

MUMBAI

SILICON VALLEY

BENGALURU

SINGAPORE

NEW DELHI

NEW YORK

GIFT CITY

Research

# Real Estate Tokenisation

## Legal, Tax and Regulatory Considerations

March 2025

Research

# Real Estate Tokenisation

---

## Legal, Tax and Regulatory Considerations

March 2025

DMS Code: 120091.3



Ranked as the 'Most Innovative Indian Law Firm' in the prestigious FT Innovative Lawyers Asia Pacific Awards for multiple years. Also ranked amongst the 'Most Innovative Asia Pacific Law Firm' in these elite Financial Times Innovation rankings.



## Disclaimer

This report is a copyright of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

## Contact

For any help or assistance please email us on [concierge@nishithdesai.com](mailto:concierge@nishithdesai.com) or visit us at [www.nishithdesai.com](http://www.nishithdesai.com).

## Acknowledgements

### **Palak Kapoor**

[palak.kapoor@nishithdesai.com](mailto:palak.kapoor@nishithdesai.com)

### **Kamini Toprani**

[kamini.toprani@nishithdesai.com](mailto:kamini.toprani@nishithdesai.com)

### **Aaron Kamath**

[aaron.kamath@nishithdesai.com](mailto:aaron.kamath@nishithdesai.com)

# Contents

<b>Fractional Ownership of Real Estate</b>	<b>1</b>
A. The Technology Behind the Process	2
B. An Insight into the Process of Real Estate Tokenisation	3
<b>Global Snapshot</b>	<b>4</b>
A. The Benefits	5
B. The Hurdles	5
<b>Regulation of RETs in the United States</b>	<b>7</b>
A. The Market and its Potential	7
B. The Regulatory Landscape	7
C. Regulation Around the World: A Broad Overview	8
<b>Tokenization in India: Unveiling Opportunities and Growth Potential</b>	<b>10</b>
A. Digital Tokens for Real-World Assets in the GIFT City	10
B. Regulatory Sandbox Opportunity by IFSCA	11
C. Telangana Government's Technical Guidance	11
<b>Legal, Tax and Regulatory Considerations in India</b>	<b>12</b>
A. Real Estate Laws	12
B. Real Estate Investment Laws	13
C. Anti-Money Laundering	14
D. Securities Laws	14
E. Banking and Payments Law	16
F. Foreign Exchange Laws	16
G. Taxation	17
<b>Conclusion</b>	<b>20</b>

# Fractional Ownership of Real Estate

Traditionally, real estate has been considered a high-value investment, often restricting participation to those with substantial financial resources. However, the introduction of fractional ownership in real estate allows multiple investors to collectively own and benefit from real estate assets. With advancements in Digital Ledger Technology (“DLT”), the concept of fractional ownership has evolved further, enabling the representation of real estate rights through digital tokens recorded on a distributed ledger. This development has sparked interest in real estate tokenization (“RET”), a process where ownership or economic rights in real estate are converted into tradeable tokens, enhancing liquidity, accessibility, and transparency in property investments.

According to a report by Custom Market Insights, the global RET market is projected to grow at a CAGR of 21% between 2024 and 2033, reaching an estimated valuation of USD 19.4 billion by 2033.<sup>1</sup> However, a study by McKinsey & Company (*captured in Figure 1 below*) underscores that the sector’s capitalisation is contingent on several key factors, including regulatory challenges, infrastructure development, and market demand.<sup>2</sup>

Forecasts of three potential adoption scenarios, 2030, nonexhaustive

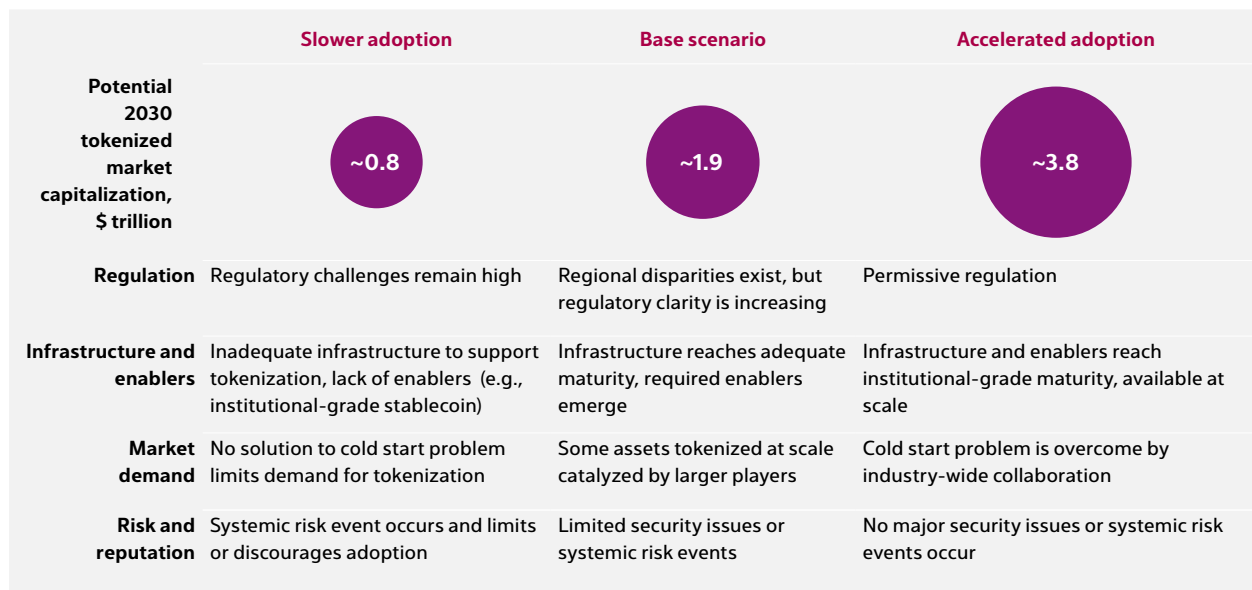


Figure 1: Forecasts of three potential adoption scenarios, 2030, non-exhaustive  
Source: McKinsey & Company

Given the nascent stage of the RET market, it is crucial to evaluate the practical challenges of implementation, the cross-jurisdictional nature of token transactions, the diverse regulatory approaches and classifications adopted across jurisdictions, and other legal and socio-economic considerations necessary for successfully operationalizing such projects.

- 1 Real Estate Tokenization Market Size, Trends and Insights By Asset Type (Residential, Commercial, Industrial), By Token Type (Security Tokens, Utility Tokens), By End-User (Investors, Developers), and By Region - Global Industry Overview, Statistical Data, Competitive Analysis, Share, Outlook, and Forecast 2024–2033, Custom Market Insights, available at: <https://www.custommarketinsights.com/report/real-estate-tokenization-market/>, last accessed: Mar 18, 2025.
- 2 A Banerjee et al, From ripples to waves: The transformational power of tokenizing assets, McKinsey & Company, [Jun 20, 2024], available at: <https://www.mckinsey.com/industries/financial-services/our-insights/from-ripples-to-waves-the-transformational-power-of-tokenizing-assets>, last accessed: Mar 18, 2025.



