Yield Premium:** Data centre ABS and CMBS offer a meaningful yield premium over investment-grade corporate bonds and other structured finance instruments of comparable credit quality.³⁷⁷ CRA International's analysis confirms that this premium reflects genuine structural differentiation — the technology and operational risk profile of data centres — rather than simple illiquidity, and that it is likely to persist as the market grows.³⁷⁸
- **Mission-Critical Tenants with Structural Lock-In:** Data centres house tenants for whom the cost and disruption of migrating a live operational environment is prohibitively high. A hyperscale cloud provider that has installed millions of dollars of specialised equipment in a data centre facility has a structural incentive to renew its lease — irrespective of prevailing market conditions — that is simply absent in conventional commercial real estate.³⁷⁹
- **Long-Term Contracted Cashflows:** Data centre leases are typically structured as long-term, triple-net arrangements with creditworthy counterparties, providing investors with predictable, contracted income streams that are well-suited to the liability-matching requirements of institutional investors.³⁸⁰
- **Credit-Rated Tranching:** ABS tranching allows investors to access data centre exposure at their preferred risk-return point — from senior AAA-rated notes with high overcollateralisation to subordinate mezzanine tranches with higher yield potential — enabling participation across the full spectrum of institutional investment mandates.³⁸¹
- **Portfolio Diversification:** Data centre ABS provides a distinct asset class with genuine diversification benefits relative to traditional real estate, corporate credit, and sovereign bonds — with return drivers linked to the secular growth of the digital economy rather than the broader economic cycle.³⁸²

³⁷⁶ Clifford Chance LLP, 'Innovative Datacentre Financing: Portfolio vs. ABS' (Clifford Chance, May 2025) <<https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2025/05/innovative-datacentre-financing-portfolio-vs-abs.html>> accessed 7 May 2026.

³⁷⁷ ETF Trends, 'Securitizing AI: The Role of Data Center ABS & CMBS' (ETF Trends, February 2025) <<https://www.etftrends.com/etf-strategist-content-hub/securitizing-ai-role-data-center-abs-cmbs/>> accessed 7 May 2026.

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³⁷⁹ CBRE India, '2024 India Data Centre Market Update' (CBRE, December 2024) <<https://www.cbre.co.in/insights/reports/2024-india-data-centre-market-update>> accessed 7 May 2026.

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³⁸² RBC Capital Markets, 'The Infrastructure Revolution: Understanding Data Center Securitisation' (RBC Capital Markets, December 2025)

V. RISKS, CHALLENGES, AND THE UNCERTAIN NATURE OF DATA CENTRE CASHFLOWS

This section addresses — with the frankness that the competition brief explicitly invites — the principal risks, challenges, and structural complexities of data centre securitisation. The brief's reference to 'the unascertainable and future nature of cashflows' is a precise and important observation: data centre revenues are not as stable or predictable as they might appear from the long-term lease contracts that underpin them, and this uncertainty must be honestly assessed by any rigorous analysis.³⁸³³⁸⁴

A. The Fundamental Challenge: Cashflow Uncertainty

The starting point for any risk analysis of data centre securitisation must be an honest acknowledgement of the structural cashflow uncertainty that distinguishes this asset class from more established securitisation collateral types — such as residential mortgages or auto loans — where historical loss data spanning decades provides a robust statistical basis for credit modelling.³⁸⁵ Data centre ABS as an asset class is only seven years old in the United States; rating agencies including S&P Global³⁸⁶ and Fitch Ratings³⁸⁷ have only recently published formal criteria for these transactions. The historical performance data that underpins the confidence intervals in their models is, by definition, limited.

The uncertainty is compounded by the forward-looking nature of the technology risk: a data centre that is optimally configured for today's AI training workloads may be inadequately equipped for the next generation of AI inference workloads, which may have fundamentally different power, cooling, and network requirements. Unlike a toll road or a power plant — whose physical characteristics will remain adequate for their primary purpose for decades — a data centre's competitive relevance depends on continuous capital investment to stay current with evolving technology requirements.³⁸⁸ Cashflows that appear contractually secured today may not be as secure as they appear if the underlying facility cannot accommodate tenant technology evolution.

B. Tenant Concentration and Counterparty Risk

<<https://www.rbccm.com/en/insights/2025/12/the-infrastructure-revolution-understanding-data-center-securitisation>> accessed 7 May 2026.

³⁸³ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025)

<<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

³⁸⁴ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

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³⁸⁷ Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

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Many data centre ABS and CMBS transactions are backed by portfolios with significant tenant concentration — often two to three hyperscale cloud providers accounting for the majority of lease revenues.³⁸⁹ This creates a binary risk: the loss of a single anchor tenant, a decision not to renew a lease, or a tenant credit deterioration can materially and immediately impair the cashflows supporting a transaction. S&P Global's June 2024 data centre securitisation criteria³⁹⁰ — the first globally applicable rating criteria for this asset class — give particular analytical weight to tenant credit quality, lease term, renewal history, and the operator's ability to re-let at comparable rates. The fact that the criteria needed to be newly developed, rather than adapted from an existing framework, itself reflects the novelty and complexity of the risk assessment challenge.

C. Technological Obsolescence Risk

Perhaps the most distinctive risk in data centre securitisation — one that has no direct parallel in conventional commercial real estate ABS — is technological obsolescence. The transition from CPU-based computing to GPU-accelerated AI workloads requires substantial capital investment in power density upgrades, liquid cooling systems, and network infrastructure.³⁹¹ Facilities whose power density — measured in kilowatts per rack — cannot be upgraded to meet tenant requirements risk becoming uncompetitive and, ultimately, untenable.

The 'DeepSeek moment' of early 2025 — when a Chinese AI research lab demonstrated that competitive large language model performance could be achieved at a fraction of the computational cost assumed by the market — had a measurable, if temporary, impact on data centre valuations and infrastructure stocks globally.³⁹² This episode illustrates the fundamental challenge of AI demand forecasting: the technology is evolving rapidly enough that demand assumptions embedded in 10-year lease contracts may be overtaken by technological developments that could not be anticipated at the time of contracting.

D. Power, Energy, and Environmental Risk

Data centres are extraordinarily power-intensive, and the AI-driven acceleration of capacity buildout is creating acute power supply constraints in primary markets globally — Northern Virginia, Singapore, Dublin, Frankfurt, and Mumbai, among others.³⁹³ Power availability, cost, and reliability are first-order determinants of data centre competitiveness and cashflow reliability. An operator who cannot secure adequate power for a new facility at a predictable long-term price faces both a development risk — the facility may not be completed as planned — and an operating risk — tenants may not renew if power costs rise materially.³⁹⁴

³⁸⁹ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

³⁹⁰ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

³⁹¹ Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

³⁹² Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

³⁹³ Cushman & Wakefield India, 'India Data Centre Market Overview H1 2025' (Cushman & Wakefield, December 2025) <<https://assets.cushmanwakefield.com/-/media/cw/apac/india/insights/indiadatacentreupdateh12025v4.pdf>> accessed 7 May 2026.

³⁹⁴ Bureau of Energy Efficiency (BEE), National Guidelines for Energy-Efficient Data Centre Operations (Ministry of Power, Government of India) <<https://beeindia.gov.in>> accessed 7 May 2026.

The environmental dimension adds a further layer of complexity: data centres currently account for approximately 1 to 2% of global electricity consumption, and AI workloads are expected to increase this significantly over the next decade.³⁹⁵ Regulatory responses — carbon taxes, renewable energy mandates, restrictions on power consumption in constrained grids — could materially affect operating costs and, in extreme cases, the ability to operate certain facilities at all. For securitisation structures with 5 to 10-year tenors, this represents a genuine long-term cashflow risk that rating agencies are only beginning to model systematically.³⁹⁶

E. Regulatory and Data Sovereignty Risk

The regulatory environment for data centres is evolving faster than virtually any other infrastructure sector. The EU's General Data Protection Regulation, India's Digital Personal Data Protection Act 2023, China's Data Security Law, and analogous frameworks in dozens of other jurisdictions are collectively reshaping the geography of data storage and processing.³⁹⁷ From a securitisation perspective, regulatory risk operates in two directions. Favourable data localisation requirements — such as India's DPDPA 2023 mandate for domestic storage of personal data — create structural demand anchors that support cashflow predictability.³⁹⁸ Unfavourable regulatory changes — such as restrictions on cross-border data transfers that undermine a facility's ability to serve international clients — can impair revenue projections.

F. Interest Rate Risk and ARD Refinancing Pressure

Data centre ABS transactions typically include Anticipated Repayment Dates (ARDs) — soft maturity triggers that create significant structural incentives for refinancing or repayment within a target timeframe, typically five to seven years from issuance.³⁹⁹ The first wave of transactions originated in the historically low interest rate environment of 2020 to 2022 are approaching their ARDs in 2025 to 2028 — generating a large volume of mandatory or incentivised refinancings in an interest rate environment that is materially higher than at origination. CRA International's December 2025 analysis estimates that this wave of ARD-driven issuance could generate up to USD 6.5 billion in annual repeat issuance.⁴⁰⁰ The refinancing economics of these deals — and, specifically, whether stabilised lease cashflows are sufficient to support debt service at current rates — is one of the most pressing near-term structural questions in the market.

G. AI Demand Volatility

³⁹⁵ Synergy Research Group, 'Hyperscale Data Centers Hit the Thousand Mark; Total Capacity is Doubling Every Four Years' (Synergy Research Group, 2024).

³⁹⁶ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

³⁹⁷ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

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³⁹⁹ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025)

<https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

⁴⁰⁰ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025) <<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

Fitch Ratings makes an observation of significant analytical importance: AI training-based demand — the largest single driver of new data centre construction in primary markets — is materially more volatile than other forms of data centre demand.⁴⁰¹ The reason is that latency is not a primary concern for AI training workloads; a model can be trained in a data centre located anywhere in the world, provided it has adequate power and connectivity. This means that AI training demand can shift between geographic markets — or consolidate with fewer operators who achieve scale advantages — in ways that cannot be anticipated at the time a long-term lease is executed. For transactions that are heavily weighted toward AI training revenues, this demand mobility represents a genuine structural vulnerability.⁴⁰²

Risk Category	Nature	Cashflow Impact	Key Mitigant	Source
Cashflow Uncertainty	Limited performance history	High — modelling uncertainty	Conservative coverage ratios	S&P ¹⁰ ; Fitch ¹¹
Tenant Concentration	2–3 hyperscalers dominate	Binary loss risk	Tenant diversification; CE	KBRA ³ ; S&P ¹⁰
Tech Obsolescence	GPU power density transition	Lease non-renewal risk	Capex reserves; flex clauses	Fitch ¹¹ ; CC ¹
Power & Energy	Supply constraints; costs	OpEx escalation	Long-term PPAs; on-site renewables	BEE ³¹ ; ORF ²⁷
Regulatory / Sovereignty	Localisation law changes	Revenue geography shift	Jurisdiction diversification	MeitY ³⁰
Interest Rate / ARD	Refinancing in high-rate env.	Debt service pressure	Rate hedges; staggered ARDs	CRA Intl ⁹ ; SFA ⁸
AI Demand Volatility	Training demand mobility	Occupancy / rental rate risk	Long-term committed leases	Fitch ¹¹ ; CRA Intl ⁹

VII-A. GLOBAL SECURITISATION OF DATA CENTRES: STRUCTURES, CRITERIA, AND MARKET EVOLUTION

Data centre securitisation has, in less than a decade, evolved from a niche U.S. financing technique into a globally recognised, institutionally accepted asset class with its own rating criteria, investor community, and cross-border transaction precedents. This section maps the global landscape — how the market is structured internationally, which jurisdictions lead, what the global rating criteria require, and how the structure translates across legal systems.

A. The United States: Origin and Market Leader

The United States is the birthplace and largest market for data centre securitisation.⁴⁰³ The first U.S. data centre ABS was executed in 2018 — a USD 1.125 billion transaction that established

⁴⁰¹ Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

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⁴⁰³ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

the foundational structural template that the market has refined ever since.⁴⁰⁴ By May 2025, cumulative U.S. issuance had reached **USD 48.69 billion across 88 transactions** — comprising 75 ABS deals averaging USD 459.7 million and 13 CMBS deals averaging USD 1.09 billion.⁴⁰⁵ Major issuers include Digital Realty, Equinix, Iron Mountain, Switch, CyrusOne, and QTS — collectively representing the largest and most creditworthy data centre operator base in the world.

The U.S. market's maturity is reflected in several structural evolutions. The ABS-CMBS issuance split, once heavily weighted toward ABS at roughly 70/30, has converged toward 50/50 by 2025 — Switch's simultaneous March 2025 dual-track issuance being the clearest demonstration of this convergence.⁴⁰⁶ ARD-driven refinancings are expected to generate up to USD 6.5 billion in annual repeat issuance through 2026–2028 as deals originated in the low-rate environment of 2020–2022 approach their soft maturity triggers.⁴⁰⁷ Morgan Stanley projects total U.S. ABS issuance reaching USD 25 billion per annum by 2028.⁴⁰⁸

B. Europe: The First Cross-Border Expansion

Europe's data centre securitisation market is nascent but rapidly establishing itself. The first EMEA transaction — a **£600 million ABS** backed by Vantage Data Centres' two Welsh facilities — was executed in May 2024 and is widely regarded as a landmark in the global expansion of the asset class.⁴⁰⁹ A second European transaction — a **€640 million German ABS** backed by four Frankfurt and Berlin data centres — followed in 2025.⁴¹⁰ Hogan Lovells notes that the European market is likely to see CMBS structures become relatively more prevalent than in the U.S., given the multi-jurisdictional character of pan-European data centre portfolios.⁴¹¹

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⁴⁰⁶ RBC Capital Markets, 'The Infrastructure Revolution: Understanding Data Center Securitisation' (RBC Capital Markets, December 2025)

<<https://www.rbccm.com/en/insights/2025/12/the-infrastructure-revolution-understanding-data-center-securitisation>> accessed 7 May 2026.

⁴⁰⁷ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025)

<<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

⁴⁰⁸ Structured Finance Association (SFA), 'Financing Pressures Drive Innovation in Data Center Financing' (SFA, May 2025)

<https://structuredfinance.org/wp-content/uploads/2025/05/SFA-Research-Corner_Financing-Pressures-Drive-Innovation-in-Data-Center-Financing.pdf> accessed 7 May 2026.

⁴⁰⁹ Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025)

<<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

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The European market is characterised by a more complex regulatory environment than the U.S. — GDPR data localisation requirements vary by category of data and jurisdiction⁴¹² — and by more fragmented power markets, with data centre development constrained by grid capacity in primary hubs including Dublin, Frankfurt, Amsterdam, and London. Savills reports that 1.7 GW of European data centre capacity is currently under development,⁴¹³ and Research and Markets projects the European market to reach USD 64.5 billion by 2029 at a 7% CAGR.⁴¹⁴

C. Asia-Pacific: The Next Frontier

Asia-Pacific has not yet produced a completed data centre securitisation transaction, but the conditions for first issuance are rapidly aligning.⁴¹⁵ The region saw a 114% year-on-year surge in data centre investment to USD 2.8 billion in Q3 2024 alone.⁴¹⁶ Singapore, Tokyo, Sydney, and Mumbai are the primary hyperscale hub markets. Singapore has, however, imposed capacity moratoriums that have displaced development to Malaysia (Johor), Indonesia (Batam and Jakarta), and Thailand — creating a more distributed regional market structure that may favour CMBS over ABS for first transactions, given the cross-border collateral pool it generates.⁴¹⁷

India — as detailed in Section VI of this paper — is widely expected to be among the first Asia-Pacific markets to develop domestic data centre structured finance instruments, given the combination of asset scale, domestic institutional investor growth, and regulatory enablers that distinguishes it from other regional markets.^{418,419}

D. Global Rating Criteria: S&P, Fitch, KBRA, and Morningstar DBRS

A defining feature of the global data centre securitisation market's maturation in 2024–2025 was the publication of comprehensive, globally applicable rating criteria by the major rating agencies — providing, for the first time, a transparent and consistent analytical framework that transcends individual transaction structuring.

S&P Global published its global Data Center Securitization Methodology and Assumptions in June 2024, revised in August 2025.⁴²⁰ S&P's framework introduces a dedicated Data Center

⁴¹² Research and Markets, 'Europe Data Center Market Landscape 2024–2029' (Research and Markets, 2024) <<https://www.researchandmarkets.com/reports/5887771>> accessed 7 May 2026.

⁴¹³ Savills, 'European Data Centres: Navigating the New Data-Centric Frontiers' (Savills, May 2024).
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⁴¹⁵ Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.
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⁴¹⁷ Synergy Research Group, 'Hyperscale Data Centers Hit the Thousand Mark; Total Capacity is Doubling Every Four Years' (Synergy Research Group, 2024).

⁴¹⁸ JLL India, 'India Data Centre Market Dynamics Report H1 2025' (Jones Lang LaSalle, December 2025) <<https://www.jll.com/en-in/insights/market-dynamics/india-data-centers>> accessed 7 May 2026.

⁴¹⁹ India Brand Equity Foundation (IBEF), 'India's Data Centre Market Projected to Reach US\$22 Billion by 2030' (IBEF, 2025) <<https://www.ibef.org/news/india-s-data-centre-market-projected-to-reach-us-22-billion-by-2030>> accessed 7 May 2026.

⁴²⁰ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

Specific Credit Factor (DCSCF) that adjusts the base case lease cashflow by a factor reflecting technology risk — specifically, the probability that a tenant will choose not to renew because the facility cannot accommodate their evolving technology requirements. S&P analyses: (i) tenant credit quality and lease term; (ii) data centre type (hyperscale, wholesale colocation, retail colocation, edge); (iii) power density and upgradeability; (iv) geographic market competitiveness; and (v) operator track record. Critically, S&P gives explicit negative weight to AI training-dominated revenue bases, on the grounds that AI training demand is more geographically mobile than latency-sensitive demand.⁴²¹

Fitch Ratings published its Data Centre Project Finance Key Rating Drivers in April 2024.⁴²² Fitch's framework emphasises five factors: the competitive position of the facility in its market; the creditworthiness and diversification of the tenant base; the remaining weighted average lease term; the adequacy of the facility's power and cooling infrastructure for current and projected tenant requirements; and the financial structure of the transaction, including debt service coverage ratios and refinancing mechanisms. Fitch explicitly highlights AI demand volatility as a differentiating risk for data centres relative to other infrastructure — noting that training workloads can migrate between facilities and markets in ways that are structurally absent in toll roads or airports.⁴²³

KBRA (Kroll Bond Rating Agency) published its comparative ABS/CMBS analysis in May 2025,⁴²⁴ providing the most detailed available quantitative comparison of the two structures' credit performance. KBRA's analysis confirmed that ABS transactions have historically outperformed CMBS transactions on a like-for-like basis in terms of downgrade frequency — attributing this to the stronger emphasis on contracted lease cashflows in ABS underwriting. KBRA also highlighted the growing importance of sustainability metrics — particularly PUE and renewable energy usage — in rating assessments, citing the increasing prevalence of tenant sustainability requirements in lease negotiations.⁴²⁵

Morningstar DBRS presented its perspectives at Global ABS 2025 in June 2025,⁴²⁶ noting that the primary credit differentiator between data centre ABS transactions of comparable initial ratings is the residual economic life of the underlying facilities — specifically, whether the data centre is positioned for continued relevance in a GPU-dominated, AI-intensive computing environment. Morningstar DBRS also noted the growing importance of energy transition risk: facilities without credible pathways to renewable energy supply face increasing risk of tenant attrition as hyperscalers pursue their own net-zero commitments.⁴²⁷

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⁴²² Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

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⁴²⁴ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

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⁴²⁶ Morningstar DBRS, 'Takeaways from Global ABS 2025: Placing Data Centres in the Securitisation Market' (Morningstar DBRS, June 2025) <<https://dbrs.morningstar.com/research/456228>> accessed 7 May 2026.

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E. Global Transaction Structures: A Comparative Summary

Structure	Primary Markets	Collateral Basis	Typical Tenor	Key Risk Factor	Relevant Criteria
Data Centre ABS	US, EMEA	Leases + cash flows via SPV trust	5–10 years	Tenant renewal / tech obsolescence	S&P (2024) ¹⁰ ; KBRA ³
Data Centre CMBS	US, EMEA	Mortgage on real property	5–10 years	Property value in enforcement	S&P (2024) ¹⁰ ; KBRA ³
CTL Financing	US	Anchor tenant credit rating	10–20 years	Tenant credit deterioration	Hogan Lovells ⁷
Dual ABS+CMBS	US (2025+)	Combined lease + mortgage	5–10 years	Complexity; co-ordination risk	KBRA ³ ; RBC ⁴
InvIT (India)	India (dev.)	Infrastructure SPV interests	Perpetual	Regulatory evolution; liquidity	SEBI ³²
Sustainability ABS	US, EMEA	ESG-linked lease cash flows	5–10 years	PUE target achievement	Clifford Chance ¹⁴

VII. INDIA: THE DATA CENTRE MARKET AND SECURITISATION OPPORTUNITY

India deserves — and receives in this paper — dedicated analytical attention. The country represents, in this author's assessment, the single most compelling emerging market opportunity in global data centre investment. Its characteristics are unusual: it is simultaneously a major, functioning data centre market (ranked among the top ten globally by installed capacity) and a dramatically undersupplied one (generating 20% of global data but holding only 3% of global data centre capacity⁴²⁸). The gap between those two figures — 17 percentage points — is the investment opportunity.

A. Market Overview and Scale

Indicator	Data Point	Source
Operational IT Load (H1 2025)	~1.3–1.5 GW	Cushman & Wakefield ²² ; CBRE ²³
Market Value (2025, estimated)	USD 9–10 billion	IBEF ²¹ ; ResiIndia ²⁸
Market Value (2030, forecast)	USD 22 billion (CAGR 13–15%)	IBEF ²¹
FDI Attracted (2020–2024)	USD 14.7–15 billion (80% foreign)	ResiIndia ²⁸
Investment Pipeline (5 Years)	USD 60–70 billion (announced)	IBEF ²¹
Net Absorption H1 2025	97.9 MW (+48% year-on-year)	Cushman & Wakefield ²²

⁴²⁸ Observer Research Foundation (ORF), 'Building Sovereign Data Centre Infrastructure in India' (ORF, September 2025) <<https://www.orfonline.org/expert-speak/building-sovereign-data-centre-infrastructure-in-india>> accessed 7 May 2026.

Indicator	Data Point	Source
Vacancy Rate (2025)	~4.3% (highly supply-constrained)	Cushman & Wakefield ²²
Capacity Projection (2027)	2,073 MW (+85% from current)	JLL ²⁰
Capacity Projection (2030, base)	4,000–5,000 MW	Arizton ²⁵ ; MarkNtel ²⁶
India Data Generation Share	~20% of global	ORF ²⁷
India DC Capacity Share	~3% of global	ORF ²⁷
Hyperscaler Wave (2025–26)	> USD 67.5 billion committed	ResiIndia ²⁸
Budget 2026–27 Tax Holiday	20-year exemption for qualifying DCs	PIB ²⁹

B. Key Demand Drivers — Why India's Growth is Structural, Not Cyclical

The figures above are not the product of a cyclical investment surge. They reflect a structural transformation driven by multiple, mutually reinforcing forces — each of which would be a compelling investment thesis on its own.

