REGULATORY OVERLAP AND LEGAL LACUNAE IN FRACTIONAL OWNERSHIP AND TOKENISED REAL-WORLD ASSETS: A CRITICAL ANALYSIS OF THE SECURITIES MARKETS CODE BILL, 2025

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I. Introduction

The rapid emergence of tokenised real-world assets (RWAs) and fractional ownership platforms has unsettled the boundaries of traditional securities regulation in India.[1] Tokenisation allows the legal or beneficial interests in assets such as real estate, commodities, or financial instruments. The tokenization allows these assets to be represented as digital tokens on distributed ledger systems, enabling divisibility, programmability, and 24/7 transferability.[2] In India, technological shift is unfolding along with the major legislative overhaul. The Securities Markets Code Bill, 2025 ("SMC Bill"), which proposes to consolidate the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), Securities Contracts (Regulation) Act, 1956 ("SCRA"), and Depositories Act, 1996 into a unified code for capital markets.[3]

The SMC Bill promises "one law, one market" through consolidation. It provides the regulatory landscape which is already grappling with the rise of fractional ownership platforms (FOPs), small and medium real estate investment trusts (SM-REITs), and experimental frameworks for asset tokenisation.[4] The SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2024 brought FOPs within the consideration of the SM-REITs. It includes many pre-existing structures risk, simultaneous classification as Collective Investment Schemes (CIS), SM-REITs, or unregulated pooling vehicles.[5] In parallel, the International Financial

[1] See Tokenized Real Estate in India: Navigating Regulatory and Structural Gaps (Part I), Indian Rev. Corp. & Comm. L. Blog (Nov. 27, 2025)
[2] See Regulatory Approach Towards Tokenization of Real-World Assets, IFSCA Consultation Paper (Feb. 26, 2025)
[3] Analysis of the Proposed Securities Markets Code, 2025, Chambers & Partners (Feb. 14, 2024); see also What Is the Securities Markets Code Bill, 2025, LinkedIn (Jan. 3, 2026)
[4] See Securities Markets Code Bill, 2025, Vajiram & Ravi Current Affairs Note (Dec. 19, 2025)
[5] See Real Estate Tokenization: 2026 Legal Guide, Maheshwari & Co. (Mar. 17, 2026)

Services Centres Authority (IFSCA) has issued a consultation paper on "Regulatory Approach Towards Tokenization of Real-World Assets" for entities operating within GIFT City. It highlights the distinct policy experiments at the international financial services.[6]There remains no bespoke Indian statute governing tokenised RWAs. The issues raised in the Navigating Regulatory and Structural Gaps (Part I), Indian Rev. Corp. & Comm. L. Blog (Nov. 27, 2025) about the doctrinal uncertainty regarding the treatment of "securities," "derivatives," "goods," or sui generis digital instruments.[7]

The current article provides an argument that the SMC Bill, 2025 does not adequately resolve regulatory overlap or legal lacunae in relation to fractional ownership and tokenised RWAs. It provides the argument that the Code's definition of "securities" and its strengthened enforcement architecture still leave following issues unresolved.

1. classificatory conflicts between CIS, SM-REITs, and other securities categories.
2. jurisdictional overlap between SEBI, IFSCA, and other sectoral regulators.
3. the absence of clear conflict-of-laws and conflict-of-regulators rules for tokenised RWAs.

Based on the black-letter law doctrinal methodology, the article evaluates the text and structure of the SMC Bill in light of existing delegated legislation, regulatory guidance, and emerging practice around fractionalisation and tokenisation.

The article in real provide three reasons for the discussion and argument.

1. tokenised RWA markets globally are moving from experimentation to scale in 2025.In current situation the RWA tokenisation became "mainstream" in capital markets discourse.[8]
2. India has taken incremental steps through SM-REIT norms and IFSCA's consultation. These are layered on a fragmented legal architecture.[9]

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[6] IFSCA, Regulatory Approach Towards Tokenization of Real-World Assets, Consultation Paper (Feb. 26, 2025)
[7] Tokenized Real Estate in India, supra note 1
[8] See, e.g., RWA Tokenization Became Mainstream in 2025, LinkedIn Article (Dec. 7, 2025)
[9] Tokenization of Real-World Assets in India: Governance Structures Through the IFSCA Lens, IRCCl Blog

3. India positions itself as a hub for digital financial innovation. Any unresolved doctrinal ambiguities risk regulatory arbitrage, harms investor, and enforcement inconsistency.

