

SECURITIES IN SEARCH OF A FIDUCIARY: RETHINKING FIDUCIARY ACCOUNTABILITY IN TOKENISED SECURITIES MARKETS

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ABSTRACT

As financial systems move beyond a conventional intermediary based model, platform driven infrastructures are redefining the manner in which securities are issued, traded and governed. Tokenisation platforms being the new big thing in this realm are 'no longer considered a fragile new means that could easily be smothered in the cradle by overzealous enforcement of laws and regulations applicable to brick-and-mortar businesses.' As these tokenised platforms continue to evolve and grow, India is

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witnessing the integration of this technology across different industries, specifically the securities markets. Tokenisation platforms displaced traditional intermediaries without displacing the functions they performed, thereby creating a fiduciary vacuum that erodes trust and exposes the market to vulnerabilities. Despite the growing discourse on digital assets and blockchain governance, existing scholarship and regulatory frameworks insufficiently examine the relocation of fiduciary accountability in tokenised securities markets, particularly within the Indian securities law regime. The current regulatory framework under the Securities and Exchange Board of India and its related frameworks remains largely entity-centric and fails to adequately address this doctrinal lacuna. The paper adopts a doctrinal and comparative legal methodology by analysing the existing Indian securities law, judicial precedents, and comparative approaches adopted in jurisdictions such as the United Kingdom, Singapore, and the European Union. This paper examines the operational reality of tokenised platforms in

securities markets and how they reconfigure market dynamics, highlighting the emerging risks due to the lack of any fiduciary responsibility. By characterising themselves as passive technology providers, these platforms try to absolve themselves of the gatekeeping functions they functionally perform. To address these gaps, the paper proposes a Functional Fiduciary Test, supplemented by baseline compliance requirements and a voluntary Issuer Fiduciary Note, to fit in this new technological regime within India's securities market framework.

Keywords: *Tokenisation, Assets, Capital Markets, Fiduciary Responsibility, Functional Control, Blockchain, Intermediaries*

I. INTRODUCTION

On a New Year's Eve, Irene does not gamble at a casino with the fiat currency; instead, she exchanges the cash for chips. These chips are the symbolic representation of the actual money into several tokens that circulate freely within the casino ecosystem. While Irene and other players at the casino interact only with these abstractions, the

underlying value is held safely by the management. The efficiency of this system lies in two interdependent functions: *first*, the issuance of tokens that allows seamless participation into the ecosystem, and *second*, the institutional integrity that preserves their underlying value and guarantees redemption. Absent either function, the system is a fiction; together, their convergence renders the abstraction economically viable.

Digital innovation has consistently tested the contours of financial regulation by replicating similar abstractions at a far greater scale. Tokenisation is one such example within the fintech sphere, where the tokens become the casino chips and the tokenised platforms acquire the role of management. Deriving its nomenclature from the word “token,” [meaning a piece or unit that resembles an entitlement,¹ tokenisation is a process which involves issuing digital representations of real-world assets [“RWA”] in the form of a token on a distributed ledger.² Just as casino chips facilitated the participation without the direct involvement of cash, tokenisation allows individuals or entities to engage with the

¹ Bank for International Settlements and Committee on Payments and Market Infrastructures, ‘Tokenisation in the context of money and other assets: concepts and implications for central banks’ (*Report to the G20*, October 2024) <<https://www.bis.org/cpmi/publ/d225.pdf>> accessed 6 January 2026.

² OECD, ‘The Tokenisation of Assets and Potential Implications for Financial Markets’ (*OECD Publishing Paris*, 2020) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/the-tokenisation-of-assets-and-potential-implications-for-financial-markets_370f9853/83493d34-en.pdf> accessed 6 January 2026.

RWAs through fractional or complete digital representation, without actual exposure of the underlying asset.³

Tokenisation, like the casino model, serves as stand-ins for the RWAs but differs in its institutional design. This divergence sharpens when these tokenised platforms are introduced in the securities markets. In the casino ecosystem, you trust the management, whereas in tokenisation, the management is often an unaccountable platform. This is because every issuance structure lies in an institutional framework designed to allocate trust, filter information, and manage risk.⁴ In the Indian securities market, these functions have been traditionally performed by intermediaries, particularly merchant banks,⁵ who have acted as fiduciary gatekeepers between the issuers and the investors.⁶ The advent of tokenisation alters this arrangement. While the outward infrastructure and framework appear to change, the underlying

³ Anetta Proskurovska and Kean Birch, 'Tokenization of Everything? Exploring the Limits of Blockchain Technologies in the Governance of Financial Markets and Assets' (2025) FINANCE AND SOCIETY <<https://www.cambridge.org/core/journals/finance-and-society/article/tokenization-of-everything-exploring-the-limits-of-blockchain-technologies-in-the-governance-of-financial-markets-and-assets/72FAD612CB96857584041CE1459A99A6>> accessed 6 January 2026.

⁴ International Monetary Fund, 'Tokenization and Financial Market Inefficiencies' Fintech Notes No 2025/001 (January 29 2025) <<https://www.elibrary.imf.org/view/journals/063/2025/001/article-A001-en.xml>> accessed 6 January 2026.

⁵ Securities and Exchange Board of India, 'Intermediaries Associated with the Securities Markets' <https://www.sebi.gov.in/sebi_data/commndocs/pt1b4_h.html> accessed 6 January 2026.

⁶ Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (as amended up to 18 August 2023) <https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-merchant-bankers-regulations-1992-last-amended-on-august-18-2023-_76327.html> accessed 6 January 2026.

gatekeeping functions do not disappear. It represents a paradigm shift in the way decisions are made in securities markets,⁷ from the ex-post human discretionary system to the ex-ante mechanism determined by the code (smart contracts).

This shift highlights a crucial question of fiduciary responsibility: when fiduciary functions are displaced and migrated from human-discretion to automated systems, *where does the fiduciary accountability and responsibility reside?* Despite the plethora of benefits, adoption of tokenisation and Distributed Ledger Technology (hereinafter referred to as “**DLT**”) based finance remains scarce owing to the regulatory lacuna. Hence, the question arises: Is it the right time to cut the Gordian knot and put a proper mechanism to regulate tokenised financial infrastructure rather than using traditional regulation as a blanket to cover all models in one basket?

The answer lies in the affirmative. The development of tokenised platforms has created novel regulatory challenges where the substance of investor-protection functions persists but lacks a legally identifiable bearer of responsibility. To address these challenges, regulators must devise tailored provisions so that fiduciary accountability can be reconceptualised so as to fill the existing “*fiduciary vacuum*.”

⁷ Synpulse and Standard Chartered, ‘Real-world asset tokenisation: A game changer for global trade’ <<https://www.hkdca.com/wp-content/uploads/2024/07/rwa-tokenization-game-changer-global-trade-synpulse.pdf#:~:text=Value%20exchange%20in%20the%20digital%20realm%20relied,evolved%20under%20many%20different%20names%20over%20time>> accessed 6 January 2026.