- Digital India and Mass-Market Internet Adoption:** India had approximately 96.6 crore internet connections as of June 2024 — a figure that continues to grow rapidly.⁴²⁹ The combination of affordable mobile data, a young demographic profile, and rapidly expanding digital government services is generating data at a pace that the existing data centre supply base simply cannot accommodate. This is the bedrock demand driver — large, growing, and entirely domestic.
- AI and Hyperscaler Investment Wave:** The major global cloud providers have made commitments to India of extraordinary scale. Google announced a USD 6 billion data centre and power investment in Visakhapatnam.⁴³⁰ Microsoft, Amazon Web Services, and Oracle have made comparable commitments. The total hyperscaler investment wave for 2025–26 exceeds USD 67.5 billion.⁴³¹ These are not speculative announcements — they are backed by identified land, power agreements, and customer commitments.
- Statutory Data Localisation:** The DPDPA 2023 creates a statutory imperative for domestic data storage that is, in effect, a demand guarantee for Indian data centre operators.⁴³² RBI's mandate that payment system data relating to Indian customers be stored exclusively within India⁴³³ and IRDAI's analogous requirements for insurance

⁴²⁹ MarkNtel Advisors, 'India Data Center Market Size & Outlook 2026–2032' (MarkNtel, 2025)

<<https://www.marknteladvisors.com/research-library/india-data-center-market.html>> accessed 7 May 2026.

⁴³⁰ ResiIndia, 'India's Data Centre Market: A Strategic Analysis of Capacity Expansion, Investment, Economic Multipliers, and the Imperative for a Sustainable Energy Playbook' (ResiIndia, 2026)

<<https://www.resiindia.org/post/india-s-data-centre-market>> accessed 7 May 2026.

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⁴³² Press Information Bureau of India, 'Budget 2026–27: Data Centre Tax Holiday Framework' (PIB, February 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227953>> accessed 7 May 2026.

⁴³³ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

data create multi-sector demand anchors of the kind that are directly material to ABS cashflow underwriting.

- **BFSI Sector Demand:** India's banking, financial services, and insurance sector is among the largest domestic drivers of data centre demand — with strict regulatory requirements for local data storage, disaster recovery infrastructure, and business continuity systems mandated by the RBI, IRDAI, and SEBI.⁴³⁴ This sector is growing rapidly as India's financial services industry deepens and digitises.
- **5G Network Rollout:** India's 5G deployment is generating demand for both large centralised data centres and distributed edge computing infrastructure.⁴³⁵ Edge computing capacity in India is expected to double from 80–100 MW to 160–180 MW by 2028 — representing a distinct and rapidly growing segment of the data centre market with different financing characteristics from hyperscale facilities.⁴³⁶
- **Domestic Champion Operators:** India's domestic data centre ecosystem is increasingly sophisticated. Reliance Jio, AdaniConneX, Bharti Airtel's Nxtra, CtrlS Datacenters, and Sify Technologies are all executing large-scale capacity expansion programmes.⁴³⁷ The combination of well-capitalised domestic operators and internationally experienced foreign investors creates the competitive market structure that efficient securitisation markets require.

C. Opportunities for Securitisation in India

India does not yet have an established data centre securitisation market. This is the opportunity. As the Indian market matures — with vacancy rates compressed to 4.3%⁴³⁸ and net absorption running 48% ahead of the prior year — the asset base is approaching the stabilised, contracted-cashflow profile that ABS requires. Several specific structural enablers are aligning:

- **Infrastructure Status as Legal Predicate:** The Government of India's formal recognition of data centres as infrastructure — placing them on par with roads, airports, and power plants for financing purposes — is a critical legal predicate for securitisation development.⁴³⁹ It establishes the classification within which InvIT structures, External Commercial Borrowings, and priority sector bank lending become available.

⁴³⁴ CBRE India, 'India's Data Centre Market: Seizing Growth Opportunities' (CBRE, 2024)

<<https://www.cbre.co.in/insights/articles/indias-data-centre-market-seizing-growth-opportunities>> accessed 7 May 2026.

⁴³⁵ JLL India, 'India Data Centre Market Dynamics Report H1 2025' (Jones Lang LaSalle, December 2025)

<<https://www.jll.com/en-in/insights/market-dynamics/india-data-centers>> accessed 7 May 2026.

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⁴³⁸ Cushman & Wakefield India, 'India Data Centre Market Overview H1 2025' (Cushman & Wakefield, December 2025)

<<https://assets.cushmanwakefield.com/-/media/cw/apac/india/insights/indiadatacentreuupdateh12025v4.pdf>> accessed 7 May 2026.

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- **SEBI's InvIT Framework as Structural Analogue:** India's Infrastructure Investment Trust (InvIT) framework, regulated by SEBI, provides the closest existing structural analogue for data centre securitisation.⁴⁴⁰ InvITs are designed precisely for infrastructure assets with stable, long-term cashflows, and allow the pooling of SPV-held infrastructure assets for investment by institutional and retail investors. With targeted adaptation, this framework could accommodate data centre ABS in a form consistent with Indian law and market practice.
- **Growing Domestic Institutional Investor Base:** India's institutional investors — the Life Insurance Corporation of India, National Pension System funds, insurance companies, and mutual funds — are rapidly growing in scale and sophistication.⁴⁴¹ They have demonstrated appetite for infrastructure yield products through existing InvIT and REIT markets. Data centre ABS, once established, would provide a new, rated, yield-generating instrument for this growing investor class.
- **International Investor Demand:** The 80% foreign ownership share of Indian data centre FDI⁴⁴² reflects substantial international investor appetite for Indian digital infrastructure exposure. International investors who currently access this exposure through equity or private credit instruments would welcome a rated, liquid, securitisation instrument — potentially stimulating significant additional capital flows.

VIII. REGULATORY FRAMEWORK: INDIA — DOES THE EXISTING FRAMEWORK PERMIT SECURITISATION?

The competition brief asks directly: would the existing Indian regulatory framework permit securitisation of data centre assets? This is an important and nuanced question. The short answer is: the foundational regulatory infrastructure exists, but targeted development is needed before a fully-fledged data centre ABS or CMBS market can emerge. This section maps the relevant regulatory landscape — national, sectoral, and state-level — and identifies both the existing enablers and the gaps that require attention.

A. The Digital Personal Data Protection Act (DPDPA) 2023

The DPDPA 2023 is India's first comprehensive personal data protection statute and the cornerstone of the regulatory framework most directly relevant to data centre demand.⁴⁴³ The Act establishes obligations for data fiduciaries — organisations that determine the purpose and means of processing personal data — and creates rights for data principals, the individuals to whom the data relates. The Data Protection Board of India, established under the Act, serves as the enforcement authority.

⁴⁴⁰ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

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⁴⁴³ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

For data centre securitisation, the critical provision of the DPDPA 2023 is its data localisation dimension. The Act empowers the central government to designate countries approved for cross-border personal data transfers; in the absence of such designation, a presumption in favour of domestic storage applies for sensitive categories of personal data.⁴⁴⁴ This creates a statutory demand anchor for Indian data centre operators — the requirement to store certain categories of personal data within India is not subject to commercial negotiation or economic fluctuation. For ABS cashflow underwriting, statutory demand anchors of this nature are of the highest value: they represent a floor below which demand cannot fall, regardless of broader economic conditions.

B. Infrastructure Status: The Critical Policy Enabler

The Government of India's grant of formal infrastructure status to data centres is the single most important policy development for the emergence of Indian data centre securitisation.⁴⁴⁵ Infrastructure status confers several specific financing benefits:

- **External Commercial Borrowings (ECBs):** Data centre operators can now access ECBs — borrowings from international sources at internationally competitive interest rates — under the RBI's ECB framework.⁴⁴⁶ This not only reduces the direct cost of capital but establishes the precedent of treating data centre assets as infrastructure for regulatory and financing classification purposes.
- **Priority Sector Lending:** Bank lending to data centre projects can qualify for priority sector classification, increasing the availability of domestic bank credit at competitive pricing and increasing the overall depth of the financing market.⁴⁴⁷
- **InvIT Eligibility:** Most importantly for securitisation purposes, infrastructure status makes data centre projects eligible for the Infrastructure Investment Trust (InvIT) structure under SEBI's regulations.⁴⁴⁸ The InvIT framework allows the pooling of infrastructure SPV interests — exactly the structure used in data centre ABS globally — and their offering to institutional and retail investors as rated, income-generating instruments. This is the most direct existing pathway to data centre securitisation under Indian law.

C. Budget 2026–27: The 20-Year Tax Holiday

Budget 2026-27 introduced a landmark 20-year tax holiday — effective until 2047 — for foreign entities providing cloud services globally via Indian data centres.⁴⁴⁹ The key features of

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⁴⁴⁵ Press Information Bureau of India, 'Budget 2026–27: Data Centre Tax Holiday Framework' (PIB, February 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227953>> accessed 7 May 2026.

⁴⁴⁶ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

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⁴⁴⁸ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

⁴⁴⁹ Press Information Bureau of India, 'Budget 2026–27: Data Centre Tax Holiday Framework' (PIB, February 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227953>> accessed 7 May 2026.

this incentive are: profits from qualifying global cloud service activities conducted through Indian data centres are effectively exempt from Indian corporate income tax; revenues from domestic Indian cloud services remain taxable; and a safe harbour margin of 15% on costs applies where the Indian data centre operates as a cost-plus centre for a related foreign entity.

The significance of this incentive for securitisation development cannot be overstated. Long-horizon policy certainty — a commitment that remains in place for 20 years — is the precondition for the large-scale, long-duration investment decisions that generate the stabilised, contracted cashflows from which ABS is structured.⁴⁵⁰ International hyperscalers making the commitment to anchor a data centre facility with a 15 to 20-year lease will point to the tax holiday as a material factor in their investment case — and that lease commitment, in turn, provides the cashflow basis for securitisation.

D. Sectoral Regulators

i. Ministry of Electronics and Information Technology (MeitY)

MeitY provides the central policy architecture for India's data centre sector — technical and physical guidelines for State Data Centres, standards for government cloud adoption, and the regulatory framework for data processing in e-governance applications.⁴⁵¹ MeitY's guidelines create standardised demand from government cloud consumers, providing a stable, rules-based revenue base for commercial operators.

ii. Reserve Bank of India (RBI) — Data Localisation

The RBI's mandate that payment system data relating to Indian customers be stored exclusively within India creates a structural, non-negotiable demand from India's large and rapidly growing financial services sector.⁴⁵² Analogous requirements from IRDAI (insurance data) and SEBI (capital market data) reinforce a multi-sector domestic demand base that is directly material to ABS cashflow underwriting — this is precisely the kind of statutory, non-discretionary revenue that rating agencies value most highly in structured finance transactions.

iii. Bureau of Energy Efficiency (BEE)

The BEE's national guidelines for energy-efficient data centre operations promote Power Usage Effectiveness (PUE) optimisation, heat recovery, and closed-loop cooling.⁴⁵³ These guidelines serve a dual purpose for securitisation development: they establish efficiency benchmarks that are increasingly relevant to tenant requirements, asset valuations, and rating agency credit analysis; and they provide the regulatory infrastructure for sustainability-linked financing structures that could attract ESG-dedicated institutional capital to Indian data centre ABS.

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⁴⁵¹ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

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⁴⁵³ Bureau of Energy Efficiency (BEE), National Guidelines for Energy-Efficient Data Centre Operations (Ministry of Power, Government of India) <<https://beeindia.gov.in>> accessed 7 May 2026.

E. State-Level Policy Frameworks

Individual Indian states have been, in many respects, the most immediate drivers of data centre investment through bespoke policy and incentive frameworks. Maharashtra, Uttar Pradesh, Tamil Nadu, Telangana, Karnataka, West Bengal, Gujarat, and Andhra Pradesh all have dedicated data centre policies offering combinations of capital expenditure subsidies, single-window permitting clearances, stamp duty exemptions, electricity duty reductions, and subsidised land access.⁴⁵⁴

Andhra Pradesh's Data Centre Policy 4.0 (2024–29) is particularly notable, targeting 200 MW of additional capacity and providing explicit land, fiscal, and infrastructure support for hyperscale and AI-ready facilities.⁴⁵⁵ Telangana's TS-iPASS framework — which provides fixed-timeline, deemed-approval permitting — represents a national model for reducing the execution risk associated with data centre development approvals, and has been recognised as such by the broader industry. The single window clearance mechanism is of direct relevance to securitisation: construction risk — the risk that a facility will not be completed as planned — is one of the most significant barriers to ABS eligibility, and streamlined permitting reduces this risk materially.

F. The Path to ABS: What India Still Needs

The foregoing analysis confirms that India has a functioning — and increasingly sophisticated — regulatory foundation for data centre investment. What it does not yet have is the specific structured finance regulatory architecture for data centre ABS or CMBS. The following targeted developments are required:

- **SEBI Data Centre ABS Criteria:** SEBI would need to develop specific eligibility criteria for data centre ABS instruments — addressing the classification of data centre assets as securitisation collateral, lease assignment requirements, SPV structuring, mandatory disclosure for technology risk and tenant concentration, and secondary market liquidity standards.⁴⁵⁶ The global precedents of S&P Global's June 2024 data centre securitisation criteria⁴⁵⁷ and Fitch's project finance framework⁴⁵⁸ provide directly applicable models.
- **Domestic Rating Agency Criteria:** CRISIL, ICRA, and CARE Ratings would need to develop data centre-specific rating methodologies addressing the technology risk, power risk, and AI demand volatility factors that distinguish this asset class from conventional infrastructure ABS.⁴⁵⁹

⁴⁵⁴ Cushman & Wakefield India, 'India Data Centre Market Overview H1 2025' (Cushman & Wakefield, December 2025)
<<https://assets.cushmanwakefield.com/-/media/cw/apac/india/insights/indiadatacentreupdateh12025v4.pdf>> accessed 7 May 2026.

⁴⁵⁵ MarkNtel Advisors, 'India Data Center Market Size & Outlook 2026–2032' (MarkNtel, 2025)
<<https://www.marknteladvisors.com/research-library/india-data-center-market.html>> accessed 7 May 2026.

⁴⁵⁶ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

⁴⁵⁷ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

⁴⁵⁸ Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

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- **Tax and Accounting Framework:** Clarity on the tax treatment of data centre SPV structures — including stamp duty on lease assignments, GST on SPV services, and the accounting treatment of off-balance-sheet securitisation — would provide the legal certainty that institutional investors and rating agencies require before committing to a new asset class.

IX. COMPARATIVE ANALYSIS: GLOBAL MARKETS AND INDIA

Dimension	Global (US / EMEA)	India
Market Stage	Highly mature (US since 2018; EMEA since 2024)	Nascent; pre-securitisation; asset base maturing
ABS Issuance (US)	USD 48.69 billion (88 transactions to May 2025)	Not yet established
Primary Structure	ABS + CMBS (converging to ~50/50 in 2025)	InvITs, ECBs, bank loans currently dominate
Rating Criteria	S&P (2024), Fitch, KBRA, Morningstar DBRS	Domestic agencies adapting; no DC-specific criteria yet
Infrastructure Classification	Established; real property framework	Formally granted; financing implications developing
Data Localisation	Voluntary / sector-specific in most markets	DPDPA 2023 + RBI / IRDAI statutory mandates
Tax Incentive	Standard corporate taxation	20-year tax holiday (Budget 2026–27)
Vacancy Rate	US: ~5–8%; EMEA varies	~4.3% (highly supply-constrained)
Demand Certainty	Largely commercial; market-driven	Partially statutory (DPDPA 2023, RBI, IRDAI)
First Securitisation	US: 2018; EMEA: 2024; APAC: 2026 expected	To be established; early-mover window open

X. POLICY RECOMMENDATIONS

A. For Policymakers and Regulators

- SEBI should develop a dedicated regulatory framework for data centre ABS and InvIT structures, drawing explicitly on S&P Global's 2024 global criteria and KBRA's structural guidelines, and adapted to India's legal context.⁴⁶⁰
- MeitY and the Ministry of Finance should provide statutory clarity on the tax and stamp duty treatment of data centre SPV structures, lease assignments, and ABS issuances to provide the legal certainty required for the first domestic transaction.⁴⁶¹

⁴⁶⁰ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

⁴⁶¹ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

- The National Single Window System for infrastructure approvals should be extended to all data centre projects, with statutory time limits for clearances, eliminating the 30+ approval permitting process that represents the most significant execution risk for large-scale development.⁴⁶²
- BEE efficiency guidelines should be formally linked to sustainability-linked financing frameworks to attract ESG-dedicated institutional capital.⁴⁶³

B. For Data Centre Operators

- Operators should prioritise the development of stabilised, contracted-cashflow asset portfolios — with long-term leases to investment-grade or creditworthy tenants — as the necessary precondition for ABS eligibility. Asset quality at origination determines the credit rating and pricing of any subsequent securitisation.⁴⁶⁴
- Tenant diversification across hyperscalers, BFSI, government, and enterprise clients reduces concentration risk and strengthens the credit profile of prospective securitisation collateral pools.⁴⁶⁵
- Operators should develop comprehensive renewable energy sourcing strategies — including long-term power purchase agreements, on-site solar, and battery storage — both to address operational power risk and to meet the sustainability requirements of institutional investors.⁴⁶⁶

C. For Investors

- Pre-securitisation investment in Indian data centre platforms at current valuations offers the prospect of significant value uplift as the market matures and securitisation re-rates stabilised assets at tighter yields — replicating the trajectory of the U.S. market from 2018 to 2025.⁴⁶⁷
- Proactive engagement with operators, Indian rating agencies, and SEBI to develop the first Indian data centre InvIT or ABS transaction would establish precedent, market

⁴⁶² Observer Research Foundation (ORF), 'Building Sovereign Data Centre Infrastructure in India' (ORF, September 2025) <<https://www.orfonline.org/expert-speak/building-sovereign-data-centre-infrastructure-in-india>> accessed 7 May 2026.

⁴⁶³ Bureau of Energy Efficiency (BEE), National Guidelines for Energy-Efficient Data Centre Operations (Ministry of Power, Government of India) <<https://beeindia.gov.in>> accessed 7 May 2026.

⁴⁶⁴ Norton Rose Fulbright LLP, 'The Future of Financing of Data Centres' in PFI Yearbook (Project Finance International, December 2024) <<https://www.pfie.com/pfi-yearbooks/1491857/the-future-of-financing-of-data-centres>> accessed 7 May 2026.

⁴⁶⁵ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

⁴⁶⁶ Bureau of Energy Efficiency (BEE), National Guidelines for Energy-Efficient Data Centre Operations (Ministry of Power, Government of India) <<https://beeindia.gov.in>> accessed 7 May 2026.

⁴⁶⁷ RBC Capital Markets, 'The Infrastructure Revolution: Understanding Data Center Securitisation' (RBC Capital Markets, December 2025) <<https://www.rbccm.com/en/insights/2025/12/the-infrastructure-revolution-understanding-data-center-securitisation>> accessed 7 May 2026.

infrastructure, and reputational positioning that benefits all subsequent activity in the asset class.⁴⁶⁸

XI. CONCLUSION

This paper has attempted to provide a comprehensive, honest, and analytically rigorous response to the questions posed by the Vinod Kothari Securitisation Summit competition. The central question — is securitisation of data centre and AI infrastructure assets both opportune and necessary? — has been answered affirmatively, with evidence drawn from across the global structured finance market.

The opportunity is real and well-documented. The global data centre market, valued at USD 389 billion in 2024 and growing at 10.6% per annum toward USD 691.6 billion by 2030,⁴⁶⁹ generates the scale of stabilised, contracted cashflows that structured finance instruments are designed to monetise. The U.S. market has demonstrated — across USD 48.69 billion in cumulative issuance and 88 transactions since 2018⁴⁷⁰ — that data centre ABS and CMBS are credible, scalable, and investor-accepted asset classes. The European market has confirmed that the U.S. experience translates to other jurisdictions,⁴⁷¹ and Asia-Pacific is poised to follow.

The necessity is equally clear. The capital requirements of the AI infrastructure buildout — USD 170 billion in financing needed in 2025 alone⁴⁷² — cannot be met by traditional instruments operating within the constraints of conventional bank lending and corporate bond markets. Securitisation, with its ability to access deep institutional investor pools at competitive pricing, on a non-recourse and scalable basis, is the most efficient available mechanism to bridge this gap.

The risks are genuine and must be taken seriously. The uncertain and future nature of data centre cashflows — the specific concern raised in the competition brief — is not a hypothetical risk. Technological obsolescence, AI demand volatility, power supply constraints, tenant concentration, interest rate pressure on ARD-approaching transactions, and the limited historical performance data available to rating agencies are all real and material challenges.⁴⁷³⁴⁷⁴ The structured finance market is addressing them — through more

⁴⁶⁸ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

⁴⁶⁹ BCC Research, 'Global Data Centre Market Size, Share & Growth Forecast 2030' (BCC Research, July 2025) <<https://www.bccresearch.com/market-research/information-technology/data-centre-market.html>> accessed 7 May 2026.

⁴⁷⁰ KBRA (Kroll Bond Rating Agency), 'Data Centers: A Comparison of ABS and CMBS Structures' (KBRA, May 2025) <<https://www.kbra.com/publications/wtXJZSZt>> accessed 7 May 2026.

⁴⁷¹ Hogan Lovells LLP, 'Financing Data Centres in the US and Europe' (Hogan Lovells, September 2025) <<https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>> accessed 7 May 2026.

⁴⁷² Clifford Chance LLP, 'Data Centre Insights 2025' (Clifford Chance, March 2025) <https://www.cliffordchance.com/insights/thought_leadership/trends/2025/data-centre-insights-2025.html> accessed 7 May 2026.

⁴⁷³ CRA International, 'Data Center ABS: Risks, Yields, and Ratings' (CRA International, December 2025) <<https://media.crai.com/wp-content/uploads/2025/12/03163400/Insights-Data-center-ABS.pdf>> accessed 7 May 2026.

⁴⁷⁴ Fitch Ratings, 'Fitch Ratings Outlines Key Rating Drivers in Data Centre Project Finance Market' (Fitch Ratings, April 2024).

sophisticated rating criteria⁴⁷⁵ more rigorous structural protections, and more diversified collateral pools — but the risk cannot be assumed away.

India's position in this story is one of extraordinary, time-sensitive opportunity. The structural fundamentals are compelling — a 17-percentage-point gap between data generation share and data centre capacity share⁴⁷⁶, a USD 22 billion market by 2030⁴⁷⁷, a USD 60–70 billion investment pipeline⁴⁷⁸, and a regulatory environment that has already done much of the preliminary work.⁴⁷⁹⁴⁸⁰⁴⁸¹ What India now needs is the final step: targeted SEBI regulatory development to permit domestic data centre ABS and InvIT issuance, domestic rating agency criteria for this asset class, and tax and accounting clarity for SPV structures. These are achievable, near-term objectives — the international precedents and frameworks are available and can be adapted to the Indian context with relative speed.