The article hence provides a structured doctrinal argument to suggest the concrete drafting and interpretive responses within the SMC Bill framework.

Keywords: Depositories Act provisions; tokenised real-world assets; SM-REITs; SMC Bill, 2025; securities.

II. Doctrinal Framework and Methodology

The article takes a black-letter doctrinal approach. It focuses on the systematic analysis of legal rules as expressed in primary and secondary legal sources. The core materials examined in this case includes the text of the SMC Bill, 2025 introduced in the Lok Sabha, along with the existing SEBI Act, SCRA, and Depositories Act provisions.[10] The analysis extends to SEBI's subordinate legislation along with the REIT Regulations amendment to create SM-REITs and the Collective Investment Scheme framework. It also takes into account relevant circulars, discussion papers, and board decisions publicly available.[11]

The article considers IFSCA's 2025 consultation paper on the tokenisation of real-world assets and selected state-level initiatives such as Telangana's technical guidance note on asset tokenisation.[12] Although, these instruments do not form the part of the SMC Bill's statutory text however they illustrate the legal assumptions and policy choices that must be reconciled by the consolidated securities code. Secondary sources, includes the doctrinal commentaries and practice-oriented analysis of the tokenised real estate. The RWAs are used to map the emerging consensus and contestation on classification and regulatory scope.[13]

The doctrinal method is considered and taken forward due to below three reasons.

1. The principal research argument is on normative legal ordering. This means to understand and find whether and how the SMC Bill resolves overlapping jurisdictions

(Apr. 9, 2025).

[10] Securities Markets Code Bill, 2025, Bill No. 200 of 2025 (Lok Sabha, introduced Dec. 18, 2025)

[11] See generally SEBI (Real Estate Investment Trusts) Regulations, 2014, as amended; SEBI (Collective Investment Schemes) Regulations, 1999.

[12] Tokenized Real Estate in India, supra note 1 ; IFSCA Consultation Paper, supra note 2.

[13] See Real Estate Tokenization: 2026 Legal Guide, supra note 5 ; Regulatory Approach Towards Tokenization of RWAs – The Way Ahead for Creating Securities, Vinod Kothari & Co. (Feb. 5, 2025).

and conceptual gaps in the treatment of tokenised RWAs and fractional ownership.

2. The core materials are legislative texts and binding regulations; hence a text-centric analysis is appropriately considered.

3. The doctrinal analysis is necessary to bring conceptual clarity between multiple, simultaneously applicable regimes like CIS, REIT/SM-REIT, general securities law, and IFSC-specific frameworks. These are precursor to any meaningful empirical or law-and-economics evaluation. The Comparative references to the European Union's MiFID II and related tokenisation guidance along with selective Singapore and UK positions are considered with limitation to inform normative recommendations instead of a comprehensive comparative study.[14]

III. Evolution of the Indian Securities Law Architecture

Before the SMC Bill, India's securities market regulation was anchored in three central statutes:

1. the SEBI Act, 1992;

2. the SCRA, 1956;

3. the Depositories Act, 1996.[15]

The SCRA focused on the recognition and regulation of the stock exchanges. The definition and legal treatment of "securities" and "derivatives" are considered. The SEBI Act empowered SEBI as the market regulator, and provides its mandate, powers, and enforcement toolkit, including directions, penalties, and disgorgement. The Depositories Act established the dematerialisation and depository system that ensured the transition from the physical share certificates.[16] The architecture was supplemented by a dense body of SEBI regulations, such as the REIT Regulations, CIS Regulations, and listing rules.