## A. The Technology Behind the Process

RET is a process through which the value of a property is divided into digital tokens using DLT. These tokens represent fractional ownership and can be traded on digital platforms, providing investors access to real estate assets without requiring full ownership. DLT serves as the foundation of this entire process.<sup>3</sup> There are two key elements linked to DLT which could substantially impact the manner in which the RET process may function:

**Permissioned or Permissionless:** The DLT used for RET may be: (i) private permissioned, (ii) public permissionless, or (iii) public permissioned.<sup>4</sup> A private permissioned ledger, accessible only to authorized participants (e.g., select investors), may be more centralized and fragmented, limiting token interoperability but enhancing security against Anti-Money Laundering/Combating the Financing of Terrorism (“**AML/CFT**”) risks. In contrast, public permissionless DLTs may allow unrestricted participation, raising AML/CFT risks but permitting interoperability. Reports note that certain pilot projects use public permissioned DLTs, incorporating participant control via whitelisting or other Know Your Customer (“**KYC**”)/AML/CFT compliance tools. However, the industry still considers the use of permissionless models as they offer scalability, interoperability, and resilience, provided that there are embedded controls pertaining to onboarding or participant identification.<sup>5</sup> Hence, the technological architecture of the DLT used for token deployment must be carefully considered, as it is crucial for ensuring the smooth functioning of the RET process and maintaining legal and regulatory compliance.

**Smart Contracts:** A smart contract is a self-executing agreement with terms encoded in its programming, operating on a decentralized DLT network to autonomously enforce and execute obligations without intermediaries. In real estate-related contracts, intermediaries such as brokers, agents, lawyers, and other parties traditionally assist buyers and sellers in executing contracts for transferring rights, titles, or interests in real estate. However, with smart contracts, these intermediaries may not be required as the technology automates the process. Once deployed, these contracts function independently, ensuring that transactions on the DLT are transparent, immutable, and irreversible. For instance, in a DLT platform used for RET, smart contracts can be programmed to enable “permissioning” or whitelisting at the application layer.<sup>6</sup> Furthermore, from a general standpoint, smart contracts, being predefined code, cannot be negotiated once deployed. However, Artificial Intelligence (“**AI**”)—based solutions can be integrated before execution to facilitate automated negotiation, enabling dynamic adjustments to contract terms based on predefined parameters and real-time data inputs. While smart contracts are central to tokenization, they also pose risks related to code errors, private key compromises, and security vulnerabilities.<sup>7</sup> The reliability of a smart contract depends on precise coding, as errors in deployed contracts can be difficult to reverse.

3 Blockchain is a subset of DLT and is often utilized for RET. However, in this article we refer to the broader technology, DLT, consistent with its usage in reports issued by the Organisation for Economic Co-operation and Development and Financial Stability Board on asset tokenization.

4 Paragraph 2.6., Tokenisation Of Assets And Distributed Ledger Technologies In Financial Markets, Potential impediments to market development and policy implications - OECD Business and Finance Policy Papers, No. 75, Organization for Economic Co-operation and Development, [Jan 09, 2025], available at: [https://www.oecd.org/en/publications/tokenisation-of-assets-and-distributed-ledger-technologies-in-financial-markets\\_40e7f217-en.html](https://www.oecd.org/en/publications/tokenisation-of-assets-and-distributed-ledger-technologies-in-financial-markets_40e7f217-en.html) (“OECD Paper”), last accessed: Mar 20, 2025.

5 Ibid.

6 Ibid.

7 Chapter 3, OECD Paper.

## B. An Insight into the Process of Real Estate Tokenisation

The RET process involves converting ownership rights in a property into tokens on a DLT platform, allowing for fractional ownership and increased liquidity. While specific steps may vary based on business decisions and the type of real estate involved, the general process includes:

- **Acquisition of Real Estate:** An entity pools investments from a private group of investors to purchase real estate. To facilitate this, a Special Purpose Vehicle (“SPV”) may be created to hold the investments. For this example, the investment made by investors is structured as debt.
- **SPV Holding the Real Estate:** The acquired property is held by the SPV, which fractionalizes ownership into digital tokens. The value of the real estate is then represented through a debt instrument issued to investors. For instance, if a property is worth USD 115,000 and 10,000 tokens are issued, each token would be valued at approximately USD 11.
- **Issuance of Tokens:** The digital tokens, proportional to the debt instrument, are issued on a blockchain to investors, ensuring security, transparency, and immutability of ownership records.
- **Rights Assigned through Tokens:** Smart contracts embedded within the tokens automatically assign rights to investors, which may include profit-sharing, governance rights, or future redemption options. A lock-in period may be imposed to restrict trading for a specified duration.
- **Tradability of Tokens:** After the lock-in period, investors may either trade the tokens on a secondary market or redeem them with the issuing entity based on the agreed terms. The tradability enhances liquidity in real estate investment, making it more accessible to a broader investor base.

The structuring of token issuance would depend on the business requirements of the issuing entity. The entity may choose to issue tokens directly rather than through an SPV, or it may opt for an alternative structuring approach, such as issuing preferential shares that are subsequently converted into tokens, instead of using a debt instrument. The chosen structure would be influenced by regulatory considerations, investor preferences, and the financial objectives of the tokenization project.

Furthermore, tokens issued can generally be categorized into (i) security tokens or (ii) utility tokens, depending on their characteristics and the rights they confer upon the holders. Security tokens signify an investment stake in real estate, such as shared ownership in a commercial property, whereas utility tokens grant access to real estate services rather than ownership.<sup>8</sup>

<sup>8</sup> Industry Case Study: Real Estate Tokenization, Beyondi | The Web3 Company, [ Nov 26, 2024], available at: <https://blog.beyondi.co/industry-case-study-real-estate-tokenization-10263ba3d7ab>, last accessed: Mar 20, 2025.



# Global Snapshot

With the prediction to reach a global market size valued at USD 16 trillion by 2030, by the Boston Consulting Group, there is a promise that the RET sector presents.<sup>1</sup> Although studies reflect that there is an absence of a tokenisation market for financial assets in general, there have been some notable developments in RETs around the globe.<sup>2</sup>

- **United Arab Emirates:** On 19 March 2024, the Dubai Land Department launched the pilot phase of the Real Estate Tokenisation Project under its Real Estate Innovation Initiative 'REES', becoming the first real estate registrar in the Middle East to tokenize property title deeds. This pioneering effort is expected to drive significant growth, with the market projected to reach AED 60 billion (approx. USD 16.33 billion) by 2033, accounting for 7% of Dubai's real estate transactions.<sup>3</sup>
- **United States:** Lofty, a Miami-based real estate tokenization platform enables investors to purchase fractional ownership in properties through blockchain technology. A company is registered for each property acquired and each token is valued at USD 50. Other players in the tokenization market include RealT and HouseBit.<sup>4</sup> Reports also indicate that a portion of a luxury resort was tokenized to secure financing, with observations suggesting that this approach was more efficient than traditional fundraising methods.<sup>5</sup> The developments in the United States have been separately discussed below.
- **Luxembourg:** As reported in 2025, Blocksquare launched a RET framework in Luxembourg, compliant with the European Union's Markets in Crypto-Assets Regulation ("MiCA"). This initiative enables property owners to tokenize economic rights tied to real estate, integrating with land registries through notarized agreements to ensure legal compliance.
- **Indonesia:** In March 2023, CoFund introduced a real estate tokenization project involving a USD 10 million, 4-star hotel in Bali. This initiative allows investors to own fractional shares of the property, with investments starting at USD 1,000, aiming to democratize access to high-value real estate assets.<sup>6</sup>
- **India:** Terazo, a private market investment platform, partnered with Tokeny, a tokenization platform, to pioneer India's first regulated tokenized real estate asset in GIFT City, India. With IFSCA's regulatory approval and Tokeny's technological assistance, Terazo launched Oryx, a flagship project in GIFT City, aimed at democratizing real estate investment through asset tokenization.<sup>7</sup> Terazo's inaugural USD 7 million tokenized fund allows qualified primary investors to participate with minimum investments starting at USD 100,000. Secondary investors can engage with as little as USD 1,000, broadening access to real estate investments.<sup>8</sup>

1 S Kumar et al, Relevance of on-chain asset tokenization in 'crypto winter', Boston Consulting Group, [Aug, 2022], available at:<https://web-assets.bcg.com/1e/a2/5b5f2b7e42dfad2cb3113a291222/on-chain-asset-tokenization.pdf>, last accessed: Mar 20, 2025.