The convergence of technological necessity, commercial opportunity, and policy enablement that characterises India's data centre market is, in the authors' assessment, as compelling as any structured finance opportunity currently visible in the global emerging markets universe. The window is open. The instruments exist, or can readily be developed. The capital is available. What is required now is the will — among regulators, operators, and investors — to take the first step and establish the Indian data centre securitisation market that the country's digital ambitions both require and deserve.

⁴⁷⁵ S&P Global, 'Criteria — Structured Finance — Data Center Securitizations: Global Methodology and Assumptions' (S&P Global Ratings, June 2024, revised August 2025).

⁴⁷⁶ Observer Research Foundation (ORF), 'Building Sovereign Data Centre Infrastructure in India' (ORF, September 2025) <<https://www.orfonline.org/expert-speak/building-sovereign-data-centre-infrastructure-in-india>> accessed 7 May 2026.

⁴⁷⁷ India Brand Equity Foundation (IBEF), 'India's Data Centre Market Projected to Reach US\$22 Billion by 2030' (IBEF, 2025) <<https://www.ibef.org/news/india-s-data-centre-market-projected-to-reach-us-22-billion-by-2030>> accessed 7 May 2026.

⁴⁷⁸ ResiIndia, 'India's Data Centre Market: A Strategic Analysis of Capacity Expansion, Investment, Economic Multipliers, and the Imperative for a Sustainable Energy Playbook' (ResiIndia, 2026) <<https://www.resiindia.org/post/india-s-data-centre-market>> accessed 7 May 2026.

⁴⁷⁹ Press Information Bureau of India, 'Budget 2026–27: Data Centre Tax Holiday Framework' (PIB, February 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227953>> accessed 7 May 2026.

⁴⁸⁰ Ministry of Electronics and Information Technology (MeitY), Technical and Physical Guidelines for State Data Centres (Government of India) <<https://www.meity.gov.in>> accessed 7 May 2026.

⁴⁸¹ Securities and Exchange Board of India (SEBI), Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) Regulatory Frameworks (SEBI) <<https://www.sebi.gov.in>> accessed 7 May 2026.

SECURITISING THE CLOUD: LEGAL AND STRUCTURAL CHALLENGES IN DATA CENTRE FINANCING

“The path to a \$5 trillion economy lies at the intersection of innovation and finance, where data becomes infrastructure, and infrastructure becomes investable”

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I. Introduction

In the Digital age, Data has become an asset that every business wants to have its hand on, and the more they invest, the less it feels.⁴⁸² Businesses today have integrated AI into their core activities, making it a new core infrastructure that requires massive computing power, high-performance GPUs, and constant data processing.⁴⁸³ In addition, these businesses have begun relying on cloud-based systems, marking a shift away from physical servers. Moreover, as the digital economy expands, with each transaction generating and storing data, the need for robust data infrastructure is evident every day.

Given the nature of Data Centres, they can now be classified as ‘*Critical Infrastructure*’ to the economy, as they are the backbone of the whole banking system, telecom networks, and AI applications.⁴⁸⁴ At present, maintaining, safeguarding, and expanding data centres are among the top priorities of any nation, as failing to do so would surely lead to a heavy dent in the nation’s economy. Nevertheless, the question comes in: *What is the issue?* The Answer is that data centres have a high initial investment, which the data suggest could cost anyone from Rs 500 to

⁴⁸² Firas Sleiman, “Data- The Game – Changing Asset” (PwC, 2025) <<https://www.pwc.com/ml/en/blog/data-the-game-changing-asset.html>> accessed on 30 April 2026.

⁴⁸³ “The next big shifts in AI workloads and hyper strategies” (McKinsey & Company, 2025) <<https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-next-big-shifts-in-ai-workloads-and-hyperscaler-strategies>> accessed on 30 April 2026.

⁴⁸⁴ “What is critical infrastructure?” (IBM, 2026) <<https://www.ibm.com/think/topics/critical-infrastructure>> accessed on 30 April 2026.

Rs 2000 crore.⁴⁸⁵ In addition, maintaining such systems is even more costly, and on top of that, the gestation period is longer, with returns being slow and uncertain.

It is now a central issue faced by any nation, ‘*whether traditional financing structures are insufficient to meet the growing capital requirements of data centre infrastructure, ‘due to bank loan limitations, equity financing issues, and scale problems’*. A solution could be to tap the capital markets and structured finance to monetise the future cash flows of such a system. today. In professional terms, the concept of ‘*Data Centre Securitisation*’ (DCS) is introduced in the finance market.⁴⁸⁶

DCS refers to the process of converting future revenue streams from data centre operations into tradable financial instruments.⁴⁸⁷ Future income from the data centres is packaged and sold to investors to secure finance today, which could be used to pay lease rentals, service fees, and cloud contracts. While DCS appears to be viable in theory, it fundamentally challenges the core principles of traditional securitisation, especially with the requirement of identifiable and predictable cash flow, and thus necessitates the development of a hybrid financing structure within the Indian regulatory framework.

As digital infrastructure becomes central to economic growth, the ability to unlock capital from future cash flows will determine its scalability, underscoring the timeliness and necessity of studying securitisation frameworks. In this article, the main issue of whether data centres’ cash flows can be effectively scrutinised within the Indian legal framework is critically analysed. It also examines the structural, legal and financial constraints that may arise due to the hybrid nature of the revenues yielded, while drawing comparative insights from global market practices. Lastly, it evaluates whether the current framework and models can be adapted or whether new hybrid models should be introduced to unlock capital from emerging asset classes.

II. Data Centres as an Asset Class

Data centres have increasingly emerged as a distinct and valuable asset class within the digital economy, characterised by stable revenue streams, high capital intensity, and long-term contractual arrangements. Data centres operate through three core business models: Colocation Model, Hyper-scaler Model, and Enterprise Hosting Model, each with distinct repercussions for the nature, predictability, and securitisation of cash flow.

i. Colocation Model:

The Colocation Model involves leasing rack space, cages, or dedicated areas to multiple clients, with the operator providing power, cooling, connectivity, and physical infrastructure.⁴⁸⁸ The revenue structure of such a model consists of a fixed component from rental charges and a variable component covering power usage, bandwidth, and ancillary

⁴⁸⁵ Faizan Haidar, “India’s data centre market to reach \$22 billion by 2030” (*ET*, 2026) <<https://economictimes.indiatimes.com/industry/services/property/-/cstruction/indias-data-centre-market-to-reach-22-billion-by-2030/articleshow/130228647.cms?from=mdr>> accessed on 30 April 2026.

⁴⁸⁶ Claude Brown, “Securitisation: The principles of data center financing” (*ReedSmith*, 2025) <<https://www.reedsmith.com/articles/securitization-the-principles-of-data-center-financing/>> accessed on 30 April 2026.

⁴⁸⁷ “The Expanding Data Center Business and its Future” (*KPMG*, 2022) <<https://kpmg.com/ip/en/insights/2022/03/datacenter-business.html>> accessed on 30 April 2026.

⁴⁸⁸ “What is a colocation data center?” (*Flexential*, 2026) <<https://www.flexential.com/resources/blog/colocation-data-center>> accessed on 30 April 2026.

services. About securitisation implications, the fixed rental stream makes the model potentially securitable; however, the variable-linked component makes it difficult to standardise and isolate.

ii. Hyperscaler Model:

The Hyperscaler Model operates at a large scale, leasing to hyperscale cloud providers. The contractual structure of such a model involves a long-term agreement, which is typically entered into for 10 to 20 years, in addition to capacity-based commitments.⁴⁸⁹ About the securitisation implications, the revenue model is the closest approximation to bankable receivables due to its predictability and contractually locked-in time period. However, due to exposure to renegotiation risk and the strategic dependence on a few large customers, it is not a risk-free securitisation.

iii. Enterprise Hosting Model:

The Enterprise Hosting Model involves the provision of IT infrastructure management, storage, and related services, typically involving customised enterprise solutions.⁴⁹⁰ The revenue structure is primarily based on contractual income and service-based income linked to ongoing performance and delivery. Regarding the securitisation implications, the revenue cannot be classified as receivables, as it heavily depends on the operator's operational capability, along with weak bankruptcy remoteness and difficulty with true sale structuring.

In conclusion, data centre revenues are typically a hybrid mix of fixed, variable, and ancillary streams, which is central to assessing securitisation feasibility. Data centre's profit makes it non-uniform and multilayered, challenging the traditional securitisation requirement of homogeneous and predictable receivables. It now necessitates segregation of cash flow and selective structuring of securitisable components. Thus, data centres exhibit financial characteristics that align more closely with infrastructure assets than with traditional securitisable pools, posing structural challenges for classical securitisation frameworks.

III. Securitisation's Legal and Financial Framework

The securitisation framework in India is predominantly governed by the SARFAESI Act of 2002 and the guidelines and directions issued by the Reserve Bank of India.⁴⁹¹ Based on these laws, the core structure of a securitisation transaction could be brief in a way that an originator (entity) holding financial assets, typically known as receivables, transfers a pool of it to a special purpose vehicle (SPV) where such a sale qualifies as a true sale. Following this, the SPV issues securities to investors, who subscribe to them based on expected cash flows that are periodic in nature and distributed to investors through a defined waterfall model.

In a nutshell, traditional securitisation assumes the existence of financial receivables and a predictable repayment schedule. The '*existence of financial receivables*' poses an issue with the DCS as data centre revenue may not qualify as 'financial assets' and might often include future, contingent, and service-linked cash flow. In contrast to the traditional securitisation framework, data centre revenue is hybrid, operationally dependent, and partially contingent, resulting in a

⁴⁸⁹ "Engineering, Procurement and construction (EPC) contracts in the solar sector"(PwC, 2024)<<https://www.pwc.com/m1/en/blogs/pdf/epc-contracts-in-solar-sector.pdf>> accessed on 30 April 2026.

⁴⁹⁰ Iaas, Paas, Saas (IBM,2026)< <https://www.ibm.com/think/topics/iaas-paas-saas>> accessed on 30 April 2026.

⁴⁹¹ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

structural mismatch between the legal requirements of securitisation and the economic nature of data centre cashflow.

Accordingly, an analysis of different forms of securitisation is essential to determine which structure best accommodates the hybrid, operationally contingent, and service-linked cash flows generated by data centre services while remaining compliant with the existing legal framework.

i. Pass-Through Certificates (PTCs):

Under the PTCs, an SPV passes underlying cash flows directly to investors, who bear the credit and prepayment risks, and the same SPV does not engage in active reinvestment. With regard to applicability to data centres, this method is suitable only where stable, fixed receivables can be isolated, as inconsistent cash flow reduces its effectiveness.⁴⁹²

ii. Pay-Through Structures:

Under Pay-Through structures, an SPV reconfigures cash flow to create tranches with risk-return profiles.⁴⁹³ It features active liability management, a credit enhancement mechanism, and a flexible structuring. With regard to applicability to data centres, this method is potentially more adaptable, as it can accommodate variable cash flows. However, this method still depends on the baseline predictability of the underlying assets.

iii. Synthetic Securitisation:

Under Synthetic securitisation, an SPV transfers credit risk without an actual transfer of assets by using credit derivatives and guarantees.⁴⁹⁴ This method transfers the assets remaining on the originator's balance sheet while transferring the risk to investors. With regard to applicability to data centres, this method may be relevant where the sale of receivables is not feasible and where regulatory constraints and the complexity of structuring in India pose challenges.

In conclusion, the existing securitisation structures are premised on financial receivables with predictable cash flows, whereas Data centre assets exhibit hybrid, operational, and future-oriented cash flows. While certain elements, particularly fixed lease revenues, may be amenable to securitisation, the asset class as a whole does not fit seamlessly into traditional securitisation frameworks, necessitating hybrid or evolved structuring approaches.

IV. Global Market Practice

Developments in the global market demonstrate that pure-play DCS receivables remain limited; however, the industry has evolved to include functionally equivalent structures such as capital recycling, risk distribution, and future cashflow monetisation, which achieve similar outcomes. As per the macro trend, data centres are increasingly treated as 'core infrastructure assets' and 'digital

⁴⁹² "What are Pass-Through Certificates" (Indiabonds, 2024) <
<https://www.indiabonds.com/bonduni/blogs/what-are-pass-through-certificates-ptcs/>> accessed on 30 April 2026.

⁴⁹³ "Securitization: Keyal Legal and Regulatory Issues" (WBD,2025)<
<https://documents1.worldbank.org/curated/en/747401468092077080/pdf/395540Securitization.pdf>> accessed on 30 April 2026.

⁴⁹⁴ Dayita Kanodia, "Significant Risk Transfer : Market, Structures, Economics and Risks".

real estate’, alongside the evolution of finance to reflect the hybrid nature of cash flows.⁴⁹⁵ Thus, there is a key structural shift from the traditional securitisation, which is receivables-centric, to asset-backed yield structures and cashflow-based financing models.

i. REIT and Yield Structures:

Entities like Equinix and Digital Realty own and operate large global portfolios of data centres, having successfully financed these assets through REIT structures.⁴⁹⁶ Under such structures, data centres share characteristics with commercial real estate and infrastructure. Thus, data centres can be structured as income-generating real estate portfolios.

To delve deeper into the structural framework, the assets are initially held within a REIT or REIT-like vehicles, where revenue is derived from lease rentals (*colocation or hyperscaler agreements*) along with the ancillary infrastructure services, and investors hold units in the REIT. Moreover, the cash flow is distributed via periodic income being given as a dividend based on the net operating income of the portfolio.

The REIT structure entails four key features: Firstly, ‘*Stable Rental Yield*,’ which involves long-term contracts (often 10 to 20 years) with high switching costs, making data centre migration expensive and complex and often resulting in sticky tenants and high renewal probability.⁴⁹⁷ Secondly, ‘*Listed Investment Vehicles*,’ which include REITs, are publicly traded entities that facilitate price discovery through market-driven valuations and ease of liquidity, enabling investors to exit.⁴⁹⁸ Thirdly, ‘*Institutional Investor Participation*,’ where key participants such as pension funds, sovereign wealth funds, and insurance companies are attracted to the structure due to its predictable income streams, low correlation with traditional assets, and long-duration yield.⁴⁹⁹ Fourthly, ‘*Portfolio Diversification*,’ wherein diversification could be done across geographies, tenant profiles and contract types, resulting in reduced volatility and stabilised aggregate cashflows.

To sum up, the REIT model exposes investors to overall portfolio performance rather than individual receivables, as it monetises on asset ownership and operating income. Unlike securitisation, there is neither a transfer of receivables nor an SPV issuing asset-backed securities. It demonstrates that the market accepts data centres as yield-generating assets; however, it does not satisfy the legal requirements for securitisation. Therefore, REITs are economically similar but legally distinct from securitisation.

⁴⁹⁵ “Emerging Trends in Real Estate” (PwC, 2026) <<https://www.pwc.com/gx/en/industries/financial-services/assets/uli-emerging-trends-global-report-2026.pdf>> accessed on 30 April 2026.

⁴⁹⁶ “Global Data Centres Report” (Knight Frank, 2025) <<https://content.knightfrank.com/research/2982/documents/en/data-centres-global-report-2025-12054.pdf>> accessed on 30 April 2026.

⁴⁹⁷ “Hyperscale meets hyperlocal: Value maximization in the data centre boom” (EY,2026) <<https://www.ey.com/content/dam/ey-unified-site/ey-com/en-uk/generic/documents/ey-uk-data-centre-report-25.pdf>> accessed on 30 April 2026.

⁴⁹⁸ “Understanding REITs and INVITs”(SEBI, 2025) <https://investor.sebi.gov.in/understanding_reit_invit.html> accessed on 30 April 2026.

⁴⁹⁹ “ Investing in the ASEAN infrastructure asset class” (PwC, 2026) <<https://www.pwc.com/sg/en/publications/assets/cpi-report-3-infrastructure-asset-class.pdf>> accessed on 30 April 2026.

ii. Structured Transactions:

Structured transactions move closer to securitisation in economic terms, focusing mainly on cash flow monetisation and risk allocation, even if they do not follow classical securitisation structures.⁵⁰⁰ Such transactions are classified into three structures: firstly, ‘*Sale Leaseback Transactions*,’ in which data centre owners sell the assets to investors who become the legal owners, following which the original operator leases the asset back and continues business operations.⁵⁰¹ The economic objective behind such a structure is to unlock capital tied up in physical infrastructure, converting illiquid assets into liquid funds. Such a structure is based on a long-term lease agreement, creating predictable payment obligations and a specific risk allocation: the investor bears the ownership risk, and the operator bears the operational risk. With regard to securitisation, the lease payments functionally resemble fixed receivables; however, there is neither pooling nor issuance of securities. Thus, it mimics the economic effect of securitisation without legal form.

Secondly, ‘*Portfolio Financing*,’ wherein multiple data centre assets are aggregated into a single financing structure, with financing raised against combined cash flows. Such a structure reduces reliance on a single asset, allowing enhanced creditworthiness, as a larger, diversified pool lowers perceived risk. With regard to securitisation, the structure is similar to the pooling of receivables but differs in its legal structure, as it remains secured lending. Thirdly, ‘*Asset Based Debt*,’ wherein the lenders provide financing based on the projected cash flows, where security includes assignment of contracts, charge over assets and control over cashflow accounts. Such a structure is based on cash flow-based lending focused on revenue-generating capability, with a heavy reliance on long-term contracts and creditworthy counterparties. With regard to securitisation, this structure closely resembles project financing and depends on the underlying cash flow.

Therefore, it can be observed that there is a clear shift from traditional securitisation towards hybrid financing models, driven by the nature of data centre cash flows, which are partly derived from contractual, operational, and variable sources. To conclude, global financing structures blur the distinction between securitisation and project finance, reflecting the hybrid and evolving nature of data centre cash flows.

V. Can Data Centre Cash Flow Be Securitised?

The question of whether data centre cash flows can be securitised lies at the intersection of traditional securitisation principles and the evolving nature of digital infrastructure revenues, requiring a careful evaluation of asset identification, cash flow stability, legal permissibility, and structural adaptability.

i. Identification of Underlying Assets:

For a securitisation transaction, the first and foremost thing to do is ‘*Identification of the Underlying Assets*,’ i.e., whether there are any assets with clearly identifiable financial

⁵⁰⁰ “India Securitisation 2025” < <https://vinodkothari.com/wp-content/uploads/2025/05/Part-A.pdf> > accessed on 30 April 2026.

⁵⁰¹ “ABS frontiers: Equipping Data Centres through Securitization” (S&P Global,2026)< <https://www.spglobal.com/ratings/en/regulatory/article/abs-frontiers-equipping-data-centers-through-securitization-s101645975> > accessed on 30 April 2026.

receivables.⁵⁰² In data centres, there is no single, uniform set of assets. Instead, the revenue arises from lease agreements, usage-based services, and operational services contracts. The core issue that arises here is the lack of a clearly identifiable, homogeneous asset pool. Delving deep into the nature of ‘*lease revenue*,’ derived either from colocation agreements or hyperscaler contracts, it is fixed, periodic payments, contractually enforceable, and often of a long-term nature. The legal character closely resembles that of a lease receivable and may qualify as an actionable claim or a receivable capable of assignment.

For instance, a data centre enters into a 15-year lease with a hyperscaler, with monthly payments fixed and contractually committed, which could, in theory, be assigned to an SPV and used as a securitisation pool. However, such revenue is often bundled with power usage and service obligations, making it difficult to isolate the pure lease component. Moreover, concerning such service-based revenue, payment is often linked to performance and delivery and does not constitute an independent financial obligation. In addition, such revenue often fluctuates with customer usage and external factors, such as energy prices. This leads to an issue where such revenue cannot be transferred or assigned, may require customer consent, and ultimately makes it difficult to model long-term cash flow.

Thus, the absence of a clearly identifiable and homogeneous receivable pool is the first and most fundamental barrier to data centre securitisation.

ii. Cash Flow Predictability Analysis:

Data centre revenue has several positive indicators that support the securitisation process, starting with the long-term contractual framework, often spanning 10 to 20 years, which provides high visibility into future revenue.⁵⁰³ Additionally, migrating data to another centre involves system reconfiguration and operational disruption, which supports strong customer stickiness and low churn. Additionally, the tenants of such data centres are often large global technology companies, which significantly reduces default risk. Lastly, many contracts include a minimum usage commitment clause, which leads to baseline revenue stability and predictability.

However, despite such positive indicators, the data centre’s revenues are no stranger to negative connotations, which contrast with securitisation as a whole. *Firstly*, revenue is often concentrated among a few hyperscalers, leading to a high reliance on a limited number of clients and an imbalance in negotiating power. *Secondly*, long-term contracts are often prone to renegotiation due to technological shifts and market competition, thereby affecting the predictability of future cash flows. *Thirdly*, a significant portion of revenue is tied to service usage, which ultimately leads to cash flow volatility. Moreover, it also creates demand uncertainty, as continuous AI adoption and the cloud demand cycle make forecasting future demand difficult. *Lastly*, hardware evolution has been at a peak over the last two decades, putting data centres at risk of asset obsolescence and reduced revenue potential.

⁵⁰² “Indian Securitisation: Happening or waiting to happen” (VKC, 2026) <<https://vinodkothari.com/wp-content/uploads/2017/05/SECURITISATION-BOOKLET.pdf>> accessed on 30 April 2026.

⁵⁰³ “Bubble of Nothing” (CPE, 2026) <<https://publiccenterprise.org/wp-content/uploads/Bubble-or-Nothing.pdf>> accessed on 30 April 2026.

Thus, cash flows are predictable in part but not entirely stable, as they may support structured finance but challenge pure securitisation models.

iii. Legal Feasibility:

One of the foremost issues with DCS is whether customer contracts can be assigned, as such contracts may restrict assignment and might require counterparty consent. The implication of such a restriction is a limit on the transferability of receivables. DCS often go against the requirement of traditional securitisation, i.e., the data centre revenues are *firstly* future and conditional on performance, *secondly*, depend upon continued service, which leads to inspiration from the originator, *thirdly*, SVP must enforce payment rights, and if the services are not delivered, then the payment may not arise and would result in enforcement uncertainty. Data centre revenues challenge the traditional legal conception of receivables by blurring the line between contractual payment obligations and operational income.

iv. Structural Feasibility:

The structural feasibility of the securitisation hinges on addressing five critical areas: *firstly*, the SPV must effectively hold receivables and ensure legal risk isolation from the originator.⁵⁰⁴ It poses an issue because revenue generation is heavily dependent on integrated operations, making it difficult to fully disentangle the assets from the parent company's day-to-day activities. *Secondly*, there should be a clear segregation of securitised income is required to protect investors' interests; however, since revenues are often operationally pooled at the source, creating a waterproof barrier for specific cash flows presents significant technical and logistical hurdles.