The paper proceeds in a three-fold manner. *Firstly*, it analyses the existing regulatory landscape within the securities market and how tokenisation platforms have reconfigured the capital market infrastructure. *Secondly*, it discusses the potential challenges that can hinder the operationalisation of this technology. *Lastly*, it proposes a Functional Fiduciary Test (hereinafter referred to as “FFT”) balancing digital innovation with the strict regulatory requirements of the Indian finance infrastructure.

II. NAVIGATING THE REGULATORY LANDSCAPE: HOW CAN THE TOKENISED SECURITIES MARKETS BE REGULATED?

Tokenisation manifests the application of blockchain technology.⁸ At its core, it converts rights in an underlying asset such as equity, real estate, debt instruments and other commodities into a digital token being recorded on a distributed ledger.⁹ While blockchain technology itself is decentralised,¹⁰ tokenisation represents its most commercially

⁸ Proskurovska and Birch (n 3).

⁹ Umair Tanveer *et al*, ‘Tokenized assets in a decentralized economy: Balancing efficiency, value, and risks’ (2025) 282 INTERNATIONAL JOURNAL OF PRODUCTION ECONOMICS <<https://www.sciencedirect.com/science/article/pii/S0925527325000398>> accessed 6 January 2026.

¹⁰ Michael Wilson, ‘What is Decentralization in Blockchain?’ (*Blockchain Council*, 27 August 2024) <<https://www.blockchain-council.org/blockchain/what-is-decentralization-in-blockchain/>> accessed 6 January 2026.

significant application.¹¹ Its promise lies not merely in its technological novelty but in its ability to restructure capital formation and asset distribution by enabling fractional ownership and reducing transaction costs.

A. TRADITIONAL INTERMEDIARIES GET REPLACED

In a token issuance model, the traditional securities issuance process gets replaced by technology driven platform-based models. Instead of engaging merchant bankers, brokers, registrars and other intermediaries, issuers interact directly with the tokenisation platform, providing a consolidated management system for managing issuance and distribution of assets. It is marked by smart contracts which automate compliance functions such as voting rights, transfer restrictions, disclosures, investor onboarding and finally transaction execution, all being consolidated and managed by a single platform. However, the economic and informational risks associated with securities issuance still persist.

What essentially changes is the identity and labels attached to the actors managing these risks. Functions which were traditionally performed by regulated intermediaries are replaced by platforms running on algorithmic models and contractual terms embedded in a code (smart contracts). This functional continuity marked by a change in

¹¹ Gousia Habib *et al*, 'Blockchain Technology: Benefits, Challenges, Applications, and Integration of Blockchain Technology with Cloud Computing' (2022) 14(11) Future Internet <<https://doi.org/10.3390/fi14110341>> accessed 6 January 2026.

technology alongside institutional displacement lies at the heart of the regulatory challenge posed by tokenisation.

B. THE ADVENT OF TOKENISATION: ITS IMPLICATIONS IN INDIAN SECURITIES MARKETS

In the Indian context, tokenisation intersects with two structural realities. *First*, Indian households have an inherent preference for real tangible assets in a traditional store of value while showing reluctance towards direct participation in the securities markets.¹² Tokenisation provides an opportunity to bridge this gap by allowing high value assets to be divided into smaller, tradeable units.

Second, India's financial regulatory framework is driven by a conservative approach which promotes investor protection over innovation. Foreign jurisdictions like the UK, Singapore, and Australia, have instead adopted a liberal approach of permitting controlled experimentation of newer technologies through sandboxes.¹³ This has allowed the regulators to test the framework before it is permanently adopted. However, this approach stands contrary to India's securities framework which is shaped by perpetual

¹² Sindhuja Kashyap, 'Tokenization of Real Assets in India: Navigating the Legal and Regulatory Crossroads' (*King Stubb & Kasiva*, 25 September 2025) <<https://ksandk.com/investment/tokenizing-real-assets-indias-legal-regulatory-roadmap/>> accessed 6 January 2026.

¹³ Monetary Authority of Singapore, *Overview of Regulatory Sandbox* <<https://www.mas.gov.sg/development/fintech/regulatory-sandbox#:~:text=The%20FinTech%20Regulatory%20Sandbox%20framework,Sandbox>> accessed 6 January 2026.

concerns over mis-selling, insider trading, market abuse and informational asymmetry. Tokenisation heightens this concern by removing traditional intermediaries without reallocating accountability, thereby triggering scepticism towards the technology.

C. THE EXISTING SECURITIES LAW REGIME: AN ENTITY CENTRIC FRAMEWORK

The Indian Securities Regulation framework is primarily entity centric. Accountability is placed not based on function but on formally recognised and licensed intermediaries (entity-centric). The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) Act, 1992, together with the SEBI (Merchant Bankers) Regulations,¹⁴ and the SEBI (Issue of Capital and Disclosure Requirements) Regulations,¹⁵ focuses on structure accountability around formally designated actors. Merchant bankers occupy a central position in this framework, acting as issuer-side gatekeepers responsible for due diligence, disclosure verification, ensuring credibility thereby creating a system of ex ante risk containment. Through this traditional framework, investor protection was not merely achieved through

¹⁴ Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (as last amended on 10 February 2025) <https://www.sebi.gov.in/legal/regulations/feb-2025/securities-and-exchange-board-of-india-merchant-bankers-regulations-1992-last-amended-on-february-10-2025-_92447.html> accessed 6 January 2026.

¹⁵ Securities and Exchange Board of India, *Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018* (last amended 17 May 2024) <https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-may-17-2024-_80421.html> accessed 6 January 2026.

compliance mandates but through reliance on human professional judgment. This model rests on the assumption that risk mitigation and placement of accountability require identifiable human professionals who are registered, regulated and can be held liable. Accordingly, regulatory compliance is linked to an institutional setup instead of functions performed.

D. HOW TOKENISATION DISRUPTS THIS MODEL: A NEED FOR CHANGE

By allowing issuers to bypass traditional intermediaries, it removes formal entities on which the Indian securities law relies and places responsibility. However, the removal of entities cannot imply disappearance of their functions. Under the current framework, this creates a regulatory mismatch. The law seeks to identify licensed intermediaries to place accountability while tokenised markets operate through platforms claiming to be mere technology providers.¹⁶ This creates a *fiduciary vacuum*. To address this, regulatory focus must shift from an entity centric approach to a function centric approach that evaluates substantive functional control, discretion and influence over the issuance and distribution of securities regardless of their nomenclature.

¹⁶ Xavier Lavayssière, 'Legal Structures of Tokenised Assets' (2025) EUROPEAN JOURNAL OF RISK REGULATION <<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/5D3537D89F9AD858339424E1D60D7C43/S1867299X24000886a.pdf/legal-structures-of-tokenised-assets.pdf>> accessed 6 January 2026.

This aligns closely with the notion of “*shadow fiduciary*” accountability which can be understood with the concept of “shadow directors” under company law.¹⁷ A shadow director is someone who is not appointed to the board, but in those directions the board is “accustomed to act on.” The Companies Act, 2013 incorporates this concept through the definition of ‘*officer in default*,’ meaning a person whose directions the board habitually follows.¹⁸ The concept of shadow directors in company law emphasises that accountability depends on substance over form.