2 OECD Paper; The Financial Stability Implications of Tokenisation, Financial Stability Board, [Oct 22, 2024], available at:<https://www.fsb.org/uploads/P221024-2.pdf> ("FSB Paper"), last accessed: Mar 20, 2025.

3 This project is developed in collaboration with Virtual Assets Regulatory Authority and Dubai Future Foundation via Sandbox Dubai; Dubai Land Department Launches Pilot Phase of the 'Real Estate Tokenisation Project', Government of Dubai Media Office, [Mar 19, 2025], available at:<https://mediaoffice.ae/en/news/2025/march/19-03/dubai-land-department-launches-real-estate-tokenisation-project>, last accessed: Mar 20, 2025.

4 Crypto has designs on real estate, Financial Times, available at:<https://www.ft.com/content/cf036ebf-6f4e-474f-a1ef-ca7179b712b0>, last accessed: Mar 20, 2025.

5 Ibid.

6 CoFund Launches First Real Estate Tokenization Project in Bali : A New Investment Opportunity to Diversify Portfolios, Global Newswire, [Mar 8, 2023], available at:<https://www.globenewswire.com/news-release/2023/03/08/2622869/0/en/CoFund-Launches-First-Real-Estate-Tokenization-Project-in-Bali-A-New-Investment-Opportunity-to-Diversify-Portfolios.html>, last accessed: Mar 20, 2025.

7 Terazo and Tokeny Join Forces for India's First Regulated Tokenisation Project, Tokeny, available at:<https://tokeny.com/terazo-and-tokeny-join-forces-for-indias-first-regulated-tokenization-project/>, last accessed: Mar 20, 2025.

8 Ibid.

These select examples illustrate that the concept of RET is gaining global traction. Observing this trend, first movers are likely to gain a competitive advantage in an industry poised for significant growth.

## A. The Benefits

Some of the key benefits of RET recognized by the industry include:

- **Democratization of Investment:** RETs enable broader public participation in real estate by lowering entry barriers and reducing the capital required for investment.
- **Cost Efficiency:** By eliminating intermediaries, RETs significantly reduce transaction costs, making real estate investment more accessible and economical.
- **Transparency and Security:** Transactions recorded on a distributed ledger are verifiable, transparent, and immutable, ensuring trust and security in ownership records.
- **Diversified Investment Opportunities:** RETs expand the investment pool by offering investors a wider range of real estate assets to choose from.
- **Speed and Efficiency:** Instant transactions reduce delays and roadblocks, making RETs a faster and more efficient alternative to traditional real estate investment.
- **Enhanced Liquidity:** By converting real estate assets into tokens, RETs improve liquidity in a traditionally illiquid market.
- **Global Accessibility:** RETs enable international investor participation, allowing individuals to invest in high-value real estate assets without geographical limitations.

## B. The Hurdles

There are few hurdles which may hinder the growth of the sector and require due consideration by relevant stakeholders.<sup>9</sup>

- **Unclear Investor Demand:** Despite industry interest, it remains uncertain whether investors and other market participants find tokenised assets attractive. Further, tokenisation is still largely at the proof-of-concept stage, with no significant projects reaching widespread adoption.
- **High Transition Costs:** Moving from traditional financial infrastructure to DLT-based systems requires significant investment and dual-system management during the transition phase.
- **Mismatch between Asset and Token:** Tokenised assets may appear liquid due to fractionalisation, but underlying assets may not be easily tradable, leading to potential mismatches in liquidity. The price of a token may diverge from the underlying reference asset, leading to valuation and risk assessment issues.
- **Ownership Issues:** Owning a token does not necessarily grant ownership of the underlying asset, creating legal ambiguities.
- **Interoperability Issues:** Many DLT platforms lack the ability to share data effectively, limiting the potential for seamless integration with other platforms.

<sup>9</sup> OECD Paper and FSB Paper.

## Global Snapshot

- **Cross-Border Regulatory Differences:** Jurisdictions have different legal and regulatory approaches to tokenised assets, leading to compliance challenges for international projects. Further, the absence of common identification standards for tokens and digital ledgers makes cross-border transactions difficult.
- **Compliance with AML/CFT Laws:** The pseudonymous nature of certain DLT systems creates compliance challenges for anti-money laundering and counter-terrorism financing regulations. Further, the decentralised nature of DLT can make it more vulnerable to cyber-attacks and operational disruptions.
- **Financial Instability Risks:** Tokenised assets may encourage excessive leverage, amplifying financial instability. Tokenised markets could introduce new interdependencies in financial markets, increasing risk transmission during stress events.

# Regulation of RETs in the United States

## A. The Market and its Potential

The RET market in the United States is set for substantial growth, fuelled by advancements in blockchain technology and rising demand for innovative investment solutions. Valued at USD 0.96 billion in 2024, the market is projected to reach USD 6.6 billion by 2034, growing at a CAGR of 2.90%.<sup>1</sup> Key players in this space include Blocksquare, BITGO, SLICE, Consensys Codefi, Blockchain App Factory, Somish Solutions Limited, FORTEM, and SMARTRealty.<sup>2</sup>

Notable industry examples include RealT, which allows investors to purchase real estate tokens issued on the Ethereum network and earn weekly rental income in stablecoins, paid via Gnosis Chain or Ethereum wallets.<sup>3</sup> Similarly, Synodus facilitates the creation of blockchain-based platforms that enable fractional ownership of real estate, further expanding investment accessibility.<sup>4</sup>

## B. The Regulatory Landscape

Tokenised real estate in the United States are generally treated as securities and regulated under federal securities laws. The Securities Act of 1933 mandates that any offering of securities, including real estate tokens, must be registered with the Securities and Exchange Commission (“SEC”), unless an exemption applies. A quick snapshot of the exemptions applicable is given below:

- Regulation D allows private placements to accredited investors. Under Rule 506(b), issuers can raise unlimited funds but cannot advertise the offering and may include up to 35 non-accredited investors.<sup>5</sup> In contrast, Rule 506(c) permits public solicitation, but only accredited investors can participate.<sup>6</sup>
- Regulation S exempts offshore offerings made to non-U.S. investors, provided the offering complies with foreign securities laws. However, tokens issued under Reg S cannot be resold to U.S. investors for one year to avoid SEC jurisdiction.
- Regulation A allows issuers to raise up to USD 20 million (Tier 1) or USD 75 million (Tier 2) from both accredited and retail investors with fewer reporting obligations than a full IPO.<sup>7</sup>

1 U.S. Real Estate Tokenization Market Size, Share, By Type (Commercial Real Estate Tokenization, Residential Real Estate Tokenization, Single Real Estate Tokenization, and Trophy Real Estate Tokenization), By Component (Services and Solutions), By Deployment (Cloud and On-Premises), By Application (Payment Security, User Authentication and Compliance Management)- Trends, Analysis, and Forecast till 2034, Prophecy Market Insights [July 2024] available at:[https://www.prophecymarketinsights.com/market\\_insight/us-real-estate-tokenization-market-5465](https://www.prophecymarketinsights.com/market_insight/us-real-estate-tokenization-market-5465), last accessed: Mar 20, 2025.