Thirdly, a defined allocation priority must be established for the cash flow waterfall design: operating expenses first, then debt service, and finally investor returns. The issue of reduced predictability arises here as operational costs are often significant and variable. *Fourthly*, credit enhancement strategies are necessary to mitigate inherent cash flow uncertainty and enhance the credit profile of the notes, with a focus on reserve accounts, third-party guarantees, and over-collateralisation to provide a safety buffer for investors. *Lastly*, investors require high levels of performance visibility to track the health of the underlying assets, posing issues of monitoring and control, as the structure remains highly dependent on the operator's efficiency and poor management at the ground level directly impacts the feasibility of the entire deal.

All things considered, data centre cash flows do not neatly align with the traditional securitisation framework. Although it is partially feasible, certain components involving fixed lease revenue and long-term contracts can be structured as securitisable assets; however, given the structural realities, full-stack securitisation in its current form would not be feasible and would require segmentation and hybrid structures. Even where structuring is feasible, the risk factor remains critical. DCS is not a question of possibility but of adaptation, requiring a reconfiguration of traditional securitisation principles to accommodate hybrid, infrastructure-linked cash flows.

⁵⁰⁴ “Securitization 2024” (Chamber and Partners, 2024) <
https://gsk-lux.com/wp-content/uploads/2024/08/Chambers-Securitisation_2024.pdf> accessed on 30 April 2026.

VI. Risk Analysis

Risk analysis is a critical component of any securitisation exercise, as its viability depends not merely on the existence of receivables but also on the stability, predictability, and enforceability of the underlying cash flows. It is so because investors in securitised instruments primarily rely on cash flows rather than asset ownership, and unlike equity investors, they do not participate in upside, making downside risk assessment essential. Thus, credit rating agencies evaluate securitisation structures based on risk factors, as the presence of unquantifiable or non-traditional risks can adversely affect ratings and investor appetite.

Moreover, in addition to the limited and well-understood risk of traditional securitisation, data centre assets introduce additional layers of operational, technological and regulatory risk, which require careful assessment. Due to the hybrid nature of the data centre, cash flows make risk identification more complex, as revenue depends on both contractual obligations and ongoing performance. This requires effective risk mitigation mechanisms, such as diversification, credit enhancement, and contractual safeguards, all of which depend on a clear understanding of risks. Accordingly, a detailed risk analysis is pertinent to determine not only the feasibility of securitising data, but also the extent to which such risk can be mitigated within the existing financial and legal framework.

i. Cashflow, Revenue, and Operational Risk:

A significant portion of a data centre's revenue comes from a few long-term hyperscalers, making cash flows vulnerable to renegotiation or exit by a single tenant. Such hyperscalers rely heavily on them, which in turn reduces diversification and ultimately exposes the structure to sector-specific risks. Moreover, since a portion of income depends on service usage, fluctuations in usage reduce predictability. Lastly, given the evolving AI and cloud trends, long-term contracts may be renegotiated due to market competition or technological changes that affect both expected cash flow and future demand for data centre capacity.⁵⁰⁵

Moreover, data centres must maintain near-constant uptime, as any disruption would trigger penalties and revenue losses. It also highlights a service-level agreement compliance risk, where any failure to meet contractual performance standards may result in termination of the contract. To safeguard against such risk, continuous infrastructure investment reduces the free cash flow available to investors.

ii. Regulatory and Legal Risk:

Data centres face three core risks: *Firstly*, Data localisation requirements; *Secondly*, Cross-border data transfer restrictions; and *thirdly*, Assignment Restrictions. With regard to the data localisation requirement and cross-border data transfer restrictions, the Digital Personal Data Protection Act,⁵⁰⁶ 2023 permits cross-border transfers; the central government may notify restricted jurisdictions under section 16,⁵⁰⁷ creating controlled but uncertain boundaries around data storage obligations and the cross-border regime. Thus, demand for data centres is more regulation-driven than purely market-driven, where any regulatory

⁵⁰⁵ HenryKirkman, "Market Insight: AI Bubble Risk and Capital Cycles" (Verdantix,2025)<<https://www.verdantix.com/venture/report/market-insight--ai-bubble-risk-and-capital-cycles>> accessed on 30 April 2026.

⁵⁰⁶ Digital Personal Data Protection Act, 2023.

⁵⁰⁷ Digital Personal Data Protection Act, 2023, §16.

relaxation or tightening can materially alter the revenue projections underlying securitised assets. Moreover, international clients may prefer jurisdictions with fewer restrictions; in turn, Indian data centres may gain or lose demand depending on the regulatory stance.

With regard to the assignment restriction, section 37 of the Indian Contract Act, 1872,⁵⁰⁸ and the general principles of assignment establish that benefits under a contract may be assigned, but obligations cannot be assigned without consent. Additionally, the nature of data centre contracts often includes anti-assignment clauses and change-of-control restrictions. Thus, assignment of receivables is permitted, but assignment of obligations is restricted.

iii. Securitisation Specific Risks:

Under the Indian securitisation framework, a valid securitisation, as per the SARFAESI Act, 2002,⁵⁰⁹ and the Reserve Bank of India Securitisation Directions, requires an outright transfer of receivables from the originator to the SPV. The transfer must result in a legal isolation of assets with no control, credit risk, or economic benefit retained by the originator. Moreover, the originator should not be obligated to compensate investors for losses; otherwise, the transaction may be recharacterised as secured lending. Thus, if transfer is not a true sale, the courts or regulators may treat the transaction as a loan secured by receivables, rather than a securitisation.

Additionally, under the Insolvency and Bankruptcy Code, 2016,⁵¹⁰ the objective of bankruptcy remoteness is to ensure that securitised assets are insulated from the insolvency of the originator, and that the SPV is a legally independent, limited-purpose entity that is non-consolidated with the originator. Thus, if assets are not truly transferred, they may be treated as part of the originator's assets in insolvency.

Lastly, cash flows from backing securities must first be clearly identifiable and, secondly, segregated from general operational revenues. For this, the structural mechanism must use escrow accounts, collection accounts and defined payment waterfalls. Concerning data centres, their revenues are often pooled across multiple streams, and payments are received in common operational accounts. Thus, it creates a difficulty in ring-fencing specific receivables with a risk of commingling of funds.

VII. Indian Market Scenario, Opportunities, and Regulatory Feasibility

India is emerging as one of the major global data centre hubs, driven by digitisation, AI adoption, and growing demand for cloud computing. In 2025, India has a total installed capacity of approximately 1.3 to 1.5 GW and expected to exceed 4.5 GW by 2030.⁵¹¹ In addition, the market size is currently \$10 billion, projected to grow to around \$22 billion by 2030, and the broader infrastructure market is projected at \$60 billion by 2032, with a 20 to 30% CAGR across segments.⁵¹² Thus, in highly capital-intensive, rapidly scaling sectors, there is a strong need for

⁵⁰⁸ Indian Contract Act, 1872, §37.

⁵⁰⁹ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

⁵¹⁰ Insolvency and Bankruptcy Code, 2016.

⁵¹¹ "2025 Marks Highest-Ever Renewable Energy Expansion in India's Energy Transition Journey" (*PIB*, 2025)" <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2209478®=3&lang=1>> accessed on 30 April 2026.

⁵¹² "India's Data Centre Market to more than Double to Reach \$22 Billion by 2030" (*DD News*, 2026) <<https://ddnews.gov.in/en/indias-data-centre-market-to-more-than-double-to-reach-22-billion-by-2030>> accessed on 30 April 2026.

alternative financing mechanisms, including securitisation. This growth is driven mainly by three factors:

- i. *Data Localisation*: Localisation is driving the boom in data centre development in India today. The Data Protection Decree (DPDP) Act of 2023,⁵¹³ combined with existing and future mandates from other sectors such as the RBI and SEBI, has fundamentally changed the environment in which all parties operate.
- ii. *Geography*: The battleground is currently concentrated in Mumbai and Chennai, which account for 70 per cent of India's capacity.⁵¹⁴ We are also seeing the rise of edge computing. To deliver the current landscape of 4K streaming, online gaming, and IoT data, it now needs to move closer to consumers. This has been a driving factor and motivation to explore building to facilitate connection and establish more data centres across the nation.
- iii. *Capital Intensive*: The \$30 billion investment is not just a projection. The buildout is being financed by long-term capital from an institutional investor worldwide. Sovereign wealth funds, the way investors view Indian data centres as a core utility rather than a speculative real estate play, and the growing trend of data centre consolidation are also growing reasons.

Against this backdrop, securitisation presents a compelling opportunity to unlock capital from operational data centre assets by converting stable, contract-backed revenue streams, particularly long-term colocation and hyperscale lease components, into investable instruments. This not only enables developers to recycle capital and fund expansion but also opens the infrastructure asset class to a wider pool of institutional investors, such as pension funds and insurance companies, seeking predictable yield profiles.

There is not a single, linear process for scaling up this growing market. There are two powerful, at times conflicting, drivers that could help stimulate growth: a non-negotiable government policy directive on data sovereignty and the existential imperative to ensure sustainable resources. The major problems that could affect the growth are as follows:

- i. *Three Dilemmas*: While in many parts of the country the grid is expanding, it is still not 99.9999 per cent reliable as data centres should be.⁵¹⁵ This could lead us to the industry's dirty secret: the use of diesel generator farms for backup power. Even though it would not be an operational obstacle, it would be an environmental and regulatory dead end.
- ii. *The Green Imperative*: Currently, the green imperative is not a CSR initiative; it is a core business, with enterprises setting 100 per cent renewable energy goals, and US- and EU-based giants now auditing their entire global supply chains and colocation providers at the top of the list.⁵¹⁶

⁵¹³ The Data Protection Decree (DPDP) Act, 2023.

⁵¹⁴ "Indian Data Center revolution : Powering the trillion- dollar digital dream"(KPMG,2025)<<https://kpmg.com/in/en/blogs/2025/11/indias-data-center-revolution-powering-the-trillion-dollar-digital-dream.html>> accessed on 30 April 2026.

⁵¹⁵ David Roberts, "For data centres, a little flexibility goes a long way" (*Volts*, 2026) <<https://www.volts.wtf/p/for-data-centers-a-little-flexibility>> accessed on 30 April 2026.

⁵¹⁶ "India's data center revolution : Powering the trillion-dollar digital dream"(KPMG, 2025)<<https://kpmg.com/in/en/blogs/2025/11/indias-data-center-revolution-powering-the-trillion-dollar-digital-dream.html>> accessed on 30 April 2026.

- iii. *Workforce*: India has a world-leading IT workforce, but it does not have a world-class data centre workforce at the scale we need. This skill gap spans both the blue- and white-collar spectrums; policymakers and operators need to bridge it through PPP agreements for professional training.
- iv. *Approvals*: Building a data centre is not like building an office. It requires a complex web of permits covering land allocation, environmental approvals, power infrastructure, and fire safety codes, among others. Policymakers should create a “single window” clearance system for data centres.

Furthermore, as India continues to strengthen its digital infrastructure ecosystem, the standardisation of contracts, increased participation by global hyperscalers, and potential alignment with structures such as Infrastructure Investment Trusts (InvITs) could significantly enhance the bankability and structuring feasibility of such transactions. In this sense, securitisation could act as a bridge between the capital-intensive nature of data centres and the growing demand for scalable, long-term financing solutions.

VIII. Conclusion

With the rise of data centres as critical digital infrastructure, the infrastructure landscape has fundamentally changed. Economies have become increasingly data-driven, and the ability to secure such infrastructure is directly linked to the availability of efficient capital. Securitisation, in theory, offers a compelling solution, as it enables the monetisation of future cash flows and allows developers to unlock capital and recycle investment into new capacity. However, data centre securitisation does not neatly fit within the traditional framework. Unlike conventional securitised assets, data centre revenues are hybrid, combining lease-based income, usage-driven charges, and service-linked payments. This hybrid nature creates a structural mismatch with legal requirements such as identifiable receivables, true sale, and predictable cash flows.

Despite such a mismatch, it has been highlighted that the challenge is not one of impossibility but of adaptation, where certain components, especially long-term contracted lease revenue, exhibit characteristics amenable to securitisation. At the same time, operational dependencies, technological risks, and regulatory uncertainties prevent a full-scale adoption of pure securitisation structures. Where financing has evolved through hybrid structures that blend elements of securitisation, project finance, and real estate investment, the global market practice has reinforced this conclusion, and the Indian market also reflects a similar trajectory, with strong underlying demand and capital requirements, but reliance on traditional financing mechanisms.

Hence, the future of data centre financing in India is likely to lie in hybrid and transactional structures, where stable cash flows are selectively monetised. At the same time, operational components remain within traditional financing frameworks. Data centre securitisation, therefore, is not a question of viability in the abstract, but of structural evolution in practice, requiring a rethinking of securitisation principles to accommodate the realities of infrastructure-linked, operationally dependent cashflows in a digital economy.

SECURITISING HYBRID INFRASTRUCTURE: A SOLVENCY-LIQUIDITY STRESS-TEST FRAMEWORK FOR DATA CENTRES IN INDIA

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Abstract

Special Purpose Vehicles (SPVs) and hybrid financing structures serve as the principal institutional mechanisms through which capital is mobilized for data-centre development by conferring bankruptcy remoteness, asset segregation, and structured cash-flow allocation. Yet data-centre revenues are not fully stable in the way traditional receivables are: they depend on utilisation, uptime, energy continuity, technological performance, and refinancing conditions. This makes securitisation conceptually attractive but practically difficult, especially in India, where the asset class is still maturing.

This paper argues that India's data-centre market remains project-finance-led and that securitisation will become viable only through a hybrid transition in which cashflows are progressively standardised, ring-fenced, and made more resilient. Rather than treating securitization as a discrete legal transaction, the paper conceptualizes it as a developmental stage within infrastructure finance that requires progressive improvements in contractual discipline, credit enhancement design, and liquidity management capacity. It compares India with mature markets, develops a three-stage lifecycle model of data-centre financing, examines hybrid monetisation practices that improve bankability without achieving full risk transfer, and explains why securitisation has not yet scaled. It draws upon Indian regulatory frameworks governing infrastructure financing and investment trusts, structured finance practices in non-bank financial intermediation, and comparative stress-testing methodologies used in infrastructure and securitization markets.

The paper then proposes a solvency-liquidity stress-test framework to assess securitisation readiness as a threshold of financial resilience rather than a formal label. Its core contribution is to show that the barrier to securitisation lies not in legal impossibility, but in the maturity of underlying cashflows and the quality of risk allocation across the financing stack.

Keywords: *Data Centres, Securitization, Hybrid Financing, Liquidity Risk, Special Purpose Vehicles (SPVs), Infrastructure Finance, Solvency-Liquidity Stress Testing*

I. Introduction

The expansion of the digital economy has transformed data centres into critical infrastructure⁵¹⁷ supporting cloud computing, artificial intelligence, and digital services.⁵¹⁸ Their development requires large, long-term capital commitments,⁵¹⁹ making the structure of financing central to both market efficiency and financial stability.⁵²⁰ In modern financial systems, securitization has emerged as a key mechanism for mobilizing capital for infrastructure by converting illiquid cash flows into tradable financial claims.⁵²¹ Classical securitization literature conceptualizes this process as a form of risk transfer and liquidity creation,⁵²² whereby asset cash flows are legally isolated from the originating entity and transferred to investors through bankruptcy-remote structures. This arrangement enables financial institutions to recycle capital and distribute risk across a wider investor base, supporting deeper financial intermediation.⁵²³

Banking intermediation theory situates securitization within an extended credit system in which banks and non-bank financial institutions jointly allocate risk and liquidity.⁵²⁴ Non-banking financial companies (NBFCs) and structured finance vehicles play a particularly important role in financing capital-intensive sectors by enabling specialised risk allocation⁵²⁵ and facilitating access to institutional capital. In this framework, securitization typically represents the final stage of the financing lifecycle, allowing projects initially funded through bank lending to transition into market-based funding once cash flows stabilise. Where this transition remains incomplete, financing structures depend on repeated refinancing and become vulnerable to liquidity stress.⁵²⁶ Banks, however, do not fully exit upon securitization; they continue to anchor the system through origination, underwriting, warehousing of exposures, and the provision of liquidity backstops and credit enhancements, particularly where cash flows remain insufficiently standardized to support full risk transfer.

⁵¹⁷ Ministry of Electronics & Information Technology (e-Governance Division), ‘Draft for Discussion: Data Centre Policy 2020’ <https://www.nitiforstates.gov.in/public-assets/Policy/policy_files/PNC510C000384.pdf> accessed 20 April 2026.

⁵¹⁸ World Bank, ‘World Development Report 2021: Data for Better Lives’ (2021) <<https://wdr2021.worldbank.org/>> accessed 20 April 2026.

⁵¹⁹ Inderst G, ‘Infrastructure as an Asset Class’ (2010) 15(1) *EIB Papers* 70 <<https://ssrn.com/abstract=1860947>> accessed 20 April 2026.

⁵²⁰ Centre for Public Enterprise, Advait Arun, ‘Bubble or Nothing: Data Centre Project Finance’ (November 2025) <<https://publiccentreprise.org/wp-content/uploads/Bubble-or-Nothing.pdf>> accessed 20 April 2026.

⁵²¹ Schwarcz SL, ‘The Alchemy of Asset Securitization’ (1994) 1 *Stanford Journal of Law, Business and Finance* 133 <<https://ssrn.com/abstract=868520>> accessed 20 April 2026.

⁵²² Gorton G and Metrick A, ‘Securitized Banking and the Run on Repo’ (2012) 104(3) *Journal of Financial Economics* 425 <<https://doi.org/10.1016/j.jfineco.2011.03.016>> accessed 20 April 2026.

⁵²³ Zagonov M, ‘Securitization and Bank Intermediation Function’ (MPRA Paper No 34961, University Library of Munich, 2011) <<https://ideas.repec.org/p/pramprapa/34961.html>> accessed 20 April 2026.

⁵²⁴ Diamond DW, ‘Financial Intermediation and Delegated Monitoring’ (1984) 51(3) *Review of Economic Studies* 393 <<https://doi.org/10.2307/2297430>> accessed 20 April 2026; Adrian T and Shin HS, ‘Money, Liquidity and Monetary Policy’ (2009) 99(2) *American Economic Review* 600 <<https://doi.org/10.1257/aer.99.2.600>> accessed 20 April 2026.

⁵²⁵ Pozsar Z, Adrian T, Ashcraft AB and Boesky H, ‘Shadow Banking’ (FRB of New York Staff Report No 458, 2010) <<https://ssrn.com/abstract=1645337>> accessed 20 April 2026.

⁵²⁶ Brunnermeier MK and Oehmke M, ‘The Maturity Rat Race’ (2010) <https://www.newyorkfed.org/medialibrary/media/research/conference/2010/fin_interm/Brunnermeier_Oehmke.pdf> accessed 20 April 2026.

Data centres challenge this established model because their revenues are operationally contingent rather than contractually predetermined.⁵²⁷ Income streams depend on utilisation, uptime reliability, energy availability, and technological performance, making cash flows dynamic and difficult to standardize for securitization. In India, despite rapid growth and infrastructure recognition, the sector remains dominated by project-finance lending structures.⁵²⁸ Emerging hybrid financing practices, such as partial monetisation⁵²⁹ and structured investment vehicles have improved bankability but have not yet enabled full risk transfer as cash flows remain insufficiently standardised, tenant concentration persists, and long-term operational risks, particularly energy dependence and technological obsolescence, cannot be cleanly externalized to capital markets.

The central question is therefore not one of capital adequacy alone, but whether the prevailing investment profile incorporates sufficient liquidity resources⁵³⁰ to support the transition from project finance to securitization. In capital-intensive infrastructure sectors, financial resilience depends not only on the volume of capital deployed, but on the ability of financing structures to withstand refinancing pressures,⁵³¹ revenue variability, and market liquidity shocks over the asset lifecycle. Where long-term assets are financed through rolling debt or concentrated funding sources, vulnerability arises from liquidity mismatches rather than balance-sheet insolvency.

This manuscript seeks to ascertain whether, and to what degree, selected hybrid financing practices can prepare the data-centre market for eventual securitization. Rather than treating securitization as a discrete legal transaction, the analysis conceptualizes it as a developmental stage within the financing lifecycle, requiring progressive improvements in risk allocation, contractual discipline, and liquidity management. To operationalise this transition, the paper proposes a *joint solvency-liquidity stress-testing framework* grounded in a progressive capability-oriented approach. Under this framework, securitization readiness is assessed not solely by the presence of stable cash flows or capital adequacy, but by the demonstrated capacity of financing structures to withstand adverse operating and refinancing conditions while maintaining liquidity continuity. The proposed model therefore evaluates the resilience of hybrid financing arrangements across the asset lifecycle, identifying the threshold at which a project evolves from dependence on project-finance support toward the institutional and financial characteristics necessary for capital-market-based risk transfer.

⁵²⁷ CBRE, 'Global Data Centre Trends 2025' (24 June 2025)

<<https://www.cbre.com/insights/reports/global-data-centre-trends-2025>> accessed 20 April 2026.

⁵²⁸ *Ibid.*

⁵²⁹ PTI, 'CapitaLand India Trust sells 20.2% stakes in 3 data centre assets for ₹702 crore' *The Week* (31 December 2025)

<<https://www.theweek.in/wire-updates/business/2025/12/31/capitaland-india-trust-sells-20.2-pc-stakes-in-3-data-centre-assets-for-rs-702cr.html>> accessed 20 April 2026.

⁵³⁰ International Monetary Fund, 'Annual Report 2015: Tackling Challenges Together' (2015)

<<https://www.imf.org/external/pubs/ft/ar/2015/eng/index.htm>> accessed 20 April 2026.

⁵³¹ Diamond DW and Rajan RG, 'Liquidity Risk, Liquidity Creation, and Financial Fragility: A Theory of Banking' (2001) 109(2) *Journal of Political Economy* 287 <<https://doi.org/10.1086/319552>> accessed 20 April 2026.

II. Lifecycle of Data Centres

Data Centres have been identified to represent an “*emergent asset class*” - infrastructure by necessity, real estate by form, and compute by function”,⁵³² but this hybridity is not merely classificatory; it has direct implications for how risk is priced and transferred in financial markets.⁵³³ Unlike traditional infrastructure assets with relatively stable and demand inputs which can be diversified or hedged, data centres rely on highly concentrated supply chains for critical components, most notably lithium-ion battery systems used in uninterrupted power supply (UPS) architectures.⁵³⁴ These systems are indispensable to maintaining uptime, yet their supply chains are geographically anchored.⁵³⁵ This exhibits strong demand-side stickiness, driven by high switching costs, long deployment timelines, and dependence on power, land, and complex infrastructure requirements such as grid connectivity and Availability Zones, permitting regimes,⁵³⁶ land-use controls and environmental compliance requirements, all of which are factors external to the financing structure.⁵³⁷ In India, this materializes as restrictions on laying captive fibre for data centre use and lack of clarity on building codes,⁵³⁸ rendering capacity expansion slow and adjustment to shocks uneven, embedding illiquidity at the asset level.