The existence of this doctrine shows that the legislature recognises a governance risk; when someone controls and influences decisions without a formal title, they are awarded with the opportunity to evade liability and accountability. Tokenisation platforms exercise substantive control over securities issuance functions without being formally recognised as intermediaries in the exact manner as a shadow director. The reasoning for shadow fiduciary accountability is precise, it reinforces a well-known capital markets principle; when an actor substantially shapes investor outcomes, fiduciary accountability must be attached.¹⁹

¹⁷ Bharat Vasani, Ayush Lahoti and Maharshi Shah, ‘Unseen Influence of Shadow Directors: Does it Compromise Corporate Governance?’ (*Cyril Amarchand Blogs*, 8 May 2025) <<https://corporate.cyrilamarchandblogs.com/2025/05/unseen-influence-of-shadow-directors-does-it-compromise-corporate-governance/>> accessed 6 January 2026.

¹⁸ The Companies Act, 2013 (18 of 2013) s 2(60).

¹⁹ Miriam A. Cherry, ‘Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance’ (*Harvard Law School Forum on Corporate Governance and Financial Regulation*, 11 February 2019)

E. TECHNOLOGY-NEUTRAL APPROACH IS NOT SUFFICIENT

Most jurisdictions with active tokenised markets have adopted a *technological neutral approach*. A technological neutral approach is a guiding principle of digital innovation regulation reinforcing the idea that legislation should treat any particular technology equal as long as the same activity or service is being provided.²⁰ This approach is grounded in the regulatory principle of “*same risk, same activity, same regulation*,” which is applied by countries to govern their financial infrastructure.²¹ They argue that tokenisation is merely a digital innovation replacing one mechanism with another.²² For instance, the UK Financial Conduct Authority (hereinafter referred to as “FCA”) has adopted a technology neutral approach in its policymaking of tokenisation of crypto assets.²³ Similarly, The Swiss Financial Market

<<https://corpgov.law.harvard.edu/2019/02/11/towards-accountable-capitalism-remaking-corporate-law-through-stakeholder-governance/>> accessed 6 January 2026.

²⁰ Atte Ojanen, ‘Technology Neutrality as a Way to Future-Proof Regulation: The Case of the Artificial Intelligence Act’ (2025) EUROPEAN JOURNAL OF RISK REGULATION 1–16 <<https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/technology-neutrality-as-a-way-to-futureproof-regulation-the-case-of-the-artificial-intelligence-act/B4B5FD9D31DEB2B7B31C5745C68032D1>> accessed 6 January 2026.

²¹ Parma Bains *et al*, ‘Regulating the Crypto Ecosystem: The Case of Stablecoins and Arrangements’ (2022) INTERNATIONAL MONETARY FUND <<https://doi.org/10.5089/9798400221675.063>> accessed 28 May 2026.

²² OECD (n 2).

²³ Kaousar Nassr, ‘Understanding the tokenisation of assets in financial markets’ (OECD, 23 July 2021) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/11/understanding-the-tokenisation-of-assets-in-financial-markets_2e657111/c033401a-en.pdf> accessed 6 January 2026.

Supervisory Authority (hereinafter referred to as “**FINMA**”) has an explicit policy of technological neutrality in regulating FinTech, including asset tokenisation.²⁴

However, critics of technology neutral approach including India’s International Financial Services Centres Authority (hereinafter referred to as “**IFSCA**”) have concluded that DLT based tokenised platforms (embedded with smart contracts) require a differentiated treatment for these platforms are susceptible to risks which are different in form and magnitude.²⁵ As regards to who bears the fiduciary responsibility in the operation of these platforms, there is a need to have a function-specific approach to have a regulatory oversight.

III. BREAKING DOWN THE REGULATORY CHALLENGES

Asset tokenisation exposes real regulatory challenges within the current Indian regulatory regime requiring a functional approach to be followed. The current framework is not unfamiliar with this approach since the courts and the regulators have repeatedly applied the ‘*substance over form*’ approach to prevent regulatory evasion.²⁶ In

²⁴ Swiss Financial Market Supervisory Authority (FINMA), *Financial technology and digitalisation (2016)* <<https://www.finma.ch/en/documentation/dossier/dossier-fintech/finanztechnologie-und-digitalisierung-2016/>> accessed 6 January 2026.

²⁵ International Financial Services Centres Authority, *Regulatory Approach towards Tokenization of Real-World Assets (Consultation Paper, 26 February 2025)* <<https://ifsc.gov.in/Document/ReportandPublication/ifsc-consultation-paper-on-regulatory-approach-towards-tokenization-of-real-world-assets03032025111644.pdf>> accessed 6 January 2026.

²⁶ *Hyatt International Southwest Asia Ltd. v CIT* (2025) 478 ITR 238.

PGF Ltd. v. Union of India,²⁷ the Supreme Court held that plantation schemes constituted Collective Investment Schemes despite being defended as mere land transactions. SEBI's popular row of enforcement against art funds such as the *Osian's Art Fund* took a similar approach,²⁸ wherein "co-ownership" labels were rejected and liability was imposed based on functional control over asset selection and returns that shall follow.

With the fiduciary vacuum being the central problem in asset tokenisation within the securities market, there exists other interdisciplinary issues that need to be addressed for the smooth functioning of the tokenised financial infrastructure.

A. THE CENTRAL RISK: THE FIDUCIARY VACUUM

Fiduciary vacuum refers to a gap where important investor-protection functions continue to exist without a legally responsible actor. The failure to relocate such a fiduciary accountability from traditional intermediaries to functionally equivalent actors in a tokenisation framework produces this vacuum, forming the most immediate and central challenge.²⁹ This vacuum is not merely theoretical, it manifests

²⁷ *PGF Ltd. v Union of India* (2015) 13 SCC 50.

²⁸ *Osians Connoisseurs of Art (P) Ltd. v SEBI* (2020) 16 SCC 745.

²⁹ Varun Vaish and Hargun Singh, 'Unravelling Real-World Tokenization: A Legal Blueprint for Digital Asset Rights' (*Mondaq*, 19 February 2025) <<https://www.mondaq.com/india/fin-tech/1587160/unravelling-real-world-tokenization-a-legal-blueprint-for-digital-asset-rights>> accessed 6 January 2026.

in the form of weakened investor protection and greater chances of evading liability due to absence of regulatory framework.

Tokenised issuance primarily involves at least two distinct actors; the *developers*, who develop these platforms, their algorithms, smart contracts and any other technology required for such a platform to function, and the platform *operators* who are assigned the role of governing these platforms. Platform operators typically exercise effective functional control.³⁰ The difficulty, however, lies in how and when the function centric approach is applied. Existing frameworks utilise and largely apply this reasoning in a post-hoc manner as has been seen in the cases. Therefore, while the Indian courts or SEBI retain this power of classification and enforcement of tokenised assets as securities, this is only done once the harm has occurred. This framework fails to prevent harm at the outset leaving the investors vulnerable and exposed.