The definition of "securities" in the SCRA is expanded through amendments and judicial interpretation. This is done to include a growing range of instruments, derivatives, units of

[14] See, e.g., Exploration on Real World Assets (RWAs) & Tokenization, arXiv (2025).
[15] Analysis of the Proposed Securities Markets Code, 2025, supra note 3.
[16] See The Securities Markets Code (SMC) Bill, 2025 – Current Affairs Analysis, Vision IAS (Jan. 27, 2026).

mutual funds, government securities, and products like electronic gold receipts and zero-coupon zero-principal instruments.[17]This incremental expansion of the definition is used to accommodate financial innovation without frequent primary legislative overhauls. The rising interests of digital tokens in off-chain assets leads to tests to provide the answer to the question on the simultaneous jurisdictions of property law, contract law, payment systems, and securities regulation.

The SMC Bill, 2025 addresses the fragmentation by consolidating these three statutes into a single securities markets code. Some of the provisions are retained and some provisions are widened. The definition of "securities," harmonises enforcement powers, and provides for a more integrated regulatory framework for Market Infrastructure Institutions (MIIs) such as stock exchanges, clearing corporations, and depositories.[18] The few commentators in this area emphasise that the Code signals, a philosophical shift from fragmented supervision to an organised, time-bound, and more predictable enforcement regime.[19] The critiques however argued on the delegated powers and potential implications for SEBI's autonomy and accountability.[20]

In the current scenario two aspects of this evolution are to be considered.

1. Consolidation does not automatically resolve substantive classification questions. The issue whether a given tokenised RWA is a "security" is dependent on definitional clauses and interpretive tests that the Code must either codify or remains as regulatory discretion.

2. The Code operates where SEBI has already used REIT and CIS regulations to discipline fractional ownership structures in real estate, and IFSCA experiment with regards to tokenisation frameworks within GIFT City, hence leading to ambiguity. Any analysis of regulatory overlap and legal lacunae should be within the SMC Bill pre-existing normative landscape.

[17] Id.
[18] Legasis, The Securities Markets Code Bill, 2025 (Dec. 28, 2025); Vajiram & Ravi Note, supra note 4.
[19] Id.
[20] See Moneylife, Explained: What the Securities Markets Code Bill 2025 Means for SEBI, Investors, and Market Intermediaries (Dec. 21, 2025) .

IV. Fractional Ownership, Tokenised RWAs, and Regulatory Conflict

Fractional ownership platforms in India initially emerged as a technology-enabled utilities for pooling retail investment into high-value commercial real estate. These were often structured as special purpose vehicles (SPVs) in the contractual arrangements rather than regulated REITs.[21] These structures promised the access, liquidity, and professional management however operated in a regulatory grey zone. This raised the issue, whether they constituted unregistered CIS, unregulated portfolio management, or mere co-ownership arrangements. The SEBI's response cumulatively is provided in the introduction of SM-REITs via amendments to the REIT Regulations in 2024. This sought was to bring such platforms within a formal REIT framework, imposing requirements on asset size, minimum investors, and distribution.[22]

Tokenisation of real estate and other RWAs has layered an additional level of complexity onto this landscape. Real estate tokenisation allows the interest benefits or units in an SPV or trust holding property to be represented as blockchain-based tokens. This allows the smart contracts governing transfer and distribution.[23] In India, there is currently no specific bespoke statute specifically governing such tokenised RWAs.[24] As a result, regulators and market participants face a classificatory challenge. The challenge depending on their structure, tokens may be may be considered as per below.

1. "securities" under the broadened securities law definition;
2. units of a CIS if funds are pooled with an expectation of profit under a common management;
3. units of an SM-REIT;
4. "goods" or digital assets governed primarily by contract and property law.[25]

The potential of having multi classifications may generate regulatory overlap. For example, a token representing a fractional interest in rental income from a commercial property could simultaneously exhibit the pooling, expectation of profit, and managerial control characteristics

[21] Real Estate Tokenization: 2026 Legal Guide, supra note 5.
[22] Id.
[23] Real Estate Tokenisation, Nishith Desai Assocs. Research Paper (Mar. 17, 2025).
[24] Tokenized Real Estate in India, supra note 1.
[25] Id.

associated with a CIS under the SM-REIT-like structure.[26] If token issuance or trading occurs within GIFT City, IFSCA may assert jurisdiction under its IFSC framework. Those emerging tokenisation regulations outside the GIFT City may come under the SEBI's jurisdiction under the SMC Bill. Real estate regulators under the Real Estate (Regulation and Development) Act, 2016 (RERA) may also assert an interest where tokenisation pertains to under-construction projects or retail homebuyers. The Reserve Bank of India (RBI) could become relevant where token structures functionally work like a deposit-like or payment instruments.