This illiquidity translates into cash flows whose revenue visibility and pricing power is contingent on utilisation levels, tenant concentration, energy costs, and technological recalibration,⁵³⁹ thereby generating risks of obsolescence and demand volatility. Unlike traditional assets, amenable to securitization, such as trade receivables, which are short-term and self-liquidating and capable of being pooled within established originate-to-distribute frameworks,⁵⁴⁰ data centre revenues resist an uniform cash flow profile and remain forward-looking and heterogeneous, constraining valuation and secondary risk transfer.

⁵³² Ahmed S, ‘Why Data Centres Are Becoming Infrastructure Assets, Not Just Real Estate’ (Medium) <<https://medium.com/ahmeds-tech-brief/why-data-centres-are-becoming-infrastructure-assets-not-just-real-estate-62c65710f8f2>> accessed 20 April 2026.

⁵³³ CBRE Investment Management, ‘The Case for Data Centre Investments’ (2023).

⁵³⁴ Hurll B, ‘Powering the Cloud, Powered by China: The Lithium Dependency Behind Global Data Centers’ (Global Financial Market Review, 29 May 2025) <<https://www.gfmreview.com/commodities/powering-the-cloud-powered-by-china-the-lithium-dependency-behind-global-data-centers>> accessed 20 April 2026.

⁵³⁵ Ninad D Sheth, ‘Data Centres: From Auxiliary Asset to Strategic Infrastructure’ (The Secretariat, 25 March 2026) <<https://thesecretariat.in/article/data-centres-from-niche-infrastructure-to-strategic-asset>> accessed 20 April 2026.

⁵³⁶ PTI, ‘Servers running, but snags remain: India’s data trade faces several pain points’ (STT GDC India) <<https://share.google/xQfOFRXI3zYuTbCcY>> accessed 20 April 2026.

⁵³⁷ Baker McKenzie, ‘The Rise of Digital Infrastructure: Data Centres’ (June 2021) <https://www.bakermckenzie.com/-/media/files/insight/publications/2021/06/the-rise-of-digital-infrastructure--data-centres_06_2021.pdf> accessed 20 April 2026.

⁵³⁸ PTI, ‘Servers running, but snags remain: India’s data trade faces several pain points’ (STT GDC India) <<https://share.google/xQfOFRXI3zYuTbCcY>> accessed 20 April 2026.

⁵³⁹ McKinsey & Company, ‘Scaling Bigger, Faster, Cheaper Data Centres with Smarter Designs’ (1 August 2025) <<https://www.mckinsey.com/industries/private-capital/our-insights/scaling-bigger-faster-cheaper-data-centres-with-smarter-designs>> accessed 20 April 2026.

⁵⁴⁰ Financial Stability Board, ‘Non-Bank Financial Intermediation: Systemic Risk Assessment’ (2023).

Three Stage Lifecycle

These characteristics map onto a three-stage financing lifecycle. In the *initial stage*, projects are financed predominantly through bank-led construction debt, reflecting high uncertainty and limited revenue visibility.⁵⁴¹ As projects move toward partial stabilisation through pre-leasing and long-term contracts, financing structures incorporate elements of cashflow-based lending, including lease rental discounting and structured debt instruments.⁵⁴² However, their preference of debt or equity does not conform to a strict pecking order, irrespective of market conditions.⁵⁴³ This intermediate stage also remains exposed to refinancing risk and credit conditions, particularly in bank-dominated systems where credit supply is procyclical and especially pronounced for emerging economies.⁵⁴⁴ The *final stage* which is envisaging securitisation or capital market take-out, requires not only predictable cashflows but also institutional mechanisms capable of absorbing and redistributing liquidity risk. It is at this stage that the transition in India remains incomplete.

Liability appraisal is done by estimating lifecycle cash flows and applying an appropriate discount rate using proxy pricing through comparable traded cash flows under the law of one price, with instruments such as corporate bonds, indexed-linked, fixed interest, or zero-coupon benchmarks, but remains difficult and imperfect due to absence of observable market signals and heterogeneous revenue streams.⁵⁴⁵

Infrastructure Investment Trusts (InvITs), which could potentially facilitate this transition, are structurally designed around the assumption of stable and distributable cashflows.⁵⁴⁶ The regulatory framework mandates high distribution ratios based on *Net Distributable Cash Flow* (NDCF), implicitly treating underlying assets as yield-generating and liquid over the investment horizon.⁵⁴⁷ However, this assumption is misaligned with the economic reality of data centre assets. While cashflow adequacy may be projected under baseline scenarios, liquidity adequacy, defined as the ability to meet redemption or refinancing pressures without distress, remains unmodelled within the InvIT framework. This distinction between cashflow adequacy and liquidity adequacy is critical since an increase in capital adequacy ratio does not lead to deepening of financial intermediation⁵⁴⁸ which could have lowered external financing

⁵⁴¹ Reserve Bank of India, 'Report of the Committee on the Development of Housing Finance Securitisation Market' (2019).

⁵⁴² Bechara A, 'Financing Data Centres: DCMT Securitisation Structure in Focus' (Dentons, 11 August 2025) <<https://www.dentons.com/en/insights/alerts/2025/august/11/financing-data-centres-dcmt>> accessed 20 April 2026.

⁵⁴³ Dong M, Loncarski I, ter Horst J and Veld C, 'What Drives Security Issuance Decisions: Market Timing, Pecking Order, or Both?' (2012) 41(3) *Financial Management* 637 <<https://doi.org/10.1111/j.1755-053X.2012.01213.x>> accessed 20 April 2026.

⁵⁴⁴ Gworo LS, Ogutu VO, Omare AN, Simiyu DW and Ondabu IT, 'Procyclicality of the Financial Systems in Emerging Economies' (2023) 6(10) *Journal of Economics, Finance and Management Studies* 5010 <<https://doi.org/10.47191/jefms/v6-i10-33>> accessed 20 April 2026.

⁵⁴⁵ University of Reading, Department of Real Estate and Planning, 'Appraisal of Data Centres: Deconstructing the Cash Flow' (Working Paper No 04/07).

⁵⁴⁶ Securities and Exchange Board of India, 'SEBI (Infrastructure Investment Trusts) Regulations 2014'.

⁵⁴⁷ Securities and Exchange Board of India, 'SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015'.

⁵⁴⁸ International Monetary Fund, 'International Capital Markets: Developments, Prospects, and Key Policy Issues' (IMF Working Paper WP/99/36, 1999) <<https://www.imf.org/external/pubs/ft/wp/1999/wp9936.pdf>> accessed 20 April 2026.

costs for enterprises.⁵⁴⁹ That gap is sharper in mature markets, where data-centre sponsors already use dedicated ABS and CMBS structures.

KBRA reports that U.S. data-centre ABS and CMBS issuance reached \$48.69 billion across 88 transactions by May 2025,⁵⁵⁰ with European securitisations also appearing in 2024 and 2025;⁵⁵¹ these transactions are generally backed by built and stabilised assets with little remaining construction or lease-up risk.⁵⁵² By contrast, India's market remains in the project-finance and hybrid-monetisation stage.

Existing regulatory approaches to stress testing in non-bank financial intermediation primarily focus on solvency metrics, without adequately capturing the timing mismatches between inflows and outflows under stressed conditions.⁵⁵³ In the context of illiquid infrastructure assets, such mismatches can result in inability to withstand redemption shocks without triggering fire sales,⁵⁵⁴ valuation compression, and amplification of market stress.⁵⁵⁵ InvITs, lacking an integrated framework to assess these dynamics, are therefore exposed to redemption and refinancing risks that are not reflected in standard disclosure or valuation metrics.

It is within this gap that a *Liquidity-at-Risk* (LaR)⁵⁵⁶ framework becomes necessary. Unlike traditional risk measures, which focus on expected losses or capital adequacy, LaR models the extent to which an entity may be unable to meet its liquidity obligations over a specified horizon under adverse conditions.⁵⁵⁷ Applied to data centre financing, such a framework would enable the joint assessment of cashflow variability, asset illiquidity, and redemption pressures, thereby providing a more accurate representation of risk. In doing so, it addresses a fundamental limitation in existing structures: the assumption that predictable cashflows are sufficient to ensure financial stability.

Hybrid financing structures have emerged as a partial response to these constraints, combining construction finance with elements of cashflow-based lending and limited equity participation. While these structures improve bankability and introduce some degree of revenue visibility, they fall short of enabling full securitisation due to unstandardised and weakly ring-fenced

⁵⁴⁹ Rajan RG and Zingales L, 'What Do We Know about Capital Structure? Some Evidence from International Data' (1995) 50(5) *Journal of Finance* 1421.

⁵⁵⁰ Kroll Bond Rating Agency, *Data Centres: A Comparison of ABS and CMBS Structures* (May 2025) <<https://www.kbra.com/publications/wtXJZSZt/kbra-releases-research-data-centers-a-comparison-of-abs-and-cmb-s-structures>> accessed 22 April 2026.

⁵⁵¹ *Ibid.*

⁵⁵² Kroll Bond Rating Agency, *Data Centre ABS Global Rating Methodology* (January 2026) <<https://www.kbra.com/publications/DJRqYcWm/kbra-releases-data-center-abs-global-rating-methodology>> accessed 22 April 2026.

⁵⁵³ Financial Stability Board, 'Policy Proposals to Enhance Money Market Fund Resilience' (2021).

⁵⁵⁴ International Monetary Fund, 'Shadow Banking around the Globe: How Large, and How Risky?' (IMF Working Paper WP/17/226, 2017) <<https://www.imf.org/-/media/files/publications/wp/2017/wp17226.pdf>> accessed 20 April 2026.

⁵⁵⁵ International Organization of Securities Commissions, 'Liquidity Risk Management for Collective Investment Schemes' (2022).

⁵⁵⁶ Cont R, Kotlicki A and Valderrama L, 'Liquidity at Risk: Joint Stress Testing of Solvency and Liquidity' (IMF Working Paper WP/20/82, 2020) <<https://www.imf.org/-/media/Files/Publications/WP/2020/WP2082.ashx>> accessed 20 April 2026.

⁵⁵⁷ Bank for International Settlements, 'Liquidity Stress Testing Frameworks' (2020).

revenues.⁵⁵⁸The result is a transitional financing model that mitigates, but does not resolve, the underlying liquidity risks embedded in the asset class.

III. Structuring the Asset: SPVs, Contracts, and Tax Pass-Through

If securitisation requires cash flows that are legally isolated, sponsor-independent, and operationally stable, the design of the SPV becomes significant to identify how far these conditions can be approximated in practice. Each kind of structure (ProjectCo, Portfolio SPV, DevCo/YieldCo, and HoldCo), addresses different elements of this problem.

At the earliest stage, *ProjectCo* performs the narrow but essential function of ring-fencing construction and commissioning risk. Through milestone-linked disbursements, escrow controls, and step-in rights, it ensures that capital deployment is tied to verifiable progress.

Portfolio SPVs attempt to soften these exposures by pooling multiple assets or tenants, thereby reducing idiosyncratic shocks.⁵⁵⁹ However, diversification comes at the cost of contractual heterogeneity and structural complexity.

The *DevCo/YieldCo* structure moves closer to the logic required for securitisation by separating development risk from stabilised income generation. By deferring monetisation until occupancy, revenue, and operational benchmarks are achieved, it attempts to produce a more predictable yield profile that can be housed within a trust-like vehicle.⁵⁶⁰ However, even here, the apparent stability of the yield vehicle remains contingent on underlying conditions.

HoldCo arrangements, by contrast, operate largely at the level of sponsor financing and exit. They facilitate capital recycling and aggregation, but do not contribute meaningfully to the isolation of project-level cashflows.⁵⁶¹

Contractual Layer

The contractual layer determines how cash flows are preserved, sequenced, and made assignable.⁵⁶²On-chain tools may improve timestamping, notice sequencing, and auditability, but legal enforceability still turns on the off-chain assignment deed, escrow agreement, lease documentation, and trust instrument, meaning that digital infrastructure can enhance traceability but cannot substitute for legal isolation. In mature markets, disclosure and surveillance are not left to drafting alone: asset-level filings and investor-report templates are

⁵⁵⁸ Cocco A, 'Structured Credit Products and Repackaged Securities' in *The Handbook of European Structured Financial Products* (Wiley, 2004) <<https://doi.org/10.1002/9780470717361>> accessed 20 April 2026.

⁵⁵⁹ Irem Demirci, Piet Eichholtz and Erkan Yönder, 'Corporate Diversification and the Cost of Debt: Evidence from REIT Bank Loans and Mortgages' (2020) 61(3) *Journal of Real Estate Finance and Economics* 316, 330.

⁵⁶⁰ Norton Rose Fulbright, 'Dissecting the YieldCo Structure: Project Finance Perspective' (14 August 2015) <<https://www.projectfinance.law/publications/2015/august/dissecting-the-yieldco-structure-project-finance-perspective>> accessed 21 April 2026.

⁵⁶¹ Matheson LLP, 'HoldCo Financing: Trends, Key Features and Issues' <<https://www.matheson.com/insights/holdco-financing-trends-key-features-and-issues/>> accessed 21 April 2026.

⁵⁶² Soku Byoun and Zhaoxia Xu, 'Contracts, Governance, and Country Risk in Project Finance: Theory and Evidence' (2014) 26 *Journal of Corporate Finance* 124.

built into the securitisation regime itself under Reg AB II and the EU disclosure standards.⁵⁶³ In India, by contrast, legal isolation still depends primarily on the trust deed, assignment deed, and transaction documents.

Instruments such as milestone escrows, SNDA and attornment clauses, variation controls, termination and step-in rights, and DSRA-backed waterfalls reduce discretion, enforce continuity, and create conditional predictability in otherwise volatile operating environments. However, greater governability does not translate into securitisability. Cashflows continue to depend on tenant demand, uninterrupted power supply, and technological relevance, all of which remain external to the contractual framework.⁵⁶⁴

Master Service Agreements (MSAs) contains agreed commercial terms. Such conditions may change later due to advancements in technology. A regulatory standard should be established in this regard, that preserves the original commercial intent while allowing adaptive interpretations of the essential substance of that contract.

Section 115UA strengthens the architecture by reducing tax leakage and making trust-based structures more commercially viable, but it does not resolve the deeper problem of risk transfer.⁵⁶⁵ A structure may therefore be tax-efficient and yet commercially fragile if its revenues still depend on operational continuity, sponsor involvement, or tenant performance. This structuring, through SPVs, contractual controls, and pass-through treatment, enables legal isolation and cash flow discipline, but does not ensure transferability of risk thereby necessitating hybrid financing structures

IV. Hybrid Financing

Classical intermediation theory recognises an extended credit intermediation chain in which non-bank institutions enable specialised functions such as securitisation, giving rise to shadow banking structures.⁵⁶⁶ In India, data centre financing reflects this decentralisation but remains hybrid due to its greenfield nature, with instruments like partial divestments⁵⁶⁷ facilitating capital recycling. Policy support, through ease of doing business reforms, tax incentives, incentives linked to SEZ, and infrastructure recognition has strengthened the sector's

⁵⁶³European Securities and Markets Authority, 'Article 7 Transparency requirements for originators, sponsors and SSPEs' (Interactive Single Rulebook)

<<https://www.esma.europa.eu/publications-and-data/interactive-single-rulebook/secr/article-7-transparency-requirements>> accessed 22 April 2026. ; U.S. Securities and Exchange Commission, 'Reg AB II Asset-level Requirements Compliance Date on November 23, 2016' (31 October 2016)

<<https://www.sec.gov/newsroom/whats-new/regabii-asset-level-requirements-compliance>> accessed 22 April 2026.

⁵⁶⁴Jufri Marzuki and Graeme Newell, 'The Emergence of Data Centres as an Innovative Alternative Property Sector' (2019) 37(2) *Journal of Property Investment and Finance* 140.

⁵⁶⁵Pranav Kashyap, 'Taxation of REITs and InvITs under Section 115UA' (TaxGuru, 25 December 2025) <<https://taxguru.in/income-tax/taxation-reits-invits-section-115ua.html>> accessed 21 April 2026.

⁵⁶⁶Pozsar Z, Adrian T, Ashcraft AB and Boesky H, 'Shadow Banking' (FRB of New York Staff Report No 458, 2010).

⁵⁶⁷PTI, 'CapitalLand India Trust sells 20.2% stakes in 3 data centre assets for ₹702 crore' *The Week* (31 December 2025)

<<https://www.theweek.in/wire-updates/business/2025/12/31/capitaland-india-trust-sells-20.2-pc-stakes-in-3-data-centre-assets-for-rs-702cr.html>> accessed 20 April 2026.

investment appeal, enhancing domestic capacity and resilience which is understood to have critical economic value.⁵⁶⁸

InvITs and REITs have emerged as key vehicles for channelling long-term capital,⁵⁶⁹ supported by the *SEBI (Infrastructure Investment Trusts) Regulations, 2014 and Listing Regulations, 2015*, which ensure better governance, distribution, and domestic capital raising for infrastructure and real estate companies that previously relied on overseas listings.⁵⁷⁰ However, these structures remain dependent on stable, revenue-generating assets and struggle with transitional or hybrid asset profiles, particularly where SPVs continue to carry liabilities post-concession or where borrowing norms remain loosely defined. This boundary is clearly resolved in established markets, where data-centre cashflows are already packaged through ABS and CMBS and rated under dedicated methodologies.⁵⁷¹ Data centres, despite being classified in the Harmonized Master List as infrastructure, sit at the boundary of REIT and InvIT frameworks due to their dual real estate and operational characteristics, making the choice of monetisation structure⁵⁷² contingent on whether the asset is treated as rent-generating property or revenue-generating infrastructure platform.⁵⁷³ Therefore, SEBI's InvIT regime⁵⁷⁴ can monetise stabilised assets, but it does not yet function as a full securitisation wrapper for transitional data-centre cashflows. Accordingly, the persistence of hybrid financing necessitates an examination of the financing stack through which risk, liquidity, and information are allocated and transmitted across institutions.

V. The financing stack

Hybrid finance persists because financial intermediation naturally spreads across banks and non-banks to optimise regulation, liquidity, and risk-bearing capacity, producing risk return combinations which dominate direct financing and augment an economy's productive potential. However, the operation of the financing stack is contingent on how opacity, pricing and liquidity are managed across its different layers.

⁵⁶⁸ Frontier Economics, 'Data Centres: The Productivity Case We're Not Making (Yet)' <<https://www.frontier-economics.com/uk/en/news-and-insights/articles/article-i22144-data-centres-the-productivity-case-we-re-not-making-yet/>> accessed 20 April 2026.

⁵⁶⁹ Shah M and Bhagwat K, 'Critical Assessment of Infrastructure Investment Trusts (InvITs) in India and Suggesting Measures to Increase Their Efficiency in Comparison with International Instruments' (2022) 16(5) *Australasian Accounting, Business and Finance Journal* 106 <<https://doi.org/10.14453/aabfj.v16i5.08>> accessed 20 April 2026.

⁵⁷⁰ Cyril Amarchand Mangaldas, 'Deconstructing InvITs and REITs' (2nd edn).

⁵⁷¹ Fitch Ratings, 'AI, Data Centre & Digital Infrastructure' <<https://www.fitchratings.com/topics/data-center-and-digital-infrastructure?ssCampaignID=271&ssVariationID=8751>> accessed 22 April 2026. ; Kroll Bond Rating Agency, 'ABS: Data Center ABS Global Rating Methodology' <<https://www.kbra.com/publications/ywsVHsMw/abs-data-center-abs-global-rating-methodology>> accessed 22 April 2026.

⁵⁷² Maple-Brown Abbott, 'Data Centres: Are They Infrastructure?' <<https://maple-brownabbott.com/data-centres-are-they-infrastructure/>> accessed 20 April 2026.

⁵⁷³ Securities and Exchange Board of India, 'SEBI (Infrastructure Investment Trusts) Regulations 2014' <https://www.sebi.gov.in/sebi_data/attachdocs/1411722678653.pdf> accessed 20 April 2026.

⁵⁷⁴ Securities and Exchange Board of India, 'SEBI (Infrastructure Investment Trusts) Regulations 2014' <https://www.sebi.gov.in/sebi_data/attachdocs/1411722678653.pdf> accessed 20 April 2026.

Opacity and asymmetric information remain the central regulatory challenges in NBFCs. Securitization helps mitigate adverse selection⁵⁷⁵ through tranche structures that allocates risks across different classes of investors. However, while uniform pricing can reduce or eliminate information asymmetry, it may also create participation constraints and leave residual fiscal risks. Simpler securitization structures further reduce computational appraisal costs while preserving diversification and risk allocation benefits.⁵⁷⁶ Ultimately both information transparency⁵⁷⁷ and liquidity⁵⁷⁸ are essential for determining accurate asset prices.

Development Financial Institutions (DFIs) play a key role in enabling investment in riskier sectors. They act as risk-distributing nodes by combining equity structuring with long-tenor lending, anchoring bond markets through their appraisal expertise, and syndicating risk across institutions.⁵⁷⁹ At the same time, leveraged funding models introduced through plurilateral initiatives⁵⁸⁰ face constraints due to risk-weighted asset frameworks. These models require careful coordination across jurisdictions to avoid concentration in a narrow set of bankable projects. For long-term sustainability, debt markets must also broaden their investor base, including greater participation from retail investors through institutional and network development.

Private markets match the financing needs of riskier economic entities with the risk-bearing capacity of long-term investors.⁵⁸¹

In fact, the largest private credit deal in history was to finance an AI data centre.⁵⁸² However, they are also known to generate “liquidity-at-risk”⁵⁸³ through illiquidity, opacity, borrower concentration, and bespoke structures,⁵⁸⁴ where illiquidity premia may fall short of covering

⁵⁷⁵ DeMarzo PM, ‘The Pooling and Tranching of Securities: A Model of Informed Intermediation’ (2005) 60(1) *Review of Financial Studies* 1; DeMarzo PM and Duffie D, ‘A Liquidity-Based Model of Security Design’ (1999) 54(1) *Econometrica* 65.

⁵⁷⁶ Beltran DO and Thomas CP, ‘Could Asymmetric Information Alone Have Caused the Collapse of Private-Label Securitization?’ (Board of Governors of the Federal Reserve System, International Finance Discussion Papers No 1010, 2010).

⁵⁷⁷ <https://scispace.com/pdf/is-information-risk-a-determinant-of-asset-returns-8uthpgblu0.pdf>

⁵⁷⁸ Allen F and Carletti E, ‘The Role of Liquidity in Financial Crises’ (2008) 92(1–2) *Economic Journal* 1.

⁵⁷⁹ Research and Information System for Developing Countries and India International Centre, ‘New-Generation DFI in India: Opportunities and Challenges’ (2021).

⁵⁸⁰ Research and Information System for Developing Countries, ‘Development Finance Institutions and Infrastructure Financing in India’ (June 2021) <https://www.ris.org.in/sites/default/files/Publication/DFI%20Report_0.pdf> accessed 20 April 2026.