B. ABSENCE OF A SETTLED DEFINITION OF DIGITAL TOKENS

Another fundamental challenge for asset tokenisation in India lies in the absence of a settled legal definition of digital tokens. Unlike traditional financial instruments whose nature and scope gets defined ex ante by a statute or a regulation, tokenised assets currently operate

³⁰ Julian Lincoln *et al*, 'Decoding Tokenisation: An introduction' (*Herbert Smith Freehills Kramer*, 3 June 2025) <<https://www.hsfkramer.com/insights/2025-06/decoding-tokenisation-an-introduction>> accessed 6 January 2026.

in a space where classification is uncertain and often deferred to post hoc regulatory or judicial determination.³¹ This uncertainty directly affects not only issuers and investors, but also platform operators or managers, who remain unclear about how their tokens may later be characterised. This risk of retrospective classification/post hoc classification creates regulatory unpredictability and discourages participation.

In the midst of this gap, the difficulty is compounded by the fact that definitions of digital assets vary even across domestic regulators depending upon regulatory purpose. Securities regulators focus on economic characteristics and investor protection, central banks emphasise monetary and payment functions and tax authorities view them as taxable assets based on how they are being transferred or generating gains rather than focusing on their technological model.

The US Securities and Exchange Commission (hereinafter referred to as “SEC”) has consistently adopted a functional approach, analysing whether a digital asset satisfies the elements of an investment contract under the Howey Test.³² In India, the Income Tax Act defines Virtual Digital Assets (hereinafter referred to as “VDAs”) expansively to allow maximum representations of financial instruments and values

³¹ *International Financial Services Centres Authority* (n 25).

³² ‘Determining Whether Digital Assets Are Securities’ (*Reuters Practical Law The Journal*, 1 September 2025) <<https://www.reuters.com/practical-law-the-journal/transactional/determining-whether-digital-assets-are-securities-2025-09-01/>> accessed 6 January 2026.

used in financial transactions.³³ However, there exists two issues as regards to the VDAs. *First*, VDAs are presently not classified as securities,³⁴ and therefore, does not fall within the regulatory ambit of securities governance.³⁵ *Second*, this definition of VDA is more suited for tax regulation as it allows a broad range of digital assets to be included within the tax regime.³⁶ This definitional ambiguity poses a direct challenge to the regulatory landscape of asset tokenisation. Digital Tokens or Tokenised Instruments often include hybrid features combining elements of securities, derivatives or collective investment schemes among others,³⁷ making it difficult to classify them within existing categories. Without a specific taxonomy for digital tokens, asset tokenisation risks operating in a grey area discouraging technological innovation due to the heightened legal and regulatory ambiguities.

C. LEGAL UNCERTAINTY OF SMART CONTRACTS

Asset Tokenisation inherently depends on smart contracts. These are self-executing agreements by virtue of which the contract terms are

³³ The Income Tax Act, 1961 (43 of 1961) s 2(47A).

³⁴ Perna Seerwani and M P Ram Mohan, 'Virtual Digital Assets Service Providers under Indian Insolvency Framework' (*Indian Institute of Management Ahmedabad*, October 2025) <<https://www.iima.ac.in/hindi/sites/default/files/2025-10/WP%20No.2025-10-01.pdf>> accessed 6 January 2026.

³⁵ The Securities Contracts (Regulation) Act, 1956 (42 of 1956) s 2(h).

³⁶ Sridhar R and Subham Kumar, 'Taxation on Virtual Digital Assets – From Ambiguity to Clarity' (*Grant Thornton*, 3 February 2022) <<https://www.grantthornton.in/insights/blogs/taxation-on-virtual-digital-assets-from-ambiguity-to-clarity/>> accessed 6 January 2026.

³⁷ Token Alliance, *Understanding Digital Tokens: Market Overviews and Guidelines for Policymakers and Practitioners* (2nd edn, January 2020) 233.

directly embedded into a code. These are then deployed on a blockchain network, ensuring maximum transparency and immutability.³⁸ The purpose of these smart contracts is that once these predefined conditions are met, the contract executes automatically without the need for human intervention.³⁹ However, no innovation exists without the possibility of error, what happens in case the code contains a bug thereby executing incorrectly? The current legal framework fails to provide a clear answer.

In India, the Indian Contract Act enforces contracts.⁴⁰ It requires conditions such as offer, acceptance, lawful consideration and object to be fulfilled before a contract becomes enforceable. The current legal framework surrounding tokenisation and smart contracts theoretically assumes that these conditions can also exist and be fulfilled in contracts embedded in a code. However, there is no definitive regulation or ruling that expressly recognises smart contracts under any framework till date. Although section 10 of the Informational Technology Act, 2000 recognises electronic contracts with an attempt to include smart contracts,⁴¹ the principal issue is not merely the recognition but the remedial impossibility. The immutability of on-chain execution of

³⁸ Ashish Deep Verma, 'Legal Challenges in Web 3.0: Navigating Smart Contracts, DAOs and Blockchain Disputes' (*SCC Times*, 15 March 2025) <<https://www.sconline.com/blog/post/2025/03/15/legal-challenges-in-web-3-0-navigating-smart-contracts-daos-and-blockchain-disputes/>> accessed 6 January 2026.

³⁹ Adriana Fekete, 'What Is a Smart Contract? Benefits and Best Practices' (*vacuumlabs*, 28 March 2025) <<https://vacuumlabs.com/articles/what-is-smart-contract/>> accessed 28 May 2026.

⁴⁰ The Indian Contract Act, 1872 (09 of 1872).

⁴¹ The Informational Technology Act, 2000 (21 of 2000) s 10.

smart contracts renders off-chain regulatory interference, in cases of errors or disputes, impossible.⁴² These traditional laws are not adept to accommodate contracts that execute automatically without human interference. Consequently, smart contracts fall under a regulatory grey area, while they may be functional on a technology level but their legal status in terms of enforceability and remedies available in case of a dispute remain uncertain.

D. TYPOSQUATTING

In traditional markets, merchant bankers, registrars or similar intermediaries function as filters against misleading issuer identities or any form of deceptive branding. Tokenisation platforms rely on automated algorithm run models with limited ex ante verification of the authenticity of an issuer. This opens doors for a more dangerous form of typosquatting.⁴³

Imagine a renowned tech company “*Tech_maestro Ltd.*” is planning to offer tokenised equity. A malicious actor sets up a similar token with the name “*Tech-mestro Ltd.*” on a renowned tokenisation platform with almost identical logo and description. Investors who place trust in the tokenisation platform to ensure only genuine issuers sell tokens,

⁴² Daniel Davis and Alexander Kim, “‘Smart Contracts’ Ruling Forces a Blockchain Development Rethink” (*Bloomberg Law*, 30 January 2025) <<https://news.bloomberglaw.com/us-law-week/smart-contracts-ruling-forces-a-blockchain-development-rethink>> accessed 6 January 2026.

⁴³ B Muzammil et al, ‘Typosquatting 3.0: Characterizing Squatting in Blockchain Naming Systems’ (*arXiv*, 1 November 2024) <<https://arxiv.org/html/2411.00352v1>> accessed 6 January 2026.

purchase the fake company's token believing it to be the original company. The investors suffer losses but there is no real merchant banker, registrar or intermediary to hold liable. This is a classic case of typosquatting. It refers to the deliberate use of names, symbols or any identifiers that closely resemble legitimate securities, with minor variations in order to mislead users.⁴⁴ In tokenised capital markets, typosquatting takes a more dangerous form with the creation of tokens and smart contracts that mimic real ones thereby misleading investors.