These all pointers above suggest that the conflicts are not hypothetical. Analysis of the tokenised real estate in India in the "absence of a statutory framework" governing tokenised RWAs are due to the vacuum of the CIS framework and has now become the default regulatory lens, often with destabilising consequences.[27] IFSCA's 2025 consultation paper explicitly acknowledges the "regulatory challenges" in defining tokenised RWAs across financial securities, financial products, and other asset classes, and seeks feedback on designing proportionate regulatory responses.[28] The consultation contemplates the custody, issuance, and trading frameworks tailored to tokenised assets, signalling a potential divergence from the mainstream SEBI/SCRA tradition.[29] The SMC Bill's silence on tokenisation-specific issues risks of the overlaps and lacunae into the new consolidated code.

V. Critical Doctrinal Analysis of the Securities Markets Code Bill, 2025

The SMC Bill's offers a streamlined, modernised, and technologically neutral framework for securities regulation.[30] This is due to the consolidation of definitions, its rationalisation of SEBI's powers, and its efforts to codify key investor-protection measures such as investor charters and grievance redressal mechanisms.[31] However, when examined from the perspective of fractional ownership and tokenised RWAs, several doctrinal shortcomings emerge as per below.

1. The SMC Bill enlarges and rationalises the definition of "securities," however, it does not articulate an explicit category for tokenised RWAs or offer statutory criteria for

[26] Id.; see also Tokenization of Real-World Assets in India: Governance Structures, supra note 9.
[27] Tokenized Real Estate in India, supra note 1.
[28] IFSCA Consultation Paper, supra note 2.
[29] See Tokenization of Real World Assets – The Way Ahead for Creating Securities, Vinod Kothari & Co. (Feb. 5, 2025).
[30] Analysis of the Proposed Securities Markets Code, 2025, supra note 3.
[31] The Securities Markets Code Bill, 2025 – Shankar IAS Parliament Note (Dec. 23, 2025).

their classification.[32] The Bill continues the previous strategy of definitional expansion. This means it adds the instruments such as hybrid products and electronic gold receipts, however has left the tokenised assets to be inferred from the generic language on units or interests in schemes or arrangements.[33] This approach may grant SEBI flexibility but fails to provide ex ante legal certainty to market participants on the structured tokenised offerings. It also leaves unresolved boundary between a regulated "security token" and an unregulated digital representation of a proprietary interest.

2. The SMC Bill does not provide explicit conflict-of-regimes rules to mediate the overlaps between CIS, REIT/SM-REIT, and other securities categories. As a result the tokenised fractional structures proliferate, the same underlying economic arrangement which can be expressed through different legal wrappers. This makes the classification outcome, determinative for regulatory burden and investor protection.

The Empirical work on real estate token offerings in other jurisdictions suggests that the absence of clear doctrinal criteria for tokenised offering is security threat which contributes to regulatory arbitrage and inconsistent treatment across platforms.[34] The Code missed the opportunity to codify a functional test akin to the "Howey-style" analysis in U.S. law or MiFID II product categorisation which is tailored to tokenised RWAs.

3. The SMC Bill does not directly address inter-regulator coordination for tokenised RWAs and fractional ownership structures. This implicates multiple sectoral regimes. The general provisions facilitate cooperation between SEBI and other authorities, however there is no tokenisation-specific coordination mechanism between SEBI and IFSCA. Neither there is any explicit recognition of IFSC-specific tokenisation frameworks.[35] IFSCA is moving ahead with a distinct consultation and potential regulations on RWA tokenisation, the absence of a statutory interface risks of creating parallel, potentially inconsistent regimes for onshore and IFSC-based tokenisation. This, in turn, may distort location choices for issuers and platforms.