⁵⁸¹ European Central Bank, ‘Financial Stability Review: Non-bank Financial Intermediation and Structural Risks’ (May 2024) <https://www.ecb.europa.eu/press/financial-stability-publications/fsr/special/html/ecb.fsrart202405_03~bc23a48d.bc.en.html> accessed 20 April 2026.

⁵⁸² iCapital, ‘Data Centre Infrastructure: Moving from Cash to Debt’ <<https://icapital.com/insights/investment-market-strategy/icapital-market-pulse-data-centre-infrastructure-moving-from-cash-to-debt/>> accessed 20 April 2026.

⁵⁸³ Elmallt D, Li Y and Valderrama L, ‘Liquidity at Risk: Joint Stress Testing of Solvency and Liquidity’ (IMF Working Paper No 20/82, 2020) <<https://doi.org/10.5089/9781513546131.001>> accessed 20 April 2026.

⁵⁸⁴ Global Association of Risk Professionals, ‘Hidden Risks in Private Credit’ <<https://www.garp.org/risk-intelligence/credit/hidden-risks-private-credit-251017/>> accessed 20 April 2026.

cumulative losses and spillover effects⁵⁸⁵ under stressed environments characterized by higher default rates, valuation opacity, or systemic liquidity freezes.

Importance of Liquidity-at-Risk framework for NBFIs structures

Interbank linkages where banks must account not only for direct counterparties but also second-order exposures, amplify liquidity stress: banks retain contingent exposure through credit lines, margin financing, and senior claims, while regulatory tightening shifts risk outward into collateralised and derivative-linked exposures.⁵⁸⁶ The absence of comparable macro-prudential standards renders NBFIs more vulnerable to procyclicality.⁵⁸⁷ Intermediation practices tend to adapt in ways that circumvent regulatory constraints and leverage bank-linked liquidity channels. This leads to increasingly intertwined risk exposures across the financial system,⁵⁸⁸ necessitating extension of financial stability regulation to investment markets.⁵⁸⁹ Goodhart's law identifies how regulatory perimeters might be devised for banking activities, while risks from disintermediated activities by NBFIs and FinTech platforms are arranged outside this perimeter enabling substitution between banks and NBFIs. This substitution problem could be addressed through a 'congruence principle' under which similar activities are regulated similarly,⁵⁹⁰ thereby limiting regulatory arbitrage across the financing stack and ensuring that functionally equivalent risk exposures, whether held on bank balance sheets or within structured vehicles, are subject to comparable oversight. Thus, various models that were devised for liquidity stress testing of banks could also be extended to NBFIs.

REIT structures impose distribution and rent-linked income constraints aligned with square-footage monetization and public market liquidity, limiting service-layer flexibility, whereas privately held data centres capture higher-margin revenues through power-based pricing, bundled services, and purpose-built infrastructure unconstrained by distribution requirements.⁵⁹¹

⁵⁸⁵ Financial Stability Board and International Organization of Securities Commissions, 'FSB and IOSCO Publish Policies to Address Vulnerabilities from Liquidity Mismatch in Open-Ended Funds' (20 December 2023) <<https://www.fsb.org/2023/12/fsb-and-iosco-publish-policies-to-address-vulnerabilities-from-liquidity-mismatch-in-open-ended-funds/>> accessed 20 April 2026.

⁵⁸⁶ Centre for Economic Policy Research, 'Transformation Activities and Risks between Bank and Non-bank Financial Institutions' <<https://cepr.org/voxeu/columns/transformation-activities-and-risks-between-bank-and-non-bank-financial>> accessed 20 April 2026.

⁵⁸⁷ Pinter G, 'An Anatomy of the 2022 Gilt Market Crisis' (Bank of England Staff Working Paper No 1019, 2023) <<https://www.bankofengland.co.uk/working-paper/2023/an-anatomy-of-the-2022-gilt-market-crisis>> accessed 20 April 2026.

⁵⁸⁸ Acharya VV, Cetorelli N and Tuckman B, 'Where Do Banks End and NBFIs Begin?' (NBER Working Paper No 32316, 2024) <<https://doi.org/10.3386/w32316>> accessed 20 April 2026.

⁵⁸⁹ Chakma RD, 'The Transformation of Banking Intermediation Theory in the Context of Fintech and Decentralized Finance (DeFi)' (2025) 2(3) COUNT: Journal of Accounting, Business and Management 143 <<https://doi.org/10.61677/count.v2i3.559>> accessed 20 April 2026.

⁵⁹⁰ Metrick A and Tarullo DK, 'Congruent Financial Regulation' (2021) <<https://ssrn.com/abstract=3817621>> accessed 20 April 2026.

⁵⁹¹ Datacentres.com, 'The Rise of Data Centre REITs: What Investors and Operators Should Know' (11 September 2025) <<https://www.datacentres.com/news/the-rise-of-data-centre-reits-what-investors-and-operators-should-know>> accessed 20 April 2026

Liquidity risk emerges when exogenous shocks trigger capital withdrawal; while intermediation reduces liquidity risk⁵⁹² through informational⁵⁹³ and diversification⁵⁹⁴ functions, deeper intermediation without transparency⁵⁹⁵ increases vulnerability through hidden leverage and interconnected exposures. Regulatory efforts to curb fire-sale risks in Open Ended Funds (OEMs), Money Market Mutual Funds (MMMFs), and Central Counterparties (CCs) contrast with persistent opacity in private markets, where lack of data on-and off-balance-sheet and synthetic leverage, and bank linkages, undermines assessment of concentration and liquidity risk and limits system-wide stress testing, necessitating targeted disclosure and clearer leverage measurement.

When financing becomes dependent on rolling debt against uncertain cash flows, fragility builds through refinancing risk, interconnected exposures, and compressed margins of safety,⁵⁹⁶ with disruptions transmitting into liquidity stress and valuation pressure across the financing stack in greenfield-heavy markets like India with limited secondary risk transfer. Fragile liquidity⁵⁹⁷ arises when near-money liabilities are supported by illiquid assets lacking autonomous liquidity generation capacities. Unlike traditional mismatches, stress manifests through mark-to-model valuation shifts, spread widening, and repricing in secondary markets.⁵⁹⁸ This is especially pronounced in InvITs, pooled vehicles, and securitised structures, where investor liquidity is structurally decoupled from asset liquidity, and marginal shifts in cash flow expectations propagate directly into Debt Service Coverage Ratios (DSCRs) and tranche valuations.

In the absence of a liquidity-at-risk framework, InvITs, private markets, and hybrid financing structures remain incapable of systematically measuring how cashflow uncertainty, leverage, and refinancing dependence translate into investment risk.

VI. Risk Allocation Through Credit Enhancement

The systemic fragility described above becomes transaction-specific in data-centre finance. Once liquidity risk is identified at the level of InvITs, private markets, and hybrid structures,

⁵⁹² Bencivenga VR and Smith BD, 'Financial Intermediation and Endogenous Growth' (1991) 58(2) *Review of Economic Studies* 195; Diamond DW and Dybvig PH, 'Bank Runs, Deposit Insurance, and Liquidity' (1983) 91(3) *Journal of Political Economy* 401.

⁵⁹³ Greenwood J and Jovanovic B, 'Financial Development, Growth, and the Distribution of Income' (1990) 98(5) *Journal of Political Economy* 1076; Boyd JH and Smith BD, 'Intermediation and the Equilibrium Allocation of Investment Capital: Implications for Economic Development' (1992) 60(1) *Journal of Monetary Economics* 133.

⁵⁹⁴ Levine R, 'Stock Markets, Growth, and Tax Policy' (1991) 46(4) *Journal of Finance* 1445; Saint-Paul G, 'Technological Choice, Financial Markets and Economic Development' (1992) 57(4) *European Economic Review* 763.

⁵⁹⁵ International Monetary Fund, 'International Capital Markets: Developments, Prospects, and Key Policy Issues' (IMF Working Paper WP/99/36, 1999) <<https://www.imf.org/external/pubs/ft/wp/1999/wp9936.pdf>> accessed 20 April 2026.

International Monetary Fund, 'International Capital Markets: Developments, Prospects, and Key Policy Issues' (IMF Working Paper WP/99/36, 1999) <<https://www.imf.org/external/pubs/ft/wp/1999/wp9936.pdf>> accessed 20 April 2026.

⁵⁹⁶Centre for Public Enterprise, Advait Arun, 'Bubble or Nothing: Data Centre Project Finance' (November 2025) <<https://publicenterprise.org/wp-content/uploads/Bubble-or-Nothing.pdf>> accessed 20 April 2026.

⁵⁹⁷Aramonte S, Schrimpf A and Shin HS, 'Non-bank Financial Intermediaries and Financial Stability' in Gürkaynak RS and Wright JH (eds), *Research Handbook of Financial Markets* (Edward Elgar Publishing, 2023).

⁵⁹⁸Bank for International Settlements, 'Learning from the Dash for Cash: Findings and Next Steps for Margining Practices' (Speech by Sir Jon Cunliffe, 9 February 2022) <<https://www.bis.org/review/r220210f.htm>> accessed 20 April 2026.

the relevant issue is how that risk is absorbed within the capital stack through credit enhancement and contractual allocation. A central constraint lies in the limited ability to distribute and reallocate risk across the financial system. Unlike trade receivables, which are short-term, self-liquidating, and routinely pooled through risk-participation structures, data-centre exposures remain largely concentrated on originators and sponsors. In India's nascent market, this is exacerbated by greenfield development and scant secondary trading or sale-leaseback activity.⁵⁹⁹

As a result, valuations are forward-looking and assumption-driven rather than anchored in market transactions, and the absence of an active secondary market prevents risk from being dispersed in the way securitisation normally requires.

Multi-dimensional Project Risks

At the project level, data-centre risk is multi-layered and must be matched to different forms of credit support. *Financially*, they carry high leverage and refinancing risk due to long build-out periods. *Operationally*, they require ultra-high uptime, modern cooling and power systems, and often depend on a small number of anchor tenants. *Supply-side constraints* (grid access, land, climate) and intense capital expenditure cycles further strain cashflows.⁶⁰⁰ Crucially, *technological obsolescence* looms over every generation. As hardware or design standards age, facilities lose marketability, tenant rents soften, and asset values decline.

Structuring tools like hedging, SNDA and attornment clauses, capex reserves, etc. can mitigate but not eliminate these fundamental risks. In response, the structure relies on a layered package of credit enhancements, each aimed at a different category of risk. Subordination and equity layers shift first-loss exposure to sponsor equity or junior notes, thereby protecting senior investors. Over-collateralisation and excess spread perform the same function by creating an initial buffer against shortfalls.

A *Debt Service Reserve Account* (DSRA) provides a liquidity buffer that allows debt service to continue through temporary revenue stress, and it is usually funded early and replenished from operating cash flows. Sponsor guarantees and completion undertakings strengthen the structure only where they are legally binding and enforceable, because they transfer construction or COD risk to the sponsor rather than removing it.⁶⁰¹ Other enhancements include interest-rate hedges, power-price protection, EPC performance bonds, and step-in or termination rights, each of which addresses a different layer of cost, completion, or control risk.

However, even marked enhancements fail to “trigger” when needed unless carefully structured. The purpose of these devices is not to eliminate risk, but to place each risk with the party best

⁵⁹⁹Quinn Emanuel Urquhart & Sullivan LLP, ‘Emerging Litigation Risks in Financing AI Data Centres Boom’ (Client Alert, 2026) <<https://www.quinnemanuel.com/the-firm/publications/client-alert-emerging-litigation-risks-in-financing-ai-data-centres-boom/>> accessed 21 April 2026.

⁶⁰⁰Clifford Chance, *Data Centre Insights 2025* (2025)

<https://www.cliffordchance.com/content/dam/cliffordchance/Thought_Leadership/data-trends-2025.pdf> accessed 21 April 2026.

⁶⁰¹India Ratings and Research, *Policy for Credit Enhanced (CE) Ratings* (February 2023)

<[https://www.indiaratings.co.in/data/Uploads/CriteriaReport/2023/Policy%20for%20Credit%20Enhanced%20\(CE\)%20Ratings.pdf](https://www.indiaratings.co.in/data/Uploads/CriteriaReport/2023/Policy%20for%20Credit%20Enhanced%20(CE)%20Ratings.pdf)> accessed 21 April 2026.

able to bear it. A waterfall is the mechanism through which this risk allocation becomes operational. *A typical waterfall for a hybrid securitisation might look like:*

1. *Operating Expenses & Taxes: O&M, maintenance, utilities.*
2. *Lender Fees: Any structuring or agent fees.*
3. *Senior Debt Service: Interest first, then principal on senior loans.*
4. *Reserve Accounts: Top up DSRA (e.g. to ~6 months of P&I); then a maintenance reserve.*
5. *Subordinated Debt Service: Interest/principal on mezzanine or junior notes.*
6. *Equity or Sponsor Distributions: Any remaining cash.*

Structural triggers might be imposed at each level. For instance, senior loans may require a minimum DSCR (e.g. 1.2×) and occupancy (>75%); if breached, all cash beyond O&M is swept into the DSRA until healed. A mezzanine tranche might have lower DSCR covenants (say 1.1×) and hinge on additional reserves. Pre-leasing or take-or-pay clauses in tenant contracts can also be treated as implicit “offtake guarantees.” The key is that until upstream obligations and reserve targets are satisfied, little flows to sponsors, which preserves discipline and protects the senior layers of the capital stack.⁶⁰²

VII. Stress-Test Framework for Securitisation Readiness

A credible move toward data-centre securitisation in India thus requires a framework that tests whether the financing structure can survive stress not only at the level of operations, but also at the level of liquidity and exit.

IMF and Basel already treat solvency and liquidity as a single stress-testing problem,⁶⁰³ and the EBA/ECB framework uses baseline, adverse and reverse-looking scenario design as part of supervisory practice.⁶⁰⁴ However, India’s RBI securitisation directions and SEBI InvIT rules are still built around general securitisation and trust regulation, not a data-centre-specific stress-test template. The appropriate standard is therefore a joint solvency-liquidity stress test, rather than a purely contractual or accounting exercise.

The framework operates through three linked layers. The first is the *collateral performance layer*, which asks whether the data centre can continue generating usable cash flows under

⁶⁰²Haydn Palliser, ‘Project Finance Cash Flow Waterfall’ (Pivotal180, 20 April 2021) <<https://pivotal180.com/project-finance-cash-flow-waterfall/>> accessed 21 April 2026.

⁶⁰³Dalya Elmalt, Yiruo Li, and Laura Valderrama. "Liquidity at Risk: Joint Stress Testing of Solvency and Liquidity", *IMF Working Papers* 2020, 082 (2020) <<https://doi.org/10.5089/9781513546131.001>> accessed 21 April 2026. ; Basel Committee on Banking Supervision, *Stress Testing Principles* (October 2018) <<https://www.bis.org/bcbs/publ/d450.pdf>> accessed 22 April 2026. ; Basel Committee on Banking Supervision, *Principles for Sound Stress Testing Practices and Supervision* (May 2009) <<https://www.bis.org/publ/bcbs155.pdf>> accessed 22 April 2026.

⁶⁰⁴European Central Bank, ‘A framework to assess the severity of adverse scenarios in EU-wide stress tests’ (Macroeprudential Bulletin 32, November 2025) <https://www.ecb.europa.eu/press/financial-stability-publications/macroeprudential-bulletin/html/ecb.mpbu202511_05.en.html> accessed 22 April 2026. ; European Systemic Risk Board, *Macro-financial scenario for the 2025 EU-wide banking sector stress test* (updated 26 February 2025) <<https://www.esrb.europa.eu/sites/default/files/2025-02/f23c8470-a2e1-410f-b752-55aff8f8e8f4/2025-02-26%20-%20ESRB%20-%20Macrofinancial%20scenario%20for%20the%202025%20EU-wide%20banking%20sector%20stress%20test%20%28updated%2026%20February%202025%29.pdf>> accessed 22 April 2026.

stress.⁶⁰⁵ The relevant variables are occupancy, tenant concentration, energy and cooling costs, uptime interruptions, GPU or technology refresh costs, capex shocks, connectivity outages, lease rollover, and regulatory change. The second is the *capital structure layer*, which tests whether the financing stack can absorb those shocks through subordination, reserve accounts, cash traps, and sponsor support. The third is the *liquidity and exit layer*, which tests whether the project can still be refinanced or monetised if lending markets tighten or investor appetite weakens.⁶⁰⁶

This framework treats stress testing as a progressive capability test. A data-centre structure should be regarded as securitisation-ready only if it can remain within acceptable solvency and liquidity thresholds under defined stress conditions. The objective is not merely to measure weakness, but to identify the point at which the asset can no longer function as a securitisable cash-flow pool and instead continues to rely on project-finance style support.

The first step is to map each risk driver to the metric that shows its effect. The point of this

Risk Driver	Affected Metric(s)	Stress Effect
Occupancy / Tenant Risk	DSCR, LTV, ICR	Lower revenue → weaker DSCR and higher leverage pressure
Energy Price / Cost	DSCR, liquidity needs	Higher O&M cost → lower net cashflow
GPU / Tech Obsolescence	Capex, LTV	Higher upgrade cost → the equity cushion gets used
Capex Shock (repair)	Cash runway, DSRA	Reserve drawdown → a shorter liquidity runway
Connectivity Outage	Revenue, liquidity	Temporary revenue loss, possible insurance claim
Regulatory Change	Revenue / cost profile	Changes future revenue or tax burden
Sponsor Default	Solvency fallback	Loss of sponsor support and risk transfer
Market Liquidity Shock	LTV, refinance horizon	Downgrade risk, refinancing may fail

mapping is simple: a risk matters only when it changes a number that affects debt service, valuation, or liquidity. *Then the project will be tested under multiple scenarios* including a baseline case, an adverse case, a severe case, and a reverse-stress case to see how the project behaves under progressively worse conditions, and to identify the point at which the structure can no longer absorb the shock. The *baseline case* reflects ordinary operating conditions. The

Scenario	Occupancy	DSCR	Energy Δ	GPU Capex	Connectivity	Sponsor Support	Market Liquidity
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⁶⁰⁵Commercial Real Estate Finance Council (CREFC), *Data Centres E-Primer* (25 February 2026) <<https://www.crefc.org/common/Uploaded%20files/Learn/DataCentres-eprimer-2026.02.25.pdf>> accessed 21 April 2026.

⁶⁰⁶*Ibid.*

Baseline	90-95%	$\geq 1.3\times$	+0%	0-5% annual	Normal	As planned	Normal
Adverse	75-80%	1.1-1.2 \times	+10-15%	5-10%	2-4 weeks outage	Delayed top-up	Tightening
Severe	50-65%	$\leq 1.0\times$	+25-30%	10-20%	8+ weeks	No support	Frozen

adverse case reflects a plausible deterioration that the structure should ideally survive. The *severe case* tests whether the structure can continue functioning when several risks strike at once.

Reverse stress testing is then used to determine the threshold combinations of occupancy, outages, and cost shocks at which DSCR falls below 1.0 \times and liquidity buffers are exhausted. Unlike the severe scenario, which assumes a pre-set extreme shock, *reverse stress* works backward from failure to identify the minimum deterioration that causes DSCR to fall below 1.0 \times , reserves to deplete, or refinancing to fail. It does not assume a fixed operating scenario; instead, it asks how far the structure can deteriorate before it stops being serviceable.⁶⁰⁷

The scenario assumptions should be calibrated to the data-centre lifecycle and not treated as rigid legal thresholds. In the baseline case, occupancy should remain high, DSCR should stay comfortably above debt service, energy costs should remain broadly stable, and sponsor support should be available as planned. In the adverse case, occupancy may soften, energy costs may rise, connectivity may be briefly disrupted, and sponsor top-ups may be delayed. In the severe case, multiple negatives should occur together: weaker occupancy, higher costs, longer outages, frozen market liquidity, and no meaningful support from the sponsor.

Metric	What it Measures	Rating-Consistent Band
DSCR	Ability of income to cover debt service	Around 1.3x or higher in stressed years
Debt-to-Value/LTV	Debt relative to asset value	Moderate leverage (generally below ~50-60% of asset value)
Equity / First-Loss Cushion	Sponsor capital available to absorb the first losses	Junior capital buffer (~15-25%) that absorbs initial losses before senior debt is affected
DSRA Adequacy	Months of debt service covered by reserves	About six months of interest and principal obligations
Liquidity Coverage / Cash Runway	Operating survival under stress without fresh funding	Reserve-backed runway, aligned with DSRA and additional liquidity support
Debt Yield	Net operating income relative to outstanding debt.	Higher debt yield reflects stronger collateral performance.

⁶⁰⁷European Banking Authority, *Guidelines on Institutions' Stress Testing (EBA/GL/2018/04)* (19 July 2018) <[https://www.eba.europa.eu/documents/10180/2282644/2b604bc8-fd08-4b17-ac4a-cdd5e662b802/Guidelines%20on%20institutions%20stress%20testing%20\(EBA-GL-2018-04\).pdf](https://www.eba.europa.eu/documents/10180/2282644/2b604bc8-fd08-4b17-ac4a-cdd5e662b802/Guidelines%20on%20institutions%20stress%20testing%20(EBA-GL-2018-04).pdf)> accessed 21 April 2026, para 12.

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Once scenario behaviour is defined, the framework requires objective benchmarks to evaluate whether the structure remains within acceptable solvency and liquidity limits. *The next step is therefore to define the core metrics that determine whether the structure remains within acceptable solvency and liquidity limits under stress.* The stress test should be run as a cashflow-waterfall simulation at the SPV level, supplemented by sensitivity analysis and, where useful, Monte Carlo-style runs.⁶⁰⁸ Reverse stress testing should identify the breaking point of the structure, not merely its performance under assumed shocks.

The *governance layer* is just as important as the modelling layer. The effectiveness of the proposed stress-testing framework depends on its integration into a clearly defined *reporting-verification-enforcement* architecture, rather than on modelling sophistication alone. At the first layer, the operator or sponsor should periodically disclose asset-level metrics such as DSCR, LTV, DSRA coverage, occupancy levels, reserve utilisation, and uptime/outage performance, so that both financial and operational drivers of cashflow stability are transparently captured.

At the second layer, those disclosures should be subject to independent verification by technical experts, engineers, or auditors, a logic that is consistent with both the RBI securitisation framework's requirement for materially relevant data and third-party certification and with structured-finance rating methodologies that begin by assessing the collateral's operating performance, transaction waterfall, and operational risk.⁶⁰⁹ At the third layer, the trustee should assume primary responsibility for monitoring covenant compliance, supervising cashflow waterfalls, and enforcing contractual triggers, while rating agencies perform a surveillance function by reviewing covenant headroom and stress sensitivity rather than acting as the sole guarantor of informational reliability.⁶¹⁰

This layered approach reflects established structured-finance practice across mature jurisdictions. In the United States, asset-backed disclosure rules require periodic reporting and asset-level information through Reg AB II and Form 10-D,⁶¹¹ which supports ongoing investor disclosure and surveillance. In the European Union, Article 7 of the Securitisation Regulation requires originators, sponsors and SSPEs to make quarterly information on underlying exposures, transaction documents, waterfall mechanics, triggers, and investor reports available, with repository-based reporting where applicable.⁶¹² These models show that investor

⁶⁰⁸CSPI Ratings, *General Structured Finance Rating Criteria* (22 February 2024) <https://www.cspi-ratings.com/pengyuancms/methodology/in-use-criteria/structured-finance/General-Structured-Finance-Rating-Criteria_20240222152455817/Criteria-GeneralStructuredFinanceRatingCriteria2024.pdf> accessed 21 April 2026.