In traditional markets, the risk of such misrepresentation is mitigated by interference of human intermediaries who perform verification functions thus acting as fiduciary gatekeepers. The advent of tokenisation disrupts this setup by automating the issuance process and allowing tokens to be placed directly on the blockchain where identification is often user generated and irreversible due to the immutable nature of the blockchain.⁴⁵ This means that once a misleading token is issued, clearing out investor confusion becomes difficult, making them vulnerable to such frauds. However, the challenge posed by typosquatting is not merely one of fraud, but of displacement of fiduciary responsibility. The example above highlights the central problem in the regularisation of asset tokenisation; the lack of a dedicated framework prevents the regulators from attaching fiduciary responsibility. This creates a regulatory blind spot, making

⁴⁴ Startup Defense, 'Typosquatting: A Complete Guide to Online Domain Fraud' <<https://www.startupdefense.io/cyberattacks/typosquatting>> accessed 29 May 2026.

⁴⁵ *Umair Tanveer et al* (n 9).

tokenised capital markets vulnerable to identity-based manipulation that traditional securities framework was designed to prevent.

E. THE ISSUE OF CROSS BORDER MARKETS

Tokenised securities are inherently borderless with platforms granting access to global investors. The Foreign Exchange Management Act, 1999 regulates cross border flow of capital and cross border tokens must comply with Indian regulations.⁴⁶ However, when tokenisation platforms position themselves as neutral infrastructure providers rather than intermediaries, accountability goes missing creating a regulatory risk. This allows for offshore listings or secondary trading of India-linked tokens to circumvent mandatory compliance and regulations under the Indian framework. A function centric approach would ensure that cross border participation does not erode regulatory oversight.

Hence, a different and an advanced approach is warranted, as treating DLT-based tokenised platforms in the same manner as the traditional intermediaries would negate the potential benefits and characteristics (immutability, decentralised, and transparency) of these platforms, while not addressing the limitations and the risks associated with it.

IV. DEBUNKING THE PASSIVE INTERMEDIARIES CLAIM IN TOKENISED CAPITAL MARKETS

⁴⁶ The Foreign Exchange Management Act, 1999 (42 of 1999).

A. THE PASSIVE INTERMEDIARY CLAIM OF TOKENISED PLATFORMS

Tokenised platforms and their proponents have characterised these digital architectures as passive (technological) intermediaries.⁴⁷ “*Passive*” intermediaries are intermediaries which “*act as mere conduits or passive transmitters of the records or information*”.⁴⁸ These intermediaries are provided protection under the safe harbour laws,⁴⁹ upon meeting the prescribed compliance threshold such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in case of social media intermediaries.⁵⁰ The concept of passive intermediaries is not limited to the Indian jurisdiction but is embedded in the European Union laws.⁵¹ In *Google France SARL v. Louis Vuitton Malletier SA*, it has been held that

⁴⁷ Indranath Gupta and Lakshmi Srinivasan, ‘Evolving scope of intermediary liability in India’ (2023) 37(3) INTERNATIONAL REVIEW OF LAW, COMPUTERS & TECHNOLOGY

<<https://www.tandfonline.com/doi/full/10.1080/13600869.2022.2164838#abstract>> accessed 6 January 2026.

⁴⁸ *Christian Louboutin Sas v Nakul Bajaj* 2014 SCC OnLine Del 4932.

⁴⁹ *Centre for Communication Governance, National Law University Delhi, Safe Harbour and Content Moderation Regulation in India* (Research Report, CCG Delhi, 2025) <<https://ccgdelhi.s3.ap-south-1.amazonaws.com/uploads/tufts-paper-454.pdf>> accessed 6 January 2026.

⁵⁰ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (updated 6 April 2023) <<https://www.meity.gov.in/static/uploads/2024/02/Information-Technology-Intermediary-Guidelines-and-Digital-Media-Ethics-Code-Rules-2021-updated-06.04.2023-.pdf>> accessed 6 January 2026.

⁵¹ Active and Passive Intermediaries in EU Law: From Liability to Compliance, (*EU Internet Law & Policy Blog*, 1 March 2022) <<https://euinternetpolicy.wordpress.com/2022/03/01/active-and-passive-intermediaries-in-eu-law-from-liability-to-compliance/>> accessed 6 January 2026.

passiveness can be assigned only when the intermediaries have “neither knowledge of nor control over the information” to escape liability.⁵²

Taking this narrative forward, tokenised platforms argue that they assume no responsibility for the assets tokenised, the information disclosed and the risks borne by the investors. They project themselves as mere facilitators that provide digital infrastructure through which the issuers and the investors can interact. This role, as argued by them, is distinct from the traditional intermediaries like merchant banks, thereby placing them outside the scope of regulatory accountability under the securities laws. Their claim of passive intermediaries is supported by the “*mere conduit*” doctrine which is central to internet governance and intermediary liability.⁵³

However, the transplantation of this claim in the capital markets suffers from a legal fallacy for regulations have consistently imposed obligations based on function, control, and reliance. The Supreme Court in *Shreya Singhal v. Union of India* has also made it clear that passive intermediaries enjoy immunity conditionally and the selection, modification or any other functional control render it an active participant.⁵⁴ The observation aligns squarely in evaluating the claim of tokenisation platforms of being passive intermediaries. Tokenised

⁵² *Google France SARL and another v Louis Vuitton Malletier SA* [2011] Bus LR 1.

⁵³ Raghav Ahooja, ‘Rethinking India’s intermediary liability regime: The advent of intermediary-turned-publishers’ (*Law and Other Things*, 23 October 2021) <<https://lawandotherthings.com/rethinking-indias-intermediary-liability-regime-the-advent-of-intermediary-turned-publishers/>> accessed 6 January 2026.

⁵⁴ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

platforms possess architectural and transactional control over the issuance, verification and information of securities. Hence, the claim by the platforms is a flawed position to exploit the regulatory lacuna rather than an actual defensible doctrine.

B. SUBSTANCE OVER FORM: WHY THE PASSIVE INTERMEDIARY CLAIM FAILS?

The claim of passivity or immunity collapses once the tokenisation platforms are subjected to the well-established doctrine of ‘*substance over form*’.⁵⁵ The doctrine aims to look beyond the formalistic characterisation that obscures the underlying economic and functional substance.⁵⁶ Additionally, the Supreme Court in recent cases of *CCE v. Northern Operating Systems Pvt. Ltd.*,⁵⁷ and *Hyatt International Southwest Asia Ltd v. ADIT*,⁵⁸ has reaffirmed the importance of substance over form in Indian corporate jurisprudence.⁵⁹ The judiciary

⁵⁵ Philip E Meyer, ‘A Framework for Understanding “Substance over Form” in Accounting’ (1976) 51 *The Accounting Review* <<https://www.jstor.org/stable/245374>> accessed 6 January 2026.