2 Ibid.

3 Home Page, RealT, available at:<https://realt.co/>, last accessed: Mar 20, 2025.

4 F Thomson, Top 10 Real Estate Tokenization Companies Paving the Future of Property Investment, Medium [Oct 21, 2024], available at:<https://medium.com/coinmonks/top-10-real-estate-tokenization-companies-69a05b17c212>, last accessed: Mar 20, 2025.

5 Private Placements – Rule 506(b), US Securities and Exchange Commission, available at:<https://www.sec.gov/resources-small-businesses/exempt-offerings/private-placements-rule-506b>, last accessed: Mar 20, 2025.

6 General solicitation – Rule 506(c), US Securities and Exchange Commission, available at:<https://www.sec.gov/resources-small-businesses/exempt-offerings/general-solicitation-rule-506c>, last accessed: Mar 20, 2025.

7 Regulation A, US Securities and Exchange Commission, available at:<https://www.sec.gov/resources-small-businesses/exempt-offerings/regulation>, last accessed: Mar 20, 2025.

## Regulation of RETs in the United States

Hence, the exemptions mentioned above may be attractive from the perspective of establishing a RET business within the United States, provided that these tokens continue to be treated as “securities” under the law.

Having said that, one may argue that since these tokens are linked to a physical asset with a relatively stable value, rather than being driven by market demand and supply dynamics like cryptocurrencies, they could be categorized as stablecoins. With this context, it may be relevant to note the regulation of stablecoins in the United States.

Interpretative letters<sup>8</sup> issued by the Office of the Comptroller of the Currency (“OCC”) in the United States suggest that stablecoins are primarily recognized for payment purposes, akin to fiat currencies. Additionally, the New York State Department of Financial Services Guidelines apply to stablecoins backed by US Dollars, issued under its regulatory oversight.<sup>9</sup>

In addition to this, on February 4, 2025, Senator Bill Hagerty introduced the Guiding and Establishing National Innovation for US Stablecoins Act of 2025 (“GENIUS Act”) in the Senate. The proposed legislation focuses on regulating payment stablecoins, defined as digital assets intended for use in payments or settlements and pegged to a fixed monetary value.<sup>10</sup> It establishes licensing requirements for entities issuing such stablecoins.<sup>11</sup> It establishes a dual regulatory regime for stablecoin issuers, allowing both federal oversight (primarily by the OCC for non-bank issuers) and state oversight (for issuers below a certain size, under equivalent state regulatory standards).

RETs differ fundamentally from payment stablecoins, being linked to physical assets rather than currency, and may not come under the purview of the GENIUS Act. However, as the law pertaining to the regulation of “digital assets” matures in the United States, one may have to be cautious of any regulation that specifically deals with tokenised real estate. For instance, other jurisdictions such as Switzerland specifically acknowledge the existence of RET and have issued supplementary guidance for its regulation under the law.

## C. Regulation Around the World: A Broad Overview

In this section, we discuss two jurisdictions where tokens linked to real-world assets are specifically regulated or at the least acknowledged by the concerned government.

**United Arab Emirates:** stablecoins pegged to assets are specifically regulated, with distinct categorization for those linked to fiat currencies and those backed by other real-world assets (as may be determined by the regulatory authority).<sup>12</sup>

8 Interpretive Letter 1174, Office of the Comptroller of the Currency, Washington DC, [Jan 04, 2021], available at:<https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf>, last accessed: Mar 20, 2025; Interpretive Letter #1172, Office of the Comptroller of the Currency, Washington DC, [Sept 21, 2020], available at:<https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1172.pdf>, last accessed: Mar 20, 2025.

9 Virtual Currency Guidance, Department of Financial Services, New York State, [Jun 08, 2022], available at:[https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20220608\\_issuance\\_stablecoins](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220608_issuance_stablecoins), last accessed: Mar 20, 2025.

10 Draft of the Guiding and Establishing National Innovation for U.S. Stablecoins of 2025 introduced in the United States Senate, available at:<https://www.hagerty.senate.gov/wp-content/uploads/2025/02/GENIUS-Act.pdf>, last accessed: Mar 20, 2025; TM Evans, GENIUS Act Clears Senate Banking Committee: What It Means For Stablecoins, Forbes [Mar 13, 2025], available at:<https://www.forbes.com/sites/tonyaevans/2025/03/13/genius-act-clears-senate-banking-committee-what-it-means-for-stablecoins/>, last accessed: Mar 20, 2025.

11 Overview of the GENIUS Act, Bill Hagerty – US Senator for Tennessee, available at:<https://www.hagerty.senate.gov/wp-content/uploads/2025/02/GENIUS-Act-One-Pager-2.4.25.pdf>, last accessed: Mar 20, 2025.

12 <https://rulebooks.vara.ae/rulebook/virtual-asset-issuance-rulebook>, last accessed: Mar 20, 2025].

**Switzerland:** Asset-backed tokens are classified as securities and subject to securities law under the Financial Market Supervisory Authority's ("FINMA") guidelines for initial coin offering ("ICO Guidelines") in Switzerland.<sup>13</sup> FINMA's supplementary guidelines<sup>14</sup> to the ICO Guidelines emphasize a substance-over-form approach for the treatment of stablecoins. It also notes that stablecoins often trigger licensing requirements under banking laws or laws related to collective investment schemes. The supplementary guidelines further categorise stablecoins linked to different assets on an indicative basis stating that the specific assessment for each stablecoin would remain decisive. For real estate-backed tokens, the supplementary guidelines state that if they involve a redemption claim and third-party management of a real estate portfolio, they may be considered a collective investment scheme, requiring a license under laws regulating collective investment schemes.

In contrast, India currently lacks a specific regulatory framework for real estate tokenization. While the concept remains unregulated, existing laws such as the FEMA and SEBI regulations may apply depending on the structure of the tokenized offering. For instance, if the tokens are deemed securities, they would fall under SEBI's purview, necessitating compliance with relevant securities laws. Additionally, taxation and anti-money laundering statutes could impact the structuring and operation of real estate tokens in India.

The absence of clear guidelines in India contrasts with the more established regulatory environment in the United States, Switzerland or United Arab Emirates, presenting challenges for stakeholders seeking to navigate the legal landscape of real estate tokenization.

13 Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs), Swiss Financial Market Supervisory Authority, [Feb 16, 2018], available at: [https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?sc\\_lang=en&hash=83EE49D77DA54DD079F314D9EDCBDC3D](https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?sc_lang=en&hash=83EE49D77DA54DD079F314D9EDCBDC3D), last accessed: Mar 20, 2025.

14 Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs), Swiss Financial Market Supervisory Authority, [Sept 11, 2019], available at: [https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-stable-coins.pdf?sc\\_lang=en&hash=68854A0D6DAFC3F8F1D4F1C9AF56BA4D](https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-stable-coins.pdf?sc_lang=en&hash=68854A0D6DAFC3F8F1D4F1C9AF56BA4D), last accessed: Mar 20, 2025.



# Tokenization in India: Unveiling Opportunities and Growth Potential

India presents a promising market for RET, given the growing interest in real-world asset tokenization expressed by certain government authorities.