⁶⁰⁹Kroll Bond Rating Agency, *'Data Center ABS Global Rating Methodology'* (9 January 2026) <<https://www.kbra.com/publications/DJRqYcWm/kbra-releases-data-center-abs-global-rating-methodology>> accessed 29 April 2026.

⁶¹⁰Securities and Exchange Board of India, *Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations 2014*, reg 26C.

⁶¹¹US Securities and Exchange Commission, *Asset-Backed Securities Disclosure and Registration (Regulation AB II)* (Release No 33-9638, 2014).

⁶¹²European Union, *Regulation (EU) 2017/2402 laying down a general framework for securitisation* [2017] OJ L347/35, art 7.

confidence comes from continuous, standardised, and independently verifiable information flows combined with enforceable contractual rights, not from ratings alone.

In the Indian context, this governance architecture can be operationalised by extending existing disclosure and trustee mechanisms under the InvIT regime, which already requires annual, half-yearly and quarterly reporting, valuation disclosure, and disclosure of material non-compliance to trustees and unitholders.⁶¹³ Periodic reporting formats may be augmented by a stress-test annexure setting out methodology, assumptions, and scenario outcomes, while trustees can be expressly empowered to act upon breaches of stress-linked thresholds. A regulatory sandbox would then allow the framework to be tested on a limited portfolio before full-scale adoption, and the FCA's sandbox is a useful comparator because it is explicitly designed for live testing of new products and services in the market under supervisory oversight.⁶¹⁴

The ultimate purpose of the framework is to turn risk absorption into a decision rule. A data-centre structure should be treated as securitisation-ready only if it remains within solvency and liquidity thresholds under stress. If it fails, the stress test should show exactly which risks still need to be absorbed through stronger reserves, better contractual protections, more conservative leverage, or a different SPV design. Through this approach, trustees, issuers, and regulators can distinguish between project finance, hybrid monetisation, and a structure that is mature enough for InvIT-level or securitisation-style exit.

VIII. Conclusion

Data centres in India sit in a transitional zone between project finance and securitisation: economically strategic, capital intensive, and increasingly infrastructure-like, yet still too operationally embedded to generate the kind of stable, isolated cashflows that securitisation presupposes. The paper has shown that this is not a problem of capital scarcity alone, but of structural maturity. Their revenues remain tied to utilisation, uptime, power continuity, tenant concentration, technological change, and refinancing conditions, which means that even as the market scales and partial monetisation increases, the asset class still resists clean conversion into tradable receivables.

That is why the paper's broader point is not that securitisation is impossible, but that it is not yet mature. SPV design, contractual allocation, tax pass-through, hybrid financing, and credit enhancements all improve bankability and redistribute risk across the capital stack, but they do not remove the asset's underlying dependence on operational performance and liquidity support. ProjectCo, Portfolio SPV, DevCo/YieldCo, HoldCo, reserves, waterfalls, guarantees, and operational mitigants each address a part of the risk problem; none, by itself, completes the transition. The decisive issue is therefore not whether the structure can function in ordinary conditions, but whether it can remain solvent and liquid under stress. The paper argues that India's data-centre sector is financeable today, but only through a capability-building architecture that prepares the ground for securitisation rather than delivering it outright.

⁶¹³Securities and Exchange Board of India, *Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations 2014*, reg 26C.

⁶¹⁴Financial Conduct Authority, 'Regulatory Sandbox' <<https://www.fca.org.uk/firms/innovation/regulatory-sandbox>> accessed 27 April 2026.

The conclusion, then, is simple: data-centre securitisation in India is best understood as a developmental endpoint that lies beyond current market structure, not within it. Until the asset class can demonstrate resilience under joint solvency-liquidity stress, and until its cashflows become sufficiently standardised, insulated, and priceable, the sector will continue to rely on hybrid finance as a bridge rather than a destination. The paper therefore treats securitisation readiness not as a label, but as a threshold that must be earned.

FUTURE FLOWS, PRESENT BARRIERS: BRIDGING REGULATORY CONSTRAINTS AND CASH FLOW UNCERTAINTY IN DATA CENTRE SECURITISATION UNDER INDIA'S SDI FRAMEWORK

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I. Introduction: India's Data Centre Boom and the Financing Mismatch

India is experiencing a structural transformation in its digital infrastructure. From 2023-2027, analysts are projecting aggregate data centre capacity to more than double (from ~950 MW to over 2000 MW of installed IT load) due to colocation of hyperscaler expansions (Microsoft Azure, AWS, Google Cloud and Meta), sovereign AI ambitions, rollout of digital public infrastructure and mandatory data localisation requirements.⁶¹⁵ Hyperscalers have made capital commitments totalling over \$25 billion to support Indian infrastructure over the next five years and domestic operators (Hiranandani's Yotta, CtrlS, NTT India and STT GDC) are aggressively growing their capacity in an effort to meet demand.⁶¹⁶

⁶¹⁵ JLL, *India Data Centre Market Dynamics Report H1 2025* (JLL, December 2025)

<https://www.jll.com/en-in/insights/market-dynamics/india-data-centers>; CBRE, *India's Data Centre Capacity Poised for Massive Expansion by 2027* (CBRE Research, November 2025)

https://www.business-standard.com/technology/tech-news/india-set-to-cross-1800-mw-in-data-centre-capacity-by-2026-cbre-report-124051501256_1.html; Digital Personal Data Protection Act 2023 (India), s 16 (data localisation provisions)

⁶¹⁶ CBRE Research, *India Data Center Colocation Market Report 2024–2025* (CBRE, 2024)

<https://www.entrepreneur.com/en-in/news-and-trends/indias-data-center-capacity-to-reach-2070-mw-by-end-of-484141> (noting over USD 60 billion in cumulative investment commitments 2019–2024); Microsoft, *Microsoft to Invest \$3 Billion in India's Cloud and AI Infrastructure* (Press Release, January 2025)

<https://www.mitrade.com/insights/news/live-news/article-3-557004-20250107>; Data Center Dynamics, *Microsoft Plans \$17.5bn AI Infrastructure Investment in India* (March 2026)

<https://www.datacenterdynamics.com/en/news/microsoft-plans-175bn-ai-infrastructure-investment-in-india/>;

Rachit Mohan, *Indian Data Centre Market Dynamics* (JLL, April 2025)

<https://www.jll.com/en-in/newsroom/indias-data-centre-capacity-to-reach-18-gw-by-2027>

Data centre operators in the mature markets of the US, UK and Singapore have utilized the markets for ABS and whole business securitisation to recycle capital, create longer maturity debt and diversify their sources of financing.⁶¹⁷ India does not have a similar platform available to it.

The primary reasons for this include the regulatory structure and the structural mismatch of the market. The Reserve Bank of India issued its Master Direction on Securitisation of Standard Assets (2021) (the Securitisation Direction) to cater to the financial sector (i.e. banks and non-banking financial institutions) securitising pools of mortgages, auto finance, microfinance and trade receivables.

This paper makes three main contributions to understanding the market of data centre revenues as a subject of the SDI Framework. The first contribution is an analysis of the legal and commercial feasibility of data centres under the SDI Framework. The second contribution is a new measure called Minimum Contract Coverage Ratio (MCCR), which can be used to assess whether or not data centre revenues meet the securitisability standard. The last contribution is a structured roadmap to facilitate India's first data centre ABS transaction through practical policies and sustainable structuring of deals.

II. Anatomy of Data Centre Cashflows: Why Traditional Securitisation Doesn't Fit:

Understanding the mismatch of securitisation requires painstaking disaggregation of the data centre revenue streams. Data centres do not generate a one-size-fits-all cashflow; rather, they are layered, multi-counterparty and multi-tenor revenue architecture defying the assumptions underlying the pool design requirements for SDI Framework.⁶¹⁸

A. Hyperscaler Leases

The most structurally dependable revenue is that of the hyperscaler lease, usually a long-term (10-15 years) take-or-pay type of contract where one particular cloud operator (AWS, Google,

⁶¹⁷ ARC Ratings, *Centre of Attention: A Closer Look into Data Centre Securitisation* (ARC Ratings, October 2024) <https://arcratings.com/researches/centre-of-attention-a-closer-look-into-data-centre-securitisation/> (first US ABS in 2018; over USD 21 billion cumulative issuance); RBC Capital Markets, *The Infrastructure Revolution: Understanding Data Center Securitisation* (RBC CM, January 2026) <https://www.rbcm.com/en/insights/2025/12/the-infrastructure-revolution-understanding-data-center-securitisation> (USD 25 billion annual issuance in 2025); Hogan Lovells, *Financing Data Centres in the US and Europe* (September 2025) <https://www.hoganlovells.com/en/publications/financing-data-centres-in-the-us-and-europe>; Norton Rose Fulbright, *Metamorphosis or Mutation, Data Centre Securitisation is Evolving (DC-ABS)* (Norton Rose Fulbright, Connections, 2024) <https://connections.nortonrosefulbright.com/post/102jlba/metamorphosis-or-mutation-data-centre-securitisation-is-evolving-dc-abs>.

⁶¹⁸ ARC Ratings (n 5); Skadden, Arps, Slate, Meagher & Flom LLP, *Hyperscaler Data Centers: Financing Solutions for Large-Scale Projects* (Skadden, September 2025) <https://www.skadden.com/insights/publications/2025/09/insights-september-2025/corporate/hyperscaler-data-centers>.

Microsoft, or Meta) leases until capacity at a set kilowatt-hour rate for specified purposes.⁶¹⁹ These contracts combine features of both operating leases and power purchase contracts; the hyperscaler pays regardless of the degree to which capacity is used, and pricing is indexed through defined escalation mechanisms. Hyperscaler credit ratings are, in effect, investment grade, and it has become implausible for operational or reputational reasons for long-tenor data centre structures to default.⁶²⁰ Hence, from a securitisation standpoint, these contracts offer the closest behaviour expressed by the SDI definition in the case of 'receivable': a contractual obligation of a creditworthy obligor with specified payment terms.

The revenue from hyperscalers contain challenges in determining pool eligibility as they present the following:

- 1) Lease commencement is reliant on the commission of the facility which is an event that has yet to be accomplished,⁶²¹
- 2) Several agreements for hyperscalers include capacity ramp-up clauses phases out the leasing of capacity in increments during the period of twelve to thirty-six months with the initial capacity contracted for between 30% to 40% being ramped to the full contracted capacity,⁶²² and
- 3) Most importantly for actual sale SPV transactions, hyperscaler contracts are frequently non-assignable unless both parties agree; thus creating an obstacle to true sale-type transactions when financing or in a SPV is required.⁶²³

⁶¹⁹ CBRE Investment Management (n 3); Applied Digital Corporation, *Lease Agreement with U.S. Based Investment Grade Hyperscaler at Polaris Forge 2* (SEC Form 8-K, 22 October 2025) https://www.sec.gov/Archives/edgar/data/0001144879/000114487925000076/ad-harwood_prxfinal102225.htm (15-year take-or-pay lease, 200 MW, approximately \$5 billion contracted revenue); Moody's, reported in Data Center Dynamics, *Hyperscalers Understating Risks of Short-Term AI DC Lease Agreements* (March 2026) <https://www.datacenterdynamics.com/en/news/moodys-hyperscalers-understating-risks-of-short-term-ai-dc-lease-agreements-leaving-investors-in-the-dark/> (US data centre leases historically 10–15 years).

⁶²⁰ Datacenter Hawk, *Colocation Data Center Pricing: A 2026 Beginner's Guide* (2026) <https://datacenterhawk.com/resources/fundamentals/colocation-data-center-pricing-a-2026-beginner-s-guide> (escalation mechanisms, typically 2.5–5% annual increases, and power pass-through structures); Equinix, *Hyperscale vs Colocation* (Equinix Blog, 2020) <https://blog.equinix.com/blog/2020/08/27/hyperscale-vs-colocation/>.

⁶²¹ Skadden (n 7) (noting that construction risk is eliminated only post-commissioning); Bain & Company, *Next Phase of Data Center Growth* (Bain & Co, 2025) <https://www.bain.com/about/media-center/press-releases/20252/next-phase-of-data-center-growth-to-be-more-disciplined-but-risks-of-power-constraints-and-construction-delays-remain-bain-co-research/> (permitting, equipment lead times 8–24 months).

⁶²² Oxford Economics, *Estimating Data Centre "Phantom Demand"* (Oxford Economics, January 2026) <https://www.oxfordeconomics.com/resource/estimating-data-centre-phantom-demand/> (ramp rates: hyperscalers average 15 years to maturity; co-locators 9 years); Moody's (n 8) (staged lease commencement and capacity ramp-up).

⁶²³ Mayer Brown, *Securitisation of Standard Assets and Receivables Financings in India* (Mayer Brown, September 2023) <https://www.mayerbrown.com/en/insights/publications/2023/09/securitisation-of-standard-assets-and-receivables-financings-in-india> (true sale and assignment mechanics; non-assignability concerns); Pillsbury Winthrop Shaw Pittman LLP, *From Anatomy to Action: Navigating Data Center Contracts* (Pillsbury, October 2024) <https://www.pillsburylaw.com/en/news-and-insights/data-center-contracts.html> (contractual assignment restrictions in data centre leases).

B. Co-location Revenues

Co-location revenues constitute the second tier of revenue for enterprise clients leasing individual cabinets, cages or suites, and contractual terms typically contain: terms of twelve to thirty-six months, with renewal pricing based on market rates and a diverse base of counterparty relationships including: domestic banking institutions and insurance companies; SME's; and mid-cap technology companies.⁶²⁴ The credit risk associated with co-locator is much less stable than that associated to hyperscaler, degree of renewal varies by sector and level of tariff, and pricing is subject to pressure from the availability of new co-location supply added to that inducement will continue to impact the ability of co-location revenue to be contractually available for purposes of securitisation.⁶²⁵ In any point in time, approximately 50% of Co-location revenues are in contract, while the remaining approximately 50% will be estimated management projections of renewals and new customers.⁶²⁶

C. Interconnection and Ancillary Income

Revenues generated through interconnections between two or more tenants and subsequently through Ancillary Services (e.g. Smart Hands/Managed Services/Remote Monitoring) form the third largest but typically smallest revenue stream (on the other hand, it is also an added benefit due to its high gross margin).⁶²⁷ These cashflows are generated as a result of actualised usage of the facility rather than traditional contracts: i.e., they occur due to event-driven, contingent events and do not create a current obligor obligation.⁶²⁸ As such, interconnection and Ancillary Service revenues are the most difficult revenues for estimating and make for differing from the rest of the cashflows when completing an SDI analysis.⁶²⁹

D. The Ramp-Up Curve: Revenue as a Dynamic Process

Data Centre revenues are not static from the time they are created. They have a typical ramp-up curve from the time they are created to when the total revenue from the Data Centre has been reached and is there an established ramp-up curve that the market has mathematically

⁶²⁴ Equinix (n 9) (retail colocation contracts 12, 24, or 36 months); Gowling WLG, *Colocation Data Centre Services: Key Points to Consider* (Gowling WLG, April 2025) <https://gowlingwlg.com/en/insights-resources/articles/2025/colocation-data-centre-services-key-points-to-consider-in-drafting-colocation-services-agreements>; Datacenters.com, *Tips for Negotiating Colocation Contracts* (2023) <https://www.datacenters.com/news/tips-for-negotiating-colocation-contracts>.

⁶²⁵ ARC Ratings (n 5) (credit heterogeneity of colocation pools); ICRA, *Securitisation of Stressed Assets* (ICRA Special Comment, April 2025) <https://www.icra.in/Rating/DownloadResearchSpecialCommentReport?id=6292> (pool pricing and market pressure on co-location revenues).

⁶²⁶ Zerodha Daily Brief (n 4) (noting the split between contracted and estimated management projections of renewals in Indian data centre financings, with reference to CtrlS and STT GDC structures).

⁶²⁷ ARC Ratings (n 5) (interconnection and ancillary services as third revenue tier, high gross margin but smallest share); Morningstar DBRS, *Data Centres – A Project Finance View* (DBRS Morningstar, May 2022) <https://dbrs.morningstar.com/research/397259/data-centres-a-project-finance-view>.

⁶²⁸ Vinod Kothari Consultants, *Legal Research on Structured Finance* (Vinod Kothari Consultants, May 2023) <https://vinodkothari.com/wp-content/uploads/2023/05/Legal-Research-on-Structured-Finance-Booklet-1.pdf> (distinction between present obligor obligations and event-driven contingent flows); Ellen M Gibson, 'Securitization of Executory Future Flows as Bankruptcy-Remote True Sales' (1999) 67 *University of Chicago Law Review* 1985 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5898&context=uclrev>.

⁶²⁹ ARC Ratings (n 5); Morningstar DBRS (n 17).

developed and is consistent with the assumptions of a Stable, Predictive Revenue Base established to complete an SDI analysis.⁶³⁰

An example of the ramp up of a Data Centre shows that a new Data Centre is estimated to have revenue of INR 50 crores in year one with an estimated revenue of INR 200 crores in year four due to expected capacity of the centre filling, hyperscale ramp-up provisions being triggered and the rate of the co-location category remaining stable.⁶³¹

The future revenue profile of the new Data Centre will, from an infrastructure investor's perspective, be very valuable.⁶³² However, this type of expected future revenue profile cannot be accommodated in the existing architecture of the current SDI Framework, as it was created to complete a backward-looking analysis (historically) of pool size.

III. SDI Framework Analysis: Legal Permissibility vs Market Reality

The SDI Framework, which was issued in September 2021 as a Master Direction, contains a comprehensive regulatory framework from the Reserve Bank of India relating to the securitisation of banks and non-banking finance companies (NBFCs) through securitisation.⁶³³ It includes outlines of eligibility requirements, true-sale requirements, minimum retention requirements, and risk management requirements. This analysis will test whether the revenue from data centres, as articulated above, can be securitised within the SDI Framework as currently drafted.

A. Defining Receivables:

The SDI Framework defines “securitisation exposures” as exposures backed by “a pool of underlying exposures”. The definition of underlying exposures includes financial assets that generate cashflows based on a contract.⁶³⁴ The definition of the underlying financial asset assumes that a present obligation exists, i.e. that there is currently an obligation by a counterparty to make a payment.⁶³⁵ Therefore, for any future revenue generated by a data centre as a result of future utilisation of capacity at the data centre, service requests from customers or contract renewals with customers, a present obligation does not exist. Upon receiving assistance from structuring counsel to determine if a contract to lease capacity in the

⁶³⁰ Oxford Economics (n 12); BCG, *Breaking Barriers to Data Center Growth* (BCG, October 2025) <https://www.bcg.com/publications/2025/breaking-barriers-data-center-growth> (ramp-up curves and GenAI-driven capacity build); McKinsey & Company, *Scaling Bigger, Faster, Cheaper Data Centers with Smarter Designs* (McKinsey, August 2025) <https://www.mckinsey.com/industries/private-capital/our-insights/scaling-bigger-faster-cheaper-data-centers-with-smarter-designs>.

⁶³¹ Oxford Economics (n 12); JLL (n 1) (ramp-up capacity projections for Indian data centres).

⁶³² Skadden (n 7); Gridlines (n 4).

⁶³³ Reserve Bank of India (n 6); Juris Corp, *New Directives on Securitisation of Standard Assets – Revamping the Securitisation Landscape?* (Juris Corp / The Legal 500, March 2024) <https://www.juriscorp.in/new-directives-on-securitisation-of-standard-assets-ae-revamping-the-securitisation-landscape-published-with-legal-500/>; Mayer Brown (n 13).

⁶³⁴ Reserve Bank of India (n 6); Juris Corp, *New Directives on Securitisation of Standard Assets – Revamping the Securitisation Landscape?* (Juris Corp / The Legal 500, March 2024) <https://www.juriscorp.in/new-directives-on-securitisation-of-standard-assets-ae-revamping-the-securitisation-landscape-published-with-legal-500/>; Mayer Brown (n 13).

⁶³⁵ Reserve Bank of India (n 6), Chapter I, Clause 3 (definition of 'underlying exposures'); Lexology / AZB & Partners, *Securitisation Trends and Developments* (Lexology, November 2020) <https://www.lexology.com/library/detail.aspx?g=544b88cd-a448-4dda-91f7-e198b044828e>.

future, where the obligation to pay is only created when the capacity is delivered, creates a “receivable” that is eligible for securitisation at origination.⁶³⁶

B. True Sale and Assignment Mechanics:

A “true sale” refers to the legal transfer of all rights in receivables from the originator to the SPV. The originator no longer owns the receivables or the rights to collect on them, and the true sale is a complete separation of the receivables from the originator's balance sheet and from any potential risks associated with the originator becoming insolvent.⁶³⁷ In India, under the Transfer of Property Act 1882 and the common law principles of equitable assignment, it is possible to assign the right to receive future payments arising out of a future obligation (a receivable) as an “assignment” at the time that the contract creating the obligation is entered into.⁶³⁸ However, it has not yet been established by the courts in India that such assignments will be enforceable against an originator that has become insolvent (i.e., that the SPV will still be able to collect on the receivables at all). Furthermore, without a statutory securitisation framework similar to the “TILA” in the US or the carve-outs in the UK Financial Services and Markets Act, legal opinions on the effectiveness of a true sale in the context of securitisation of receivables may qualify.⁶³⁹

C. Pool Homogeneity and Seasoning Requirements

The ideal function of the SDI Framework requires that securitised assets have common risk characteristics (allowing for statistical modelling at the level of the pool). The methodologies used by rating agencies for the Securitisation of pools have been created based on the assumptions made by the RBI when they assigned approved risk weights for pools; they assume that the historical default rates, prepayment speeds and recovery rates will be applicable to the assumed generally uniform pools (i.e., normally, these are not uniformly structured).

Current data centre revenue pools are always heterogeneous in nature i.e. there will be both investment-grade obligations from hyperscale organisations and un-rated obligations from co-located SMEs; the pool will also contain long-term and short-term obligations, fixed rate and variable rate obligations as well as contracted and estimated obligations.⁶⁴⁰ Therefore the standard way in which rating agencies will typically stratify pools will not allow the data centre

⁶³⁶ Reserve Bank of India (n 6), Chapter II; Vinod Kothari Consultants (n 18) (analysis of present obligation requirements under the SDI framework).