⁵⁶ John Doe, ‘Tokenisation and Financial Markets’ (2025) *SMU School of Accountancy Research Paper Series* <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=3067&context=soa_research> accessed 6 January 2026.

⁵⁷ Vaibhav Vyas, ‘Secondment, Substance, and Service Tax: A Critical Analysis of The Northern Operating Systems Judgement’ (*Taxmann*, 30 May 2025) <<https://www.taxmann.com/research/gst-new/top-story/10501000000026669/secondment-substance-and-service-tax-a-critical-analysis-of-the-northern-operating-systems-judgement-experts-opinion>> accessed 6 January 2026.

⁵⁸ *Hyatt International Southwest Asia Ltd. v CIT*, (2025) 478 ITR 238.

⁵⁹ Runit Rathore and Lakshita Goyal, ‘Substance Over Form Prevails: Supreme Court’s Landmark Ruling in Hyatt International’ (*CBCL Blog*, 29 August 2025)

as well as the regulators now focus on what may be described as a “look at” test to ascertain the true nature and function rather than merely relying on formal legal recognition.⁶⁰

Seen in the context of tokenisation platforms, they are not formally characterised as intermediaries under the securities law, yet they exercise and enable decisive control across the securities lifecycle, including issuance, allowing multiple entities to invest in fractions of the assets, thereby democratising access to previous inaccessible markets.⁶¹ Based on a distributed-ledger technology, the role of these platforms goes to the heart of the capital markets’ functions. The functions performed by them are embedded in code (smart contracts) rather than being exercised by human agents.⁶² To allow platforms to escape fiduciary responsibility in the absence of any human intervention would undermine the very objectives of the securities regulation.

<<https://cbcl.nliu.ac.in/taxation/substance-over-form-prevails-supreme-courts-landmark-ruling-in-hyatt-international/>> accessed 6 January 2026.

⁶⁰ Riccardo de Caria, ‘Tokenisation and Property Law’ in *The Tokenised Economy and the Law* (Edward Elgar Publishing, 2024) <<https://www.elgaronline.com/edcollchap/edcoll/9781800884618/9781800884618.00018.pdf>> accessed 6 January 2026.

⁶¹ Ashish Kots, ‘Understanding Asset Tokenization to Unlock Digital Asset Potential’ (*National Payments Corporation of India*) <<https://www.npci.org.in/blog/understanding-asset-tokenization-to-unlock-digital-asset-potential>> accessed 6 January 2026.

⁶² Global Financial Markets Association, Boston Consulting Group, Clifford Chance and Cravath, Swaine & Moore LLP, *Impact of Distributed Ledger Technology in Global Capital Markets* (May 2023) <<https://www.gfma.org/wp-content/uploads/2023/05/impact-of-dlt-on-global-capital-markets-full-report.pdf>> accessed 6 January 2026.

Indian securities market watchdog, SEBI has also taken functional control and dominance in consideration in its regulatory treatment of automated markets' activities, particularly algorithmic trading.⁶³ SEBI, in its latest guidelines on algorithmic trading, has imposed stringent obligations on brokers and algo providers (vendors). Brokers have been accorded with fiduciary responsibility of acting as the principal and to perform obligations such as due diligence, categorising two-factor authentication for Application Programming Interface (hereinafter referred to as "API"), using only OAuth method, i.e., the Open Authentication methods, etc.⁶⁴ On the other hand, algo providers will act as agents and will be regulated by an empanelment criterion established by stock exchanges.⁶⁵

Drawing a similar corollary of functional control to the tokenisation platforms would ensure the governance of the system despite the absence of real-time human discretion and intervention. For instance, countries like the United Kingdom in its draft legislation for crypto assets have made attempts to attach fiduciary obligations to the

⁶³ Securities and Exchange Board of India, *Broad Guidelines on Algorithmic Trading*, Circular No CIR/MRD/DP/09/2012, 30 March 2012 <https://www.sebi.gov.in/sebi_data/attachdocs/1333109064175.pdf> accessed 6 January 2026.

⁶⁴ Securities and Exchange Board of India, *Safer participation of retail investors in Algorithmic trading* (Circular No. SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013, 4 February 2025) <https://www.sebi.gov.in/legal/circulars/feb-2025/safer-participation-of-retail-investors-in-algorithmic-trading_91614.html> accessed 6 January 2026.

⁶⁵ *ibid.*

tokenisation platforms issuing crypto assets.⁶⁶ Under The Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025, trading venues, i.e., crypto tokenisation systems have the onus to establish information security and sharing arrangements.⁶⁷ They are also expected to have mechanism and control to prevent, detect, and disrupt any kind of market abuse, insider trading, and information asymmetry.⁶⁸ Additionally, Singapore's Securities and Futures Act, in its Guidelines on the Regulation of Markets, attribute fiduciary duties to the tokenised platforms thereby rejecting their claim of mere "technology providers."⁶⁹ Once these platforms become central to issuance mechanisms or secondary trading, they are required to operate in fair, orderly and transparent markets regardless of the fact whether they characterise themselves as technology providers or not.⁷⁰

⁶⁶ Norton Rose Fulbright, *The UK regime for cryptoassets: draft rules and legislation* (June 2025)

<<https://www.nortonrosefulbright.com/en/knowledge/publications/8d8b8337/the-uk-regime-for-cryptoassets-draft-rules-and-legislation>> accessed 6 January 2026.

⁶⁷ Bank of HM Treasury, *The Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025* (Draft Statutory Instrument, 2025)

<https://assets.publishing.service.gov.uk/media/680f6387faff81833fcae94b/0302425_draft_RAO_SI.pdf> accessed 6 January 2026.

⁶⁸ KPMG, *A UK regulatory regime for cryptoassets* <<https://kpmg.com/xx/en/our-insights/regulatory-insights/a-uk-regulatory-regime-for-cryptoassets.html#:~:text=The%20regime%20will%20be%20based,place%20i.e.%20could%20be%20overseas>> accessed 6 January 2026.

⁶⁹ Monetary Authority of Singapore, 'A Guide to Digital Token Offerings' <<https://www.iosco.org/library/ico-statements/Singapore%20-%20MAS%20-%20A%20Guide%20to%20Digital%20Token%20Offerings%20-%20updated%20Nov%2030%202018.pdf>> accessed 6 January 2026.

⁷⁰ Monetary Authority of Singapore, 'Securities and Futures Act (Cap. 289) Guidelines on the Regulation of Markets' <<https://www.mas.gov.sg/>>

These regulatory developments underscore the idea that displacement of functional control from traditional intermediaries to automated systems does not extinguish responsibility but relocates it to platforms who exercise functional control and dominance. While the automated nature of these platforms may reduce the intervention of traditional intermediaries, the rules they enforce, the manner in which they are deployed and operated triggers compliance and governance mechanisms.