4. The SMC Bill provides an ambiguity on the private-law questions in relation to the tokenised RWAs, legal title, enforceability of smart contracts, and the treatment of token-holder rights in insolvency. IFSCA's Expert Committee on Asset Tokenization

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[32] Vision IAS Note, supra note 16.
[33] Id.
[34] See Real Estate Security Token Offerings and the Secondary Market, J. Banking & Fin. (2023).
[35] IFSCA Consultation Paper, supra note 2; SMC Bill, supra note 10.

are required to assess the “legal validity inherent in smart contracts”. It is tsked to develop the risk management frameworks tailored for digital tokens. The SMC Bill remains silent on these issues,[36] and results tokenised RWAs to rest on a fragile combination of contractual documentation, platform terms, and technological assurances, without a clear statutory backbone linking on-chain representations to off-chain rights.

These shortcomings collectively suggest that the SMC Bill, in its current form, is tokenisation-agnostic and at worst tokenisation-oblivious. Doctrinally it can be established, it does not meaningfully engage with the regulatory particularities of fractional ownership and tokenised RWAs. In perspective of the black-letter, this leads to a missed opportunity, to provide a forward-looking securities code that integrates, rather than postpones, the governance of digital representations of real-world value.

VI. Comparative and Normative Reflections

The Comparative analysis provides the parallel argument that a modern securities code should address tokenised RWAs in explicit doctrinal terms. In the European Union, MiFID II guidance have been interpreted, to bring most asset-backed security tokens within the scope of existing securities definitions. However, the regulators have supplemented this with detailed interpretive statements on the classification of crypto-assets and tokenised instruments.[37] Singapore’s Monetary Authority treats many tokenised securities as “capital markets products.” It has issued consultation papers and guidelines to clarify the classification and licensing expectations for digital platforms.[38] These comparative models illustrate that technologically neutral drafting can be complemented by targeted, tokenisation-specific elaboration.

In case of India in IFSCA’s 2025 consultation paper which offers an internal comparative reference point. It explicitly categorises tokenised RWAs into financial securities, financial products, and other assets, and looks for the feedback on regulatory treatment across these categories.[39] It also consider the bespoke rules on custody, issuance, and market infrastructure for tokenised assets. In principle, the IFSC-level experimentation could serve as a proof of concept for the broader national reforms. This can be only achieved, if the SMC Bill provides

[36] Tokenization of Real-World Assets in India: Governance Structures, supra note 9.
[37] See generally EU MiFID II and ESMA guidance on crypto-assets and DLT pilot regimes
[38] See MAS, Consultation Papers on the Proposed Regulatory Approach for Digital Payment Token Services.
[39] IFSCA Consultation Paper, supra note 2.

an enabling interface and recognises tokenisation as a doctrinally salient category.

Normatively, the argument is considered on the SMC Bill as per below:

1. introduce an express recognition of "tokenised securities" and "tokenised real-world asset instruments" with cross-references to functional tests based on pooling, expectation of profit, and managerial control.

2. codify a hierarchy or tie-breaker rule for overlapping classifications between CIS, SM-REITs, and other securities categories.

3. mandate a formal coordination mechanism between SEBI and IFSCA for tokenised RWAs, including reciprocal recognition or passporting rules as per need.

Such amendments will make code technology agnostic, and would ensure that its doctrinal architecture anticipates and channels the tokenisation rather than leaving it to ad hoc subordinate legislation.

VII. Conclusion

Tokenised RWAs and fractional ownership platforms expose the fault lines in India's securities law architecture in classification, jurisdiction, and the relationship between on-chain and off-chain rights. The SMC Bill, 2025 offers a valuable consolidation of legacy statutes and a strengthened enforcement framework, however it fails to resolve the regulatory overlap and legal lacunae associated with tokenised RWAs and fractional ownership. Its silence on tokenisation-specific categories, conflict-of-regimes rules, and inter-regulator coordination risks leads to uncertainty, when tokenisation is moving into the financial mainstream.

A robust securities markets code for the digital age must be provided to handle these issues directly. This can be done by integrating the explicit recognition of tokenised instruments, clarifying overlaps between CIS, SM-REITs, and other securities categories, and formalising coordination with IFSCA and other regulators. The SMC Bill could better align in the India's legal architecture with the realities of tokenised finance. In absence of such measures, tokenisation will evolve and bring legal ambiguity, leaving courts, regulators, and market participants to patch gaps in a code that aspires to be comprehensiveness in nature.

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