⁶³⁷ Juris Corp, *Securitisation Transactions in India – Legal Validity* (Juris Corp, March 2024)

<https://www.juriscorp.in/securitisation-transactions-in-india-ae-legal-validity/>; *Reliance Nippon Life Asset Management Limited v Dewan Housing Finance Corporation Limited & Others* (High Court of Judicature at Bombay, 13 November 2019), COMMERCIAL SUIT(L)NO.1034 OF 2019 ; Mayer Brown (n 13)

⁶³⁸ Transfer of Property Act 1882 (India), ss 5, 130; Nishith Desai Associates, *Asset Securitisation* (Nishith Desai Associates) http://nishithdesai.com/Content/document/pdf/Asset_Securitisation.pdf (analysis of assignment of receivables under the Transfer of Property Act and equitable assignment doctrine); *Bharat Nidhi Ltd v Takhatmal* AIR 1969 SC 595.

⁶³⁹ Vinod Kothari Consultants (n 18); Gibson (n 18); Chambers and Partners Global Practice Guide, *Securitisation 2020: India* (Chambers, January 2020)

<https://practiceguides.chambers.com/practice-guides/securitisation-2020/india> (residual legal risk and qualified true sale opinions in Indian transactions); cf Financial Services and Markets Act 2000 (UK), Part XVII (comparative reference for statutory securitisation carve-outs).

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pool to be stratified in any meaningful way due to the complexity of the pool and would result in a financial instrument that will not be able to be marketed.⁶⁴¹

The issue of seasonality is just as important, with rating agencies and institutional investors typically requiring an average of 12 to 24 months of operating performance from any securitised pool.⁶⁴² At this time, the majority of the data centre market is comprised of data centres built within the last 60 months, all of which are new builds and all of which have no operating history (greenfield).⁶⁴³ The lack of any historic performance will create a material gap in the availability of performance data and will not be able to be bridged through estimates only.⁶⁴⁴

TABLE 1: SDI GAP ANALYSIS, DATA CENTRE SECURITISATION FEASIBILITY

SDI REQUIREMENTS	DATA CENTRE REALITY	PRACTICAL IMPLICATION
Defined, identifiable receivables arising from existing obligations ⁶⁴⁵	Revenue streams are partially contracted; hyperscaler leases provide long-term certainty, but co-location and interconnection revenues are event-driven and ramping. ⁶⁴⁶	Future-flow revenues may not satisfy the 'existing obligation' test; deal lawyers must segregate contracted from uncontracted cashflows at origination. ⁶⁴⁷
True sale of receivables with clean legal transfer ⁶⁴⁸	Where no obligation yet exists (i.e., a customer not yet contracted), there is no receivable capable of legal transfer; assignment of future receivables requires equitable transfer doctrine which Indian courts have inconsistently applied. ⁶⁴⁹	Deals must rely on present assignment of future receivables under contractual frameworks, creating residual legal risk that trustees must document and rating agencies must stress-test. ⁶⁵⁰

⁶⁴¹ Vinod Kothari Consultants, *SEBI Securitisation Regulations: Track Record, Risk Retention and Investment Size* (Vinod Kothari Consultants, May 2025) <https://vinodkothari.com/2025/05/sebi-securitisation-regulations/> (pool homogeneity requirement under SDI Regulations and rating agency methodologies); Chambers and Partners, *Harmonizing Debt Markets: SEBI's Reforms and the Future of Securitization in India* (Chambers, 2025) <https://chambers.com/articles/harmonizing-debt-markets-sebi-s-reforms-and-the-future-of-securitization-in-india>.

⁶⁴² Reserve Bank of India (n 6), Chapter II, Clause 7 (Minimum Holding Period); Mayer Brown (n 13) (12-month MHP and seasoning requirements); Juris Corp (n 23).

⁶⁴³ JLL (n 1); CBRE (n 1) (India data centre inventory predominantly built post-2019, with most capacity commissioned within the last 60 months).

⁶⁴⁴ Morningstar DBRS (n 17) (historical performance data gap for greenfield data centres); Vinod Kothari Consultants (n 26).

⁶⁴⁵ Reserve Bank of India (n 6), Chapter I, Clause 3 (definition of underlying exposures as financial assets generating cashflows based on existing contractual obligations).

⁶⁴⁶ ARC Ratings (n 5); Zerodha Daily Brief (n 4).

⁶⁴⁷ Mayer Brown (n 13); Juris Corp (n 27); Chambers (n 32).

⁶⁴⁸ Reserve Bank of India (n 6), Chapter II, Part C (true sale requirements); Juris Corp (n 27).

⁶⁴⁹ Transfer of Property Act 1882 (India), s 130; Vinod Kothari Consultants (n 18); Mayer Brown (n 13) (inconsistent judicial application of equitable assignment of future receivables in insolvency contexts).

⁶⁵⁰ Chambers and Partners (n 29); Gibson (n 18); Vinod Kothari Consultants (n 18).

Pool homogeneity: similar risk profiles across obligors ⁶⁵¹	Data centre pools blend hyperscalers (investment-grade, long-tenor), SME co-locators (unrated, short-tenor), and spot-capacity customers (no credit history); this is inherently heterogeneous. ⁶⁵²	Achieving regulatory pool homogeneity requires either a pure hyperscaler-only pool (concentration risk) or bespoke multi-tranche structuring; neither maps cleanly onto SDI's standard pool definitions. ⁶⁵³
Minimum holding period / seasoning of receivables ⁶⁵⁴	Most Indian data centres are in ramp-up phase (0–36 months); few have sufficient seasoning to satisfy historical performance data requirements. ⁶⁵⁵	SDI's implicit expectation of seasoned pools cannot be met for greenfield or near-greenfield assets; a regulatory carve-out or safe harbour for infrastructure-category receivables is needed. ⁶⁵⁶
Prohibition on originating assets primarily for securitisation (skin-in-the-game / MRR) ⁶⁵⁷	Data centre operators are infrastructure companies, not NBFCs or banks; the 10% Minimum Retention Requirement under SDI is calibrated for financial sector originators, not asset-heavy infrastructure entities. ⁶⁵⁸	Applying MRR to an infrastructure originator conflates prudential banking regulation with project finance; regulators may need a separate calibration or exemption framework for infrastructure asset classes. ⁶⁵⁹
Payment predictability and low volatility of cashflows. ⁶⁶⁰	Revenue ramp-up creates an inherently volatile early period; anchor tenant revenues stabilise after commissioning, but the	Investors and rating agencies cannot apply standard default rate models; bespoke ramp-up stress scenarios and DSCR

⁶⁵¹ Reserve Bank of India (n 6), Annex 1, STC Criterion 8 (homogeneity of underlying exposures); Vinod Kothari Consultants (n 32).

⁶⁵² ARC Ratings (n 5); Morningstar DBRS (n 17); Skadden (n 7).

⁶⁵³ Hogan Lovells (n 5) (master trust and single-asset structures for data centre ABS); RBC Capital Markets (n 5); Chambers (n 32).

⁶⁵⁴ Reserve Bank of India (n 6), Chapter II, Clause 7 (Minimum Holding Period provisions); Mayer Brown (n 13).

⁶⁵⁵ JLL (n 1); CBRE (n 1); Zerodha Daily Brief (n 4) (most Indian data centres in ramp-up phase, 0–36 months)

⁶⁵⁶ Chambers (n 32) (need for regulatory carve-out for infrastructure-category receivables); Vinod Kothari Consultants (n 32); ELP Law, *RBI's Draft Directions on Securitisation of Stressed Assets 2025* (ELP Law, April 2025)

<https://elplaw.in/wp-content/uploads/2025/04/RBIs-Draft-Directions-on-Securitisation-of-Stressed-Assets-2025-Released-on-April-9-2025.pdf>.

⁶⁵⁷ Reserve Bank of India (n 6), Chapter II, Clause 8 (Minimum Retention Requirement); Vinod Kothari Consultants (n 32); Chambers (n 32).

⁶⁵⁸ Vinod Kothari Consultants (n 32); Chambers (n 32) (MRR of 10% calibrated for financial sector originators, not infrastructure entities).

⁶⁵⁹ Chambers (n 32); ELP Law (n 47); Juris Corp, *RBI Unveils Draft Guidelines for Securitisation of Stressed Assets* (Juris Corp, April 2025)

<https://www.juriscorp.in/rbi-unveils-draft-guidelines-for-securitisation-of-stressed-assets/>.

⁶⁶⁰ Reserve Bank of India (n 6), Chapter II (payment predictability requirements underlying STC framework); Morningstar DBRS (n 17).

	path to stabilisation (typically 24–48 months) is uncertain. ⁶⁶¹	covenant triggers are required during the stabilisation window. ⁶⁶²
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IV. The Future Cashflow Problem: When Do Revenues Become Securitizable?

The issue of data centre securitisation is not whether it can produce enough income to service debt; the real issue is to determine when revenue will become predictable enough to be viewed as cash flows that can support the securitisation process. This is primarily a timing issue it is not whether cash flows are reliable, but when they will be reliable enough in terms of revenue development cycle to pass rating agencies, investor expectations and regulatory requirements⁶⁶³.

The ramp-up phase of revenue predictability is the most evident challenge to the operator. Like other forms of capital-intensive infrastructure, a data centre does not have stable revenue at commencement, but rather moves from partially occupied to uncertain demand to completely contracted levels over time⁶⁶⁴.

Long-term financial repercussions exist as an implied outcome of poor ramp-up management processes using empirical research data. Issues arising from and/or contributing to delays in *stabilisation, low performance levels associated with utility, and unplanned disruptions* to operations have negative impacts on projected cashflows⁶⁶⁵; there are very few instances where benefits derived from obtaining revenue sooner outweigh the negative impacts caused by inefficiencies and volatility in revenues later in the process. Thus, there is an ongoing conflict between achieving results quickly and having certainty about those results. Although executing quickly can provide the opportunity to gain a positional advantage in a competitive marketplace, doing so does not provide the long-term security of stable, contractually based cashflows required for rate securitisation.

⁶⁶¹ Oxford Economics (n 12); Bain & Company (n 11); McKinsey & Company (n 20) (stabilisation 24–48 months post-commissioning)

⁶⁶² Morningstar DBRS (n 17); Skadden (n 7); ARC Ratings (n 5) (bespoke stress scenarios and DSCR triggers for ramp-up period).

⁶⁶³ Dgtl Infra, *How Much Does It Cost to Build a Data Center?* (2024)

<https://dgtlinfra.com/how-much-does-it-cost-to-build-a-data-center/> (noting \$10–15 million per MW construction cost, equating to approximately \$1 billion for a 100 MW facility); Peter Sacco (PTS), quoted in *Cutting Data Center Construction Costs* (Data Center Dynamics, March 2021)

<https://www.datacenterdynamics.com/en/marketwatch/cutting-data-center-construction-costs-use-supporting-infra-structure-ptss-peter-sacco/> (construction 12–18 months, ramp-up 12–36

⁶⁶⁴ ARC Ratings, *Centre of Attention: A Closer Look into Data Centre Securitisation* (ARC Ratings, October 2024) <https://arcratings.com/researches/centre-of-attention-a-closer-look-into-data-centre-securitisation/> (first US ABS in 2018; over USD 21 billion cumulative issuance); RBC Capital Markets, *The Infrastructure Revolution: Understanding Data Center Securitisation* (RBC CM, January 2026)

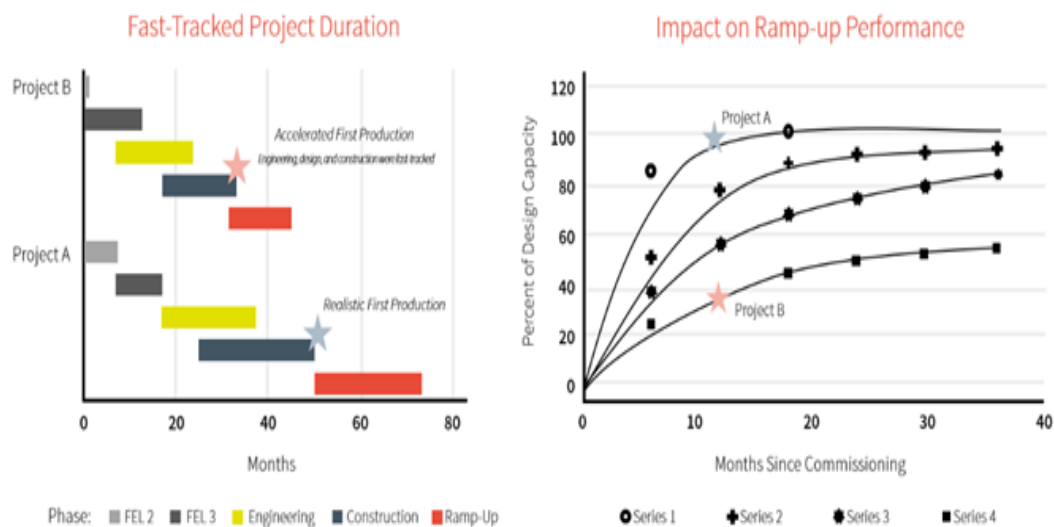
⁶⁶⁵ Datacenter Hawk, *Colocation Data Center Pricing: A 2026 Beginner's Guide* (2026)

<https://datacenterhawk.com/resources/fundamentals/colocation-data-center-pricing-a-2026-beginner-s-guide> (escalation mechanisms, typically 2.5–5% annual increases, and power pass-through structures); Equinix, *Hyperscale vs*

This paper proposes the Minimum Contract Coverage ratio (MCCR) as a practical way to determine when revenue has reached a level of securitisation⁶⁶⁶. The MCCR is a ratio that describes the percentage of revenue covered by legally binding agreements with identifiable counterparties against the total projected revenue of the asset.

The aforementioned separation is not just a technical distinction, but is critical to an understanding of risk.

Figure 2: Comparison of a fast-tracked project timeline with a timeline informed by benchmarking data and a theoretical representation of the fast-tracking impact on ramp-up performance



This

distinction is particularly critical as data centers move through the “ramp-up” phase (i.e., initial construction, pre-opening of the data center). In this ramp-up phase (i.e., also referred to as the “securitisation exclusion zone”), most data centers have relatively low levels of contracted revenue, which may be below even conservative securitisation thresholds, where monetising cashflows will rely more heavily on projected cashflows vs. enforceable rights. Therefore, the financial models will dictate a need for more traditional financing methods (i.e., project financing or traditional bank credit lines) until the data centers have sufficient contracted revenue and then allow for the use of securitisation as a form of financing.

V. Structuring Solutions: Making Data Centre Securitisation Work

After the Minimum Contract Coverage Ratio has met its thresholds, the transition is made from eligibility to execution of a deal. It is likely that a successful Indian data centre securitisation will adopt an anchor-backed structure based on contracted hyperscale receivables, which can provide the necessary degree of predictability to support a rated instrument. Other revenue

⁶⁶⁶ Oxford Economics (n 12); BCG, *Breaking Barriers to Data Center Growth* (BCG, October 2025) <https://www.bcg.com/publications/2025/breaking-barriers-data-center-growth> (ramp-up curves and GenAI-driven capacity build); McKinsey & Company, *Scaling Bigger, Faster, Cheaper Data Centers with Smarter Designs* (McKinsey, August 2025) <https://www.mckinsey.com/industries/private-capital/our-insights/scaling-bigger-faster-cheaper-data-centers-wi-th-smarter-designs>.

sources, such as co-location or utilization-based income, are typically treated conservatively and will either be subordinate to, or remain as trapped cashflows, thus maintaining credibility of the structure while still capturing a broader range of value.

VI. Alternative Approaches

- **Whole Business Securitisation (WBS):** This model secures the entire operating entity instead of just the receivables. It creates security over the entire operating business and includes both contracted and uncontracted revenues in the securitisation⁶⁶⁷. It is suitable for infrastructure-style assets; however, it requires an evolved regulatory and rating framework compared to traditional ways of financing.
- **Hybrid Project Finance + Securitisation:** This is a phased approach, with construction and ramp-up stages of funding taking place through traditional project financing. After the revenue has stabilised, funding becomes available through securitisation⁶⁶⁸. This creates an alignment between the financing strategy and the asset's maturity level, decreasing the risk associated with financing at the beginning of a new project.
- **InvIT-Based Structures:** (InvITs) provide a way to monetise infrastructure investment through the use of pooled, publicly traded investment vehicles. While InvITs can facilitate recycled capital, they generally serve more like equity instruments as opposed to replicating the risk-transfer characteristics of securitisation.⁶⁶⁹

VII. Conclusion and Policy Roadmap: Realising Data Centre Securitisation in India:

In order to make the data centre industry in India part of the standard securitisation market, a deliberate and phased approach is needed.⁶⁷⁰ On the basis of above analysis, we provide an outline of the regulatory actions needed over the next two to three years to allow for the unlocking of this asset class.

A. The Structural Incompatibility within the Current Regime

The data centre industry in India is considered to be an infrastructure quality, long-term asset class, with the potential to generate a predictable and contracted cash flow over time. While the Securitisation of Standard Assets (SDA) Framework of the Reserve Bank of India (RBI) is designed for profitable, existing retail loan types, there is a fundamental disconnect between how the SDA supports cash flow generation and the ability of the data centre to generate cash

⁶⁶⁷ *Whole Business Securitization in Structuring and Refinancing of LBO*, HAL Open Sci. (2020) [Whole Business Securitization in structuring and refinancing of LBO - Université d'Angers](#)

⁶⁶⁸ Claire A. Hill, *Whole Business Securitization: Secured Lending Repackaged?*, 32 Duke J. Comp. & Int'l L. 387 (2002), [Whole Business Securitization: Secured Lending Repackaged?: A Comment on Hill](#)

⁶⁶⁹ S&P Global Ratings, *Credit Rating Model: Whole Business Securitization Principal Amortization* (Nov. 10, 2020), <https://www.spglobal.com/ratings/en/regulatory/article/-/view/sourceId/11669566>.

⁶⁷⁰ Reserve Bank of India (n 6); Vinod Kothari Consultants, *Securitisation of Infrastructure Assets in India* (Whitepaper, May 2023) 1–4 <https://vinodkothari.com/wp-content/uploads/2023/05/Whitepaper-on-Infrastructure-Securitisation-A5.pdf>

flow over time.⁶⁷¹ In order to reduce this disconnect, it is necessary to create a complete realignment of policy, not just draft a workaround solution.⁶⁷²

B. The Minimum Contract Coverage Ratio (MCCR) and Interim Solutions

The MCCR (Minimum Contract Coverage Ratio) is an important tool to quantify revenue stability and assist as a benchmark to navigate the uncertainty of the current regulatory climate.⁶⁷³ The MCCR provides three (3) differentiated thresholds for MCCR; Conservative (70%), Moderate (60%) and Aggressive (50%) and provides a calibrated threshold for MCCR to provide a quantitative parameter for a deal rather than a qualitative parameter.⁶⁷⁴ The current best interim pathway is a hybrid finance model: project debt during the ramp-up phase of the data centre and then refinancing via securitisation at the completion of the ramp-up phase and completion of the MCCR threshold at the conservative threshold only.⁶⁷⁵

C. Regulatory Recommendations for a Viable ABS Market

In order to unlock the Investment Grade Asset- Backed Securities (ABS) market, there are several specific regulatory changes that need to be made. First, the Reserve Bank of India (RBI) will need to include a new 'Infrastructure Future Flow' category in the Structured Debt Instruments (SDI) Framework, allowing for partial contracted pools.⁶⁷⁶ Second, the RBI and Ministry of Law must provide clear guidance on the “true sale” qualification of future flows to address the risk of legal qualification confusion. Finally, the RBI should implement infrastructure-specific Minimum Retention Requirements (MRR) that make the standard 10% MRR baseline amount a maximum (rather than a minimum) and/or officially recognise the over-collateralisation of assets as being a structural protection.

⁶⁷¹ Reserve Bank of India (n 6), Chapter II (Eligibility Criteria and Conditions for Securitisation); Juris Corp (n 23); Vinod Kothari Consultants, Future Flows Securitisation (May 2025) 120–34 <https://vinodkothari.com/wp-content/uploads/2025/05/future-flows.pdf> accessed 29 April 2026.

⁶⁷² Vinod Kothari Consultants, Infrastructure Securitisation: Where Concrete Meets Capital Markets (Whitepaper, May 2025) 1–5 <https://vinodkothari.com/wp-content/uploads/2025/05/infrastructure-securitisation-combined.pdf> accessed 29 April 2026; NatWest Corporates and Institutions, 'Unlocking Infrastructure Investment: The Role of Securitisation and Private Credit' (2025) <https://www.natwest.com/corporates/insights/finance/unlocking-infrastructure-investment-the-role-of-securitisation-a.html> accessed 29 April 2026.

⁶⁷³ Vinod Kothari Consultants (n 57) 10–12; National Law Review, 'Financing the Data Center Boom: Trends, Structures, and Considerations for Market Participants' (April 2026) <https://natlawreview.com/article/financing-data-center-boom-trends-structures-and-considerations-market-participants> accessed 29 April 2026.

⁶⁷⁴ *ibid*; Morgan Lewis, 'Project Finance in the Data Center Sector: Structuring for Scale and Certainty' (February 2026) <https://www.morganlewis.com/pubs/2026/02/project-finance-in-the-data-center-sector-structuring-for-scale-and-certainty> accessed 29 April 2026.

⁶⁷⁵ Brodies LLP, 'Project Finance: The Role for Hybrid Finance' (July 2024) <https://brodies.com/insights/banking-and-finance/project-finance-the-role-for-hybrid-finance/> accessed 29 April 2026; Infrastructure Asia, 'Standardising of Project Finance Loan Documentation' <https://www.infrastructureasia.org/insights/standardising-of-project-finance-loan-documentation> accessed 29 April 2026; Paul D Clifford, Project Finance: Applications and Insights to Emerging Markets Infrastructure (Wiley 2020) ch 6.

⁶⁷⁶ *ibid*; Vinod Kothari Consultants, Future Flows Securitisation (n 56) 124–30; Ana Iglesias-Casal and others, 'Securitization, Financial Stability and Effective Risk Retention: A European Analysis' (2020) PLOS ONE DOI: 10.1371/journal.pone.0228141 <https://pmc.ncbi.nlm.nih.gov/articles/PMC6996833/> accessed 29 April 2026.

D. Conclusion

The evolution of securitisation in India hinges on regulatory adaptability, not capital availability. Implementing these reforms would successfully decentralise infrastructure financing risk from the banking sector and optimise long-term capital allocation. With its contractual certainty and strategic importance, the data centre sector is the logical vanguard for this financial evolution.⁶⁷⁷ The critical question is no longer whether India will cultivate a data centre ABS market, but how much developmental momentum will be lost to regulatory inertia before it finally does.

⁶⁷⁷ Iglesias-Casal and others (n 62); Vinod Kothari Consultants (n 57) 30–33; The Secretariat, 'Data Centres: From Auxiliary Asset to Strategic Infrastructure' (March 2026) <https://thesecretariat.in/article/data-centres-from-niche-infrastructure-to-strategic-asset> accessed 29 April 2026; Lowy Institute, 'India Emerges as a Data Centre Hub' (2025) <https://www.lowyinstitute.org/the-interpretor/india-emerges-data-centre-hub> accessed 29 April 2026.