In this context, two notable developments in GIFT City warrant attention. Before delving into these developments, it is relevant to note that GIFT City consists of two distinct zones: the GIFT Special Economic Zone, designated as an International Financial Services Centre (“**GIFT IFSC**”), and the Domestic Tariff Area. Under Indian law,<sup>1</sup> businesses incorporated in the GIFT IFSC are treated as non-residents for foreign exchange laws and certain duties, and are also required to conduct business in foreign currency, making it an attractive location for enterprises seeking a favorable regulatory environment. The International Financial Services Centres Authority (“**IFSCA**”) serves as the unified regulator for all financial services within the IFSC.<sup>2</sup>

## A. Digital Tokens for Real-World Assets in the GIFT City

On February 26, 2025, the IFSCA, issued a consultation paper titled Regulatory Approach Towards Tokenization of Real-World Assets (“**Consultation Paper**”)<sup>3</sup> inviting comments from the stakeholders. One of the primary objectives of the Consultation Paper is to establish a regulatory framework for the tokenization of real-world assets (“**RWAs**”) by providing legal and regulatory recognition to digital tokens that represent ownership or beneficial interest in underlying RWAs. Additionally, it aims to develop reliable mechanisms for the issuance, trading, custody, clearing, and settlement of such tokens.

The Consultation Paper is structured into four thematic sets of questions, seeking stakeholder feedback on key regulatory concerns:

- **Definition and Characteristics of Digital Tokens:** Questions in this section seek input on the scope of RWAs that may be tokenized, including whether tangible assets (e.g., real estate) and intangible assets (e.g., financial securities) should be included. It also asks how changes in beneficial ownership of the RWA should be recognized when digital tokens representing RWAs are traded and what rights should be conferred by such tokens.
- **Regulatory Framework for Issuance, Custody, Clearing, and Settlement:** This section invites responses on whether the issuance and custody of digital tokens should be regulated activities. It also asks how the market infrastructure for digital tokens should be structured, including whether it should be classified based on DLT and non-DLT systems.

1 Regulated under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 and Special Economic Zones (SEZ) Act, 2005; For more information on business opportunities in the GIFT City please see our research paper titled Opportunities in GIFT City, available here: [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/research\\_Papers/Opportunities\\_in\\_GIFT\\_City\\_.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/research_Papers/Opportunities_in_GIFT_City_.pdf).

2 IFSCA is established under the International Financial Services Centres Authority Act, 2019 as the unified regulator of the GIFT City; GIFT City is India's maiden International Financial Services Centre based in the state of Gujarat.

3 Regulatory Approach Towards Tokenization of Real-World Assets, International Financial Services Centres Authority, [Feb 26, 2025] available at: <https://ifsc.gov.in/Document/ReportandPublication/ifsc-consultation-paper-on-regulatory-approach-towards-tokenization-of-real-world-assets03032025111644.pdf>, last accessed: Mar 20, 2025.

## Tokenization in India: Unveiling Opportunities and Growth Potential

- **Risk Management Framework:** Questions in this section focus on addressing risks in digital token markets, including technological risks, cyber risks, and risks related to money laundering and terrorist financing.
- **Fostering Growth and Development of the Digital Token Market:** This section invites views on regulatory approaches to support the organic growth of the digital token ecosystem

IFSCA's efforts to streamline the regulation of digital tokens reflect the government's intent to foster growth and development in this emerging sector.

## B. Regulatory Sandbox Opportunity by IFSCA

Before issuing this Consultation Paper, IFSCA laid the groundwork for FinTech innovation in IFSCs through its April 27, 2022 circular titled “Framework for FinTech Entity in the International Financial Services Centres (IFSCs).”<sup>4</sup> This framework introduced Regulatory Sandboxes, allowing FinTech firms operating in capital markets, banking, insurance, and other financial services to test innovative solutions in a controlled, real-world setting. As outlined in the circular, a Regulatory Sandbox is a live testing environment with a limited number of real customers over a defined period, where participating entities benefit from targeted regulatory exemptions or relaxations to support the experimentation of new financial technologies.<sup>5</sup> Leveraging this framework, Terazo and Tokeny pioneered India's first regulated tokenized real estate asset (details discussed above).

## C. Telangana Government's Technical Guidance

The State Government of Telangana has taken a proactive approach to fostering the adoption of “asset tokenization”<sup>6</sup> within the state.<sup>7</sup> As part of this initiative, in 2023, the State Government, in collaboration with private stakeholders, released a guidance note (“**Guidance Note**”) to assist stakeholders and the Web3 ecosystem in navigating this emerging sector.

The Guidance Note outlines the technical steps involved in asset tokenization, including the issuance and transfer of tokens. These technical steps are key determinants in shaping the legal framework applicable to the model. For instance, the Guidance Note mentions the difference between the custodial approach, where the token remains under the custody of a centralized entity (such as a centralized exchange) rather than the buyer, and the non-custodial approach, where the buyer directly holds custody of the token. The determination of token ownership is particularly significant from the perspective of Indian foreign exchange laws, as it influences whether a cross-border transfer of asset-backed tokens has occurred. Such transactions require a case-by-case analysis to ensure compliance with applicable regulatory frameworks.

4 Framework for FinTech Entity in the International Financial Services Centres (IFSCs), International Financial Services Centres Authority, [Apr 27, 2022], available at: [https://giftsez.com/documents/Circular/Framework\\_for\\_FinTech\\_Entity\\_in\\_the\\_International\\_Financial\\_Services\\_Centres.pdf](https://giftsez.com/documents/Circular/Framework_for_FinTech_Entity_in_the_International_Financial_Services_Centres.pdf), last Accessed: Mar 20, 2025.

5 Paragraph 2(m), Framework for FinTech Entity in the International Financial Services Centres (IFSCs), International Financial Services Centres Authority, [Apr 27, 2022], available at: [https://giftsez.com/documents/Circular/Framework\\_for\\_FinTech\\_Entity\\_in\\_the\\_International\\_Financial\\_Services\\_Centres.pdf](https://giftsez.com/documents/Circular/Framework_for_FinTech_Entity_in_the_International_Financial_Services_Centres.pdf), last Accessed: Mar 20, 2025.

6 The Telangana Guidance Note refers to “Asset Tokenisation” as the process of converting the value of a tangible or intangible asset into a digital token using blockchain technology, which allows for the fractional ownership of such asset.

7 Technical Guidance Note on Asset Tokenization [2023], Emerging Technologies ITE&C Department, Government of Telangana.

# Legal, Tax and Regulatory Considerations in India

As mentioned above, India holds significant potential for the growth of the RET market, and in line with this, this section examines the applicability of the current legal, tax, and regulatory framework to RET projects.

Before conducting a detailed analysis, it is essential to first understand the potential classification of real estate tokens under Indian jurisprudence, as this forms the foundation for their legal and regulatory treatment. For this, the jurisprudence laid down by the apex court serves as a key reference. In its judgment in *Internet and Mobile Association of India v. Reserve Bank of India* (W.P. (C) 528/2018), delivered on March 4, 2020, the Supreme Court of India observed that virtual digital assets do not have an exact and precise legal definition. These digital assets could be categorized as goods, commodities, intangible assets, or even currency, depending on their specific use and context. In line with this observation of the court, one may argue that real estate tokens may be categorised as intangible assets.

## A. Real Estate Laws

Legal compliances applicable to contracts involving the transfer of real estate or “immovable property” require thorough assessment in the context of RETs. The applicability of such compliances may pose potential challenges to the seamless transfer of rights assigned through tokens linked to immovable property.

- **Stamping and Registration Considerations:** The law mandates the registration of any instrument that creates or assigns “any right, title, or interest” in immovable property where the value exceeds INR 100 (approx. USD 1).<sup>1</sup> This includes instruments acknowledging receipt or payment of consideration for such transactions.<sup>2</sup> Additional requirements include the presentation of the instrument at the appropriate registration office along with party photographs and fingerprints.<sup>3</sup> The applicability of these obligations must be assessed in the context of smart contracts and tokenized real estate transactions executed on DLT platforms.