V. BRIDGING THE FIDUCIARY VACUUM: THE REGULATORY ONBOARDING OF TOKENISED PLATFORMS UNDER INDIAN SECURITIES REGIME

Innovation is the sine qua non of the market's dynamism and its capacity to develop. Through its paradigmatic shift, tokenisation has reconfigured the capital market infrastructure. The regulatory framework needs to bridge two seemingly opposite worlds: the function-centric ethos of digital innovation and the strict regulatory requirements of traditional finance infrastructure.⁷¹ The Indian Supreme Court has underscored the need to establish a regulatory framework which institutionalises blockchain technology within the existing regime, and has therefore requested the Law Commission to

/media/MAS/resource/legislation_guidelines/securities_futures/sub_legislation/Guidelines_Regulation_of_Markets.pdf> accessed 6 January 2026.

⁷¹ *International Financial Services Centres Authority* (n 25).

examine this in detail.⁷² Adding to the necessity, the stakeholders, investors, and industry participants have also consistently emphasised the urgent need to have better clarity around the regulatory and supervisory gaps surrounding the tokenised assets and markets.⁷³

The objective behind the regulatory approach towards tokenisation would be to:

1. To Identify who bears the fiduciary responsibility within the tokenised securities market.
2. Provide licensing and conduct requirements with special emphasis on KYC/AML, governance standards, and mitigating cyber risks.
3. Evolve a robust and reliable mechanism for attaching fiduciary obligations to ensure smooth functioning of the infrastructure (issuance, trading, custody, etc. of tokens).
4. Fostering digital innovation and growth in tokenised space by balancing between the regulatory oversight and self-regulation.⁷⁴

We, therefore, propose a FFT centred along the lines of the aforementioned approach. This approach attempts to bridge the

⁷² *Samiullah v State of Bihar* 2025 SCC OnLine SC 2370.

⁷³ OECD, *Regulatory Approaches to the Tokenisation of Assets* (OECD Publishing, Paris, March 2021) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/03/regulatory-approaches-to-the-tokenisation-of-assets_da7ae482/aea35466-en.pdf> accessed 6 January 2026.

⁷⁴ *International Financial Services Centres Authority* (n 25).

fiduciary vacuum in the tokenised securities market. The rationale behind the FFT is to reinforce the idea that fiduciary responsibility does not disappear because of technological innovation and platform displacement but is migrated. The test follows a four-pronged approach.

A. WHO BEARS THE FIDUCIARY RESPONSIBILITY?

Comparative jurisprudence on regularisation of digital assets and tokenised markets shows that ultimate fiduciary responsibility is not uniformly fixed upon one common type of actor. Across jurisdictions, responsibility has been attributed to issuers, platform operators or developers, depending upon the structure of control.⁷⁵ This divergence is not accidental, it reflects structural differences in tokenisation markets based on their design and governance models. For this reason, it is neither feasible nor normatively accurate for the authors to determine and recommend a single, rigid allocation of fiduciary responsibility in an ex-ante form.

What emerges instead of uniform state practice is a common methodological thread, i.e., fiduciary responsibility is ultimately determined by identifying the actor that exercised effective functional control in that specific factual context.

⁷⁵ *Proskurovska and Birch* (n 3).

In several jurisdictions, primary responsibility is placed on issuers.⁷⁶ Securities and stablecoin frameworks in EU, Japan,⁷⁷ Hong Kong,⁷⁸ and the United States impose disclosure, governance and anti-money laundering obligations on issuers as they control token design and allocation. On the other hand, several regulations assign responsibility to platform operators and service providers,⁷⁹ as they exercise functional control in market access, asset custody while having the duty to ensure AML obligations, record keeping requirements, market remains free from manipulation and unfair practices and investor protection.

A more contested but increasingly significant trend concerns the attribution of responsibility to developers. In the case of *Tulip Trading*

⁷⁶ InnReg LLC, 'What Is Tokenization In Fintech? A Guide to Tokenized Assets' (*InnReg*, 25 October 2025) <<https://www.innreg.com/blog/tokenization-in-fintech-and-tokenized-assets>> accessed 6 January 2026.

⁷⁷ Bank of Japan, Taiga Okuyama and Kazutoshi Sugimura, 'Private Law Frameworks for Tokenized Assets: Implications from Legal Developments in Switzerland, Germany, France, and the United States' (*Bank of Japan Working Paper Series* No 25-E-12, October 2025) <https://www.boj.or.jp/en/research/wps_rev/wps_2025/data/wp25e12.pdf> accessed 6 January 2026.

⁷⁸ Hauzen LLP, 'Unlocking Real-World Assets: How Hong Kong's Regulatory Framework May Support RWA Tokenization' (*Lexology*, 18 December 2025) <<https://www.lexology.com/library/detail.aspx?g=900618d5-5dc9-49a9-a87c-ac6a7fcc9d77#:~:text=Generally%2C%20VATPs%20offering%20trading%20in,en%20in%20RWA%20tokenization%20opportunities.&text=Hong%20Kong%20regulators%20have%20issued,Intermediaries'%20virtual%20asset%20related%20activities>> accessed 6 January 2026.

⁷⁹ Daniel Bruno Corvelo Costa, 'IoT-Enabled Tokenization of Physical Assets with Verifiable Physical Proof: A Comprehensive Regulatory and Technical Framework' (*Submission to the U.S. Securities and Exchange Commission (SEC)*, 21 September 2025) <<https://www.sec.gov/files/ctf-written-input-daniel-bruno-corvelo-costa-092125.pdf>> accessed 6 January 2026.

Ltd. v. van der Laan,⁸⁰ the UK Court of Appeal recognised that developers may owe duties where they retain control over modifications of codes. This reasoning given by the court challenges the “code in law” narrative by recognising that technical control translates into legal responsibility.⁸¹ Therefore, these divergent allocations of responsibility reflect fact-sensitive determination of liability based on functional control.

B. PRE-OPERATIONAL ACCOUNTABILITY: BASELINE CONDUCT OBLIGATIONS

Attaching fiduciary responsibility is essential at the pre-operational stage, i.e., stage where the tokenised platforms have not stepped onto the operational reality of the securities market. This stage is marked by economically significant changes including but not limited to curating issuers, designing token infrastructure, standardising transparency and immutability, etc.⁸² Most of these functions were traditionally performed by intermediaries which were subjected to fiduciary obligations.⁸³ Hence, it becomes crucial to ensure regulatory oversight

⁸⁰ *Tulip Trading Ltd. v van der Laan* [2023] EWCA Civ 83.

⁸¹ Quinn Emanuel Urquhart and Sullivan, ‘Fiduciary duties in a decentralised world?’ <<https://www.quinnemanuel.com/the-firm/publications/fiduciary-duties-in-a-decentralised-world/>> accessed 6 January 2026.

⁸² Yashika Thakur, ‘A Country-by-Country Analysis for Real-World Asset Tokenization Platform Development Regulations in Europe’ (*Antier Solutions*, 2025) <<https://www.antiersolutions.com/blogs/a-country-by-country-analysis-for-real-world-asset-tokenization-platform-development-regulations-in-europe/#:~:text=All%20Dutch%20platforms%20fall%20under,MiCA's%20transparency%20and%20auditability%20mandates.>> accessed 6 January 2026.