Further, state-specific stamping obligations also apply to such instruments in India,<sup>4</sup> and similar franking or stamping requirements may exist across multiple jurisdictions, necessitating careful compliance.

- **Restrictions on Acquisition/Purchase of Real Estate:** Foreign exchange control laws impose restrictions on the purchase of certain categories of land by persons resident outside India (as discussed below). Domestic buyers also face state-specific restrictions or approval requirements, particularly for agricultural land, which is often reserved for farmers or agriculturists. For instance, Karnataka proposed a bill to protect khaarab land, covering government-owned landlocked parcels, water bodies, grazing grounds, and public lands, aiming to prevent encroachment.<sup>5</sup> Hence, restrictions on land purchase/acquisition may need to be carefully assessed prior to the process of tokenisation operation.

<sup>1</sup> Section 17(1)(b), Registration Act, 1908.

<sup>2</sup> Section 17(1)(c), Registration Act, 1908.

<sup>3</sup> Section 32, Registration Act, 1908.

<sup>4</sup> Section 3 read with Schedule 1, Indian Stamp Act 1899; Section 74 read with 75, Indian Stamp Act 1899.

<sup>5</sup> Govt introduces Bill to protect ‘landlocked’ kharab lands leased for 15+ years, Times of India, [Mar 18, 2025], available at: <https://timesofindia.indiatimes.com/city/bengaluru/govt-introduces-bill-to-protect-landlocked-kharab-lands-leased-for-15-years/articleshow/119173244.cms>, last accessed: Mar 20, 2025.

- **Land-Related Disputes:** According to Land Conflict Watch, approximately 4,902,077 hectares of land in India are affected by land-related conflicts, impacting investments of approximately INR 340 million (approx. USD 3.94 million).<sup>6</sup> A 2022 study revealed that 17% of all disputes before the Delhi High Court at the time pertained to land and property matters, with tenancy and land acquisition being the most common types of cases.<sup>7</sup> Additionally, a 2019 report indicated that 66% of all civil cases in India are related to land or property disputes.<sup>8</sup> These statistics highlight the critical need for thorough due diligence before purchasing property in India for RET, as disputed properties could hinder title transfers and create legal and financial risks for investors.
- **Digitization of Land Records:** In 2024, Union Minister of Rural Development Shri Shivraj Singh Chouhan announced that 95% of rural land records had been digitized, aiming to enhance transparency, reduce encroachments, and improve land administration.<sup>9</sup> While this initiative is expected to clarify title ownership and mitigate disputes, its long-term impact remains to be seen.

In addition to the above considerations, it must also be noted that if the immovable property in question is under-construction, then the transfer of rights in such property by the promoter may be subject to restrictions imposed under the Real Estate (Regulation and Development) Act, 2016.

## B. Real Estate Investment Laws

Considering the likely cross-jurisdictional nature of RET projects, the permissibility of foreign residents investing in domestic real estate or allied products would also need due consideration.

In India, the transfer or acquisition of immovable property by a Non-Resident Indian (“NRI”)<sup>10</sup> or an Overseas Citizen of India (“OCI”)<sup>11</sup> is governed under foreign exchange law.<sup>12</sup> An NRI or OCI may acquire or (transfer to an NRI or OCI)<sup>13</sup> immovable property in India, except agricultural land, farmhouses, or plantation property, subject to certain conditions. The consideration, if any, for such transfer must be made from: (i) funds received in India through banking channels via inward remittance from outside India; or (ii) funds held in a non-resident account maintained in compliance with foreign exchange law, including applicable rules and regulations.<sup>14</sup> However, NRIs and OCIs are permitted to inherit any immovable property in India from a person resident outside India by way of inheritance provided that they had inherited such property in accordance with applicable inheritance laws or from a person resident in India.<sup>15</sup> Hence, in effect a person resident outside India may inherit immovable property in India subject to compliance with applicable laws or if it is inherited from a person resident in India.

6 Conflicts Database, Land Conflict Watch, available at: <https://www.landconflictwatch.org/all-conflicts>, last accessed: Mar 20, 2025.

7 Devendra Damle & Karan Gulati, Characterising Land And Proper And Property Related Litigation At The Delhi High Court, National Law School of India Review, [2022], available at: <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1378&context=nlsir#:-:text=At%20the%20Delhi%20High%20Court%2C%20land%20and%20property%20disputes%20constitute,more%20than%2018%25%20of%20cases>, last accessed: Mar 20, 2025.

8 Namita Wahi, Understanding Land Conflict in India and Suggestions for Reform, Centre for Policy Research, [Jun 26, 2019], available at: <https://cprindia.org/understanding-land-conflict-in-india-and-suggestions/>, last accessed: Mar 20, 2025.

9 95% of Land Records in Rural India Digitized, Press Information Bureau, [Oct 26, 2024], available at: <https://pib.gov.in/PressReleaseFramePage.aspx?PRID=2068408>, last accessed: Mar 20, 2025.

10 Regulation 2(aj), Foreign Exchange Management (Non-debt Instruments) Rules, 2019, ‘Non-Resident Indian (NRI)’ means an individual resident outside India who is a citizen of India.

11 Regulation 2(ak), Foreign Exchange Management (Non-debt Instruments) Rules, 2019, ‘Overseas Citizen of India (OCI)’ means a individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

12 Foreign Exchange Management Act, 1999 read with the Foreign Exchange Management (Non-debt Instrument) Rules, 2019.

13 Regulation 24(e), Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

14 Regulation 24, Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

15 Regulation 24(c), Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Additionally, there is a general prohibition on the transfer of immovable property in India by persons resident outside India. Such transfers require prior permission from the banking regulator and must comply with other prescribed conditions.<sup>16</sup> Further, transactions involving the purchase of permissible immovable property in India may also be subject to an amount cap of USD 250,000.<sup>17</sup>

In light of the above, the restrictions on acquisition/purchase of immovable property in India from an investors perspective should be analysed on a case-by-case basis.

## C. Anti-Money Laundering

Issuance and trading of real-estate based tokens in India may be subject to AML/CFT related risks, requiring compliance with KYC obligations. In India, entities engaging in the exchange between virtual digital assets (“VDAs”) and fiat currencies, the exchange between different forms of VDAs, and the transfer of VDAs, among others activities, on behalf of another natural or legal person in the course of business would be categorised as a “reporting entity” under the Prevention of Money-laundering Act, 2002 (“PMLA”).<sup>18</sup> Such reporting entities are required to register with the Financial Intelligence Unit of India. Hence, there may be a possibility that a real estate token provider may be classified as a reporting entity under the PMLA. If categorized as a reporting entity, such a provider would be required to comply with anti-money laundering and know your customer obligations, including those prescribed under the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

## D. Securities Laws

With reference to the process of RET, there may be a risk of these tokens being categorised as securities linked to the SPV. Therefore, the categorisation of such tokens becomes crucial from a legal compliance perspective.

### Categorisation of RETs under securities law:

Given that real estate-backed tokens derive their value from a tangible real-world asset, their classification as a “security” under the Securities Contracts (Regulation) Act, 1956 (“SCRA”) may require careful evaluation. The definition of “security”<sup>19</sup> under the SCRA includes “derivatives,”<sup>20</sup> which may encompass securities derived from debt instruments. If the tokens are issued against debt instruments representing investor contributions, there is a possibility that they could be categorized as securities under the regulatory framework. However, the specific facts of each issuance must be analyzed, including whether the issuance is explicitly authorized by a regulator and the nature of such authorization. Thus, the manner in which tokens are issued to investors plays a crucial role in determining whether they qualify as securities.

<sup>16</sup> Regulation 30, Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

<sup>17</sup> FAQs on Liberalised Remittance Scheme, Reserve Bank of India, [Apr 06, 2023], available at: <https://www.rbi.org.in/commonperson/English/Scripts/FAQs.aspx?Id=1834#Q1>, last accessed: Mar 20, 2025.

<sup>18</sup> Section 2(1)(sa) and Section 2(1)(s), Prevention of Money-Laundering Act, 2002; 2nd Revision of Circular for Registration of Virtual Digital Asset Service Providers (VDA SPs) in FIU India as Reporting Entity (RE) – reg, Ministry of Finance Department Revenue, [Jan 20, 2025], available at: <https://fiuindia.gov.in/pdfs/downloads/VDASP20012025.pdf>, last accessed: Mar 20, 2025.

<sup>19</sup> 2(h), Securities Contracts (Regulation) Act, 1956.

<sup>20</sup> 2(ac), Securities Contracts (Regulation) Act, 1956.

For instance, if the tokens are issued as “security tokens” granting ownership rights to the holder, such as permitting the holder to derive rental income or other similar rights, then such a token may be categorised as a security and may be subject to securities law.

Additionally, certain token issuances may fall under the category of “collective investment schemes” (“**CIS**”)<sup>21</sup> as defined under the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”). Whether a token qualifies as a CIS would depend on the structure of the issuance, the rights conferred to token holders, and whether the tokens fulfil the conditions prescribed under the SEBI Act. This classification is particularly relevant in cases where the tokenized assets involve pooled investments managed on behalf of multiple investors. Therefore, regulatory scrutiny would be necessary to assess compliance with securities laws applicable to such tokens.

### From ‘REITs’ to ‘FOPs’ to RETs:

Real Estate Investment Trusts (“**REITs**”) could be termed as the predecessor of RETs, allowing liquidity in the real estate sector. In Indian, under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”), a REIT<sup>22</sup> may invite subscriptions and allot units to any person, whether resident or foreign.<sup>23</sup> However, investments by foreign investors are subject to guidelines prescribed by the Reserve Bank of India (“**RBI**”) and the Government of India from time to time.

Any investment made by a person resident outside India must comply with the prescribed entry routes, sectoral caps, investment limits, and attendant conditionalities.<sup>24</sup> Specifically, foreign investors may invest in REITs in accordance with the provisions laid out in the Master Directions on Foreign Investment in India issued by the RBI.<sup>25</sup>

2024 marked the recognition of fractional ownership platforms under the REIT Regulations. The Securities Exchange Board of India (“**SEBI**”) introduced Small & Medium Real Estate Investment Trusts (“**SM REITs**”) as a new chapter under the REIT Regulations, bringing Fractional Ownership Platforms (“**FOPs**”) under its regulatory oversight. FOPs operated by allowing investors to subscribe to securities issued by a SPV, which holds the underlying real estate asset.

With the recognition of SM REIT as a separate category of REITs, these platforms must now comply with SEBI’s REIT framework and adhere to the registration and regulatory obligations prescribed therein.

In August 2024, Property Share was notified as the investment manager of the Property Share Investment Trust,<sup>26</sup> becoming the first FOP to receive an SM REIT license from SEBI. This suggests a growing acceptance of structures facilitating fractional ownership platforms in India.

From REITs to FOPs, we have now come to the acknowledgment of RET, atleast by IFSCA and the Telangana State Government. It remains to be seen whether SEBI will recognize RETs under the REIT Regulations or introduce a separate regulatory framework for their issuance.

21 Section 11AA, The Securities and Exchange Board of India Act, 1992.

22 A REIT is a pooled investment vehicle that operates similarly to a mutual fund, enabling investors to invest in income-generating real estate assets without direct ownership. The funds raised through REITs are deployed into revenue-generating properties such as hotels, hospitals, convention centers, and mixed-use developments. For information on the SEBI amendment related to SM REITs please see our detailed paper titled Governance of Fractional Ownership Platforms, Are REITs the Right Answer? available here: [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Policy-Paper/Governance\\_of\\_Fractional\\_Ownership\\_Platforms.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Policy-Paper/Governance_of_Fractional_Ownership_Platforms.pdf), last accessed: Mar 20, 2025.

23 Regulation 4(12), Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014.

24 Regulation 6, Master Direction – Foreign Investment in India, RBI.

25 Regulations 6.7 and 2.19, read with Annexure 7, Master Direction – Foreign Investment in India, RBI.

26 Property Share becomes first FOP; gets Sebi license for small, medium REIT, Business Standard, [Aug 09, 2025], available at: [https://www.business-standard.com/companies/news/property-share-becomes-first-fop-gets-sebi-license-for-small-medium-reit-124080901051\\_1.html](https://www.business-standard.com/companies/news/property-share-becomes-first-fop-gets-sebi-license-for-small-medium-reit-124080901051_1.html), last accessed: Mar 20, 2025.



## E. Banking and Payments Law

Under banking laws, generally a company engaged in the business of banking, which refers to acceptance of money deposits from the public for lending or investment purposes, with the obligation to repay such deposits on demand,<sup>27</sup> would fall within the purview of the regulatory oversight of the banking regulator. In India, a real estate token provider may appear to be accepting investments from the public, raising the question of whether it falls within the scope of banking activities. However, given that the tokens issued in exchange for these investments may be tradable in secondary markets, it becomes difficult to categorize such a business as engaging in traditional banking functions.

Similarly, payment service providers may fall under banking regulations. An entity qualifies as a payment system provider if it operates a system enabling transactions between a payer and a beneficiary, involving clearing, payment, or settlement.<sup>28</sup> While tokenized real estate assets may require efficient clearing and settlement, they do not constitute a payment system as they do not function as money facilitating direct payments.

## F. Foreign Exchange Laws

Catering to a global pool of investors, the inflow and outflow of real estate tokens would be subject to foreign exchange laws. In India, the inflow and outflow of foreign exchange are regulated under the Foreign Exchange Management Act, 1999 (“FEMA”). Real estate tokens may potentially be classified as goods or software under FEMA, although there is no explicit definition of “goods” within the legislation.

However, under the *Foreign Exchange Management (Export of Goods and Services) Regulations, 2015*, goods and software are treated similarly. The definition of software includes “any computer program, database, drawing, design, audio/video signals, or any information by whatever name called, in or on any medium other than a physical medium.”<sup>29</sup> Since tokens represent information stored electronically, they may fall within this definition of software. Such classification as goods/software may exclude the classification of real estate tokens within the ambit of “foreign exchange” itself.

However, cross-border transactions involving real estate tokens with countervailing payments as consideration may require further analysis to determine the applicability of regulations under FEMA.

Additionally, the Master Direction – Import of Goods and Services, issued by the RBI, also recognizes the import of goods and services in non-physical form, such as software or data transmitted through internet or data communication channels. This suggests that real estate tokens could be subject to FEMA regulations governing cross-border transactions involving software or intangible goods.

<sup>27</sup> Section 5(b), Banking Regulation Act, 1949.

<sup>28</sup> Section 2(1)(i), Payment and Settlement Systems Act, 2007.

<sup>29</sup> Regulation 2(8), Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

## G. Taxation

### Direct Taxes

Direct Tax implications depend on the structure of tokenization. Typically, limited partners (“LPs”) pool money in a pooling vehicle (“PV”) which acquires the real estate either directly or through another SPV.

The tax implications of tokenized real estate transactions can be complex and varies significantly by jurisdiction and structure. Investors may face capital gains taxes on the sale of tokens, and the income generated from rental properties or other real estate activities may be subject to different tax rates. Additionally, the transfer of real estate tokens across borders raises questions about the applicability of international tax treaties and the potential for double taxation. Tax authorities are still developing guidelines on how to treat digital assets, and navigating these rules requires careful planning and expert advice. Therefore, this paper provides a broad summary of potential tax implications on tokenisation transactions.

Typically, under tokenisation transactions, a PV may be established in or outside India. In case a PV is established in India, then under the relevant SEBI regulations and a new entity is set up to act as its manager/sponsor. A PV can be set up either as an Alternative Investment Fund (“AIF”), REIT or CIS. Typically, the PV or manager develops, operates and maintains a token exchange for trading of units that are issued by the PV in the form of tokens. The PV then either invests the amount pooled either directly in a real estate asset or establishes another SPV that hold the real estate asset. It is this real estate asset that is to be tokenized. The tokens issued by the PV track the value of the real estate asset. Individuals then subscribe to the units in the form of tokens of PV. The PV then distributes returns to the investors in the form of interest, rental income, dividend depending on the manner of PV chosen. Thus, when investors invest in tokens that are issued by a PV and the real estate is held by a separate SPV, all three are taxed differently as follows:

### Taxation of SPV

The income such as rental income or capital gains earned by the SPV is taxable as profits and gains from business and profession under the Income Tax Act, 1961 (“ITA”) and is subject to tax at the applicable tax rate. A withholding tax is applied to the distributions made by the SPV to the PV which depend on the type of PV.

If the SPV is set up outside India, then it additionally has to withhold tax on dividend distributions and interest payments to the PV as per the applicable tax treaties.

### Taxation of PV

The tax of the PV also depends on the type under which it is set up. Generally, AIF, REIT and CIS (set up as trusts) are taxable on a pass-through basis and therefore all income earned by it is taxable in the hands of its investors, unless otherwise specified in the ITA.

If the PV is set up outside India, it will have to pay capital gains on its exit from the SPV. Further, its dividend and interest income from SPV will be taxable in India as per applicable tax treaty rates. Lastly, credit of taxes withheld by the SPV would be available.

### Taxation of investors

The returns to the investors are in the form of interest, rental income or dividend. They may also attract tax through trading the tokens. The tax implications depend on whether units of PV qualify as VDA under ITA or not.

Under section 47A, of the ITA, VDA means

- a) *any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;*
- b) *a non-fungible token or any other token of similar nature, by whatever name called;*
- c) *any other digital asset, as the Central Government may, by notification in the Official Gazette specify;*

If the tokens qualify as VDA, then the income from such transfer is taxable @30% (plus surcharge and cess) and the income is to be computed without giving any effect to any deduction except the cost of acquisition. Further, any loss from the transfer of such assets is also not allowed to be set-off against such income or under income computed under any provision of the act. Accordingly, such losses are also not allowed to be carried forward to any succeeding assessment years.

If the tokens do not qualify as VDA, then it may be presumed that income from trading tokens of the PV would be characterized as capital gains income subject to tax at the applicable tax rates depending on their characterization as long-term capital gains or short-term capital gains under the ITA.

Any other income earned by investors will depend on the type of PV.

Withholding taxes where the PV tokens qualify as VDA, a resident buyer is to withhold tax @1% at the time of making payment for the VDA under section 194S.

In the hand of the token exchange, tax implications depend on whether or not the tokens qualify as VDA. Where they do qualify, the token exchange may be under an obligation to withhold tax @ 1% under section 194S on transfer of units of PV. However, in case where resident investors withhold tax under section 194S, token exchange should not be required to withhold tax. When the tokens do not qualify as VDA, it may be argued that the exchange platform may not be required to withhold tax under section 194O.

## Indirect Taxes

Goods and Service Tax (“GST”) is an indirect tax that is triggered on the happening of a taxable event. The taxable event is supply of goods or services or both. The payment of GST is to be made either by the supplier of taxable supply known as forward charge basis or by the recipient of taxable supply known as reverse charge basis.

GST will apply on transfer of development rights to the SPV. This will however be paid on reverse charge basis by the SPV. Exemptions from GST are available for development rights in relation to residential apartments.

The applicability of GST on tokens will depend on whether tokens qualify as goods or service. This issue is presently unclear and further clarification is required.

Tokenization transactions may attract GST on services provided by platform providers or intermediaries.

## Conclusion

RET is emerging as a transformative force in the real estate sector, offering enhanced liquidity, accessibility, and efficiency through fractional ownership enabled by DLT. While jurisdictions such as Switzerland, and the United Arab Emirates have taken significant steps toward regulating tokenized real estate/ real world assets, other markets, including India, are still in the early stages of establishing a comprehensive legal framework. The initiatives taken by IFSCA and the Guidance Note issued by the Telangana State Government on asset tokenization indicate growing regulatory interest in this space, yet critical challenges remain, including foreign exchange regulations, securities classification, taxation, and compliance with AML laws. Addressing these regulatory concerns will be crucial for fostering an environment conducive to the large-scale adoption of RET.

As the sector continues to evolve, the successful implementation of RET projects will depend on legal clarity, technological advancements, and regulatory adaptability. The development of standardized frameworks, clear classification of tokenized assets, and harmonized global regulations will be key to unlocking the full potential of RET. Stakeholders, including regulators, financial institutions, and technology providers, must work collaboratively to strike a balance between innovation and investor protection. If these challenges are addressed effectively, real estate tokenization could redefine traditional investment models, paving the way for a more inclusive, transparent, and efficient global real estate market.



## About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm — and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium Aligunjan, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly — the VISION — to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech and Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times–RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.



## Research@NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Labs dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness — that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research publications. Please feel free to contact us at [research@nishithdesai.com](mailto:research@nishithdesai.com).

## Recent Research Papers

Extensive knowledge gained through our original research is a source of our expertise.



February 2025  
**Taxing Offshore  
Indirect Transfers in India**



February 2025  
**Clinical Trials and  
Biomedical Research in India**  
Legal and Regulatory Framework



February 2025  
**Telemedicine in India**  
The Future of Medical Practice



February 2025  
**The Indian  
Pharmaceutical Industry**  
Regulatory, Legal and Tax Overview



February 2025  
**Medical Device  
Industry in India**  
Regulatory, Legal and Tax Issues



January 2025  
**Research Paper  
Compendium**  
Clickable Catalogue  
of Publications

For more research papers [click here](#).

**MUMBAI**

93 B, Mittal Court, Nariman Point  
Mumbai 400 021, India

Tel +91 22 6669 5000

**SILICON VALLEY**

220 S California Ave., Suite 201  
Palo Alto, California 94306, USA

Tel +1 650 325 7100

**BENGALURU**

Prestige Loka, G01, 7/1 Brunton Rd  
Bengaluru 560 025, India

Tel +91 80 6693 5000

**SINGAPORE**

Level 24, CapitaGreen  
138 Market St  
Singapore 048 946

Tel +65 6550 9855

**MUMBAI BKC**

3, North Avenue, Maker Maxity  
Bandra–Kurla Complex  
Mumbai 400 051, India

Tel +91 22 6159 5000

**NEW DELHI**

13-H, Hansalaya Building, 15  
Barakhamba Road, Connaught Place  
New Delhi 110 001, India

Tel +91 11 4906 5000

**NEW YORK**

1185 6th Avenue, Suite 326  
New York, NY 10036, USA

Tel +1 212 464 7050

**GIFT CITY**

408, 4th Floor, Pragya Towers  
GIFT City, Gandhinagar  
Gujarat 382 355, India