⁸³ Monetary Authority of Singapore and Guardian Asset & Wealth Management Industry Group, ‘Operationalising Tokenised Funds’ (*Project Guardian Industry*

without chilling innovation.

a) Licensing and Registration

Platforms performing early-stage functions such as curating issuers, designing token infrastructure, etc. shall be subjected to licensing and registration requirements. The rationale behind meeting the authorisation requirement is to attach regulatory onboarding to early-stage functional engagements. Licensing would recognise the formal nature of these platforms even before they become operational. A similar model finds resonance under the European Union's Markets in Crypto-Assets Regulation (hereinafter referred to as "MiCA"). Although MiCA relates particularly to the regulation and functioning of crypto assets, it provides an idea as to how these evolving digital platforms can be governed. Article 59 of the Regulation set forth a criterion for the authorisation and licensing of service providers which are primarily based on DLT,⁸⁴ similar to what the tokenised platforms operate through. Further, Articles 66 and 67 require mandatory fiduciary obligations to the tokenised platforms (using DLT).⁸⁵ These obligations require the platforms to act honestly, fairly and professionally, while ensuring all prudential safeguards.⁸⁶ They are

Publication, 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/development/fintech/guardian/project-guardian-operationalising-tokenised-funds.pdf>> accessed 6 January 2026.

⁸⁴ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (MiCA) [2023] OJ L150/40, art 59.

⁸⁵ *ibid* arts 66–67.

⁸⁶ Dirk Zetzsche and Julia Sinning, 'The EU Approach to Digital Currencies' <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5162&context=lcp>> accessed 6 January 2026.

non-waivable, meaning that these are tied to functional performance, and cannot be set aside or revoked.⁸⁷

b) *Know-Your-Customer Requirement*

KYC and due diligence requirements are the foundational checks to ensure fiduciary safeguard. With giant tokenisation platforms like Binance reporting 97% successful completions once proper KYC was introduced, it is crucial for not only facilitating investor participation but also building users' trust.⁸⁸ Additionally, SEBI through its Charter for KYC (Know Your Client) Registration Agencies (hereinafter referred to as "**KRAs**") has mandated the KYC compliance for intermediaries once they interface with investors.⁸⁹ Comparatively, Singapore's Payment Services Act,⁹⁰ along with the notices issued by the Monetary Authority of Singapore (hereinafter referred to as "**MAS**"), MAS Notice PSN01 requires due diligence and transaction

⁸⁷ Federal Financial Supervisory Authority, 'Services and activities in connection with crypto-assets in accordance with MiCAR' <https://www.bafin.de/EN/Aufsicht/MiCAR/MiCAR_artikel_en.html?cms_gtp=19579310_list%253D2#:~:text=Is%20the%20provision%20of%20crypto,with%20Article%2063%20of%20MiCAR.> accessed 6 January 2026.

⁸⁸ Agrima Dwivedi, 'KYC for Crypto Firms: Your Complete Compliance Guide for 2024' (*Signzy*, 25 October 2024) <<https://www.signzy.com/blogs/kyc-guide-for-crypto>> accessed 6 January 2026.

⁸⁹ Securities and Exchange Board of India, *Publishing Investor Charter for KYC (Know Your Client) Registration Agencies (KRAs) on their Websites*, Circular No. SEBI/HO/MIRSD/PODFATF/P/CIR/2025/62, 6 May 2025 <https://www.sebi.gov.in/legal/circulars/may-2025/publishing-investor-charter-for-kyc-know-your-client-registration-agencies-kras-on-their-websites-_93811.html> accessed 6 January 2026.

⁹⁰ Payment Services Act 2019 (Singapore, Act 2 of 2019).

monitoring for DPT.⁹¹ Applying this to the tokenised platforms within the Indian securities markets would ensure SEBI's commitment to investor protection, thereby sending a clear message that "no platform can afford to be complacent."⁹²

C. ISSUER FIDUCIARY NOTE (IFN): VOLUNTARY SIGNALING AS A MEANS OF ATTACHING FIDUCIARY DUTIES

Like the traditional markets, the resilience of the tokenised markets also rests on trust.⁹³ Trust in these markets is often communicated through labels such as "verified user," "platform approved token," and "curated offering."⁹⁴ Although viewed as a reputational marker for these platforms, these labels or soft signals are crucial in building investor confidence. Judicial precedents,⁹⁵ and recent scholarship has also recognised that the core fiduciary duties can be attributed to a party who voluntarily assumes a position of trust under the prism of

⁹¹ Monetary Authority of Singapore, *MAS Notice PSN01 Amendment Notes (30 June 2025)* <<https://www.mas.gov.sg/-/media/amld-amendments---30-june-2025/mas-notice-psn01---amendment-notes-june-2025.pdf>> accessed 6 January 2026.

⁹² Alexander X, 'A Blockchain-based Enterprise Financing Framework to Address SMEs' Access to Finance' <<https://opal.latrobe.edu.au/ndownloader/files/51157202>> accessed 6 January 2026.

⁹³ Global Financial Markets Association (n 62).

⁹⁴ ExchangeWire PressBox, 'TeqBlaze Enables Curated Deals Creation Directly in White-Label SSP & Ad Exchange Platforms' (*ExchangeWire*, 16 July 2025) <<https://www.exchangewire.com/blog/2025/07/16/teqblaze-enables-curated-deals-creation-directly-in-white-label-ssp-ad-exchange-platforms/#:~:text=Deals%20can%20only%20be%20made%20with%20inventory,trust%2C%20ensuring%20maximum%20relevance%20for%20both%20sides.>>> accessed 6 January 2026.

⁹⁵ *Nabha Power Ltd. (NPL) v Punjab State Power Corporation* (2018) 11 SCC 508.

voluntary undertaking.⁹⁶

With an objective of creating a voluntary regime for attributing accountability under the control of securities regulator,⁹⁷ an Issuer Fiduciary Note (hereinafter referred to as “IFN”) seeks to formalise this reality. IFN is a voluntary issue or promise by the platform that a tokenised issuance has been subjected to due diligence, disclosure review, and other necessary compliance.⁹⁸ It is crucial to understand that IFN is not an outcome of regulatory oversight, but rather a reputational signaling transcending into the formal attribution of trust. Once a platform issues an IFN, it chooses to intermediate trust thereby triggering investor reliance, duties of care, disclosure integrity, etc.

Imagine a tokenised infrastructure that highlights certain issuance as “platform verified” and/or “platform approved token.” Investors can reasonably infer that such issuance has undergone due diligence by the platform similar to what was exercised by a merchant banker in a traditional set-up. Thus, by issuing an IFN, the platforms voluntarily bear fiduciary responsibility for any risk associated with it.

An important nature of IFN would be its *revocability*, meaning that platforms must have the right to withdraw an IFN upon discovering

⁹⁶ James J. Edelman, ‘When Do Fiduciary Duties Arise?’ (2010) 126 Law Quarterly Review 302-327 <<https://ssrn.com/abstract=1697656>> accessed 6 January 2026.

⁹⁷ José M. Garrido, ‘Digital Tokens: A Legal Perspective’ (*International Monetary Fund*, July 2023) <<https://www.imf.org/-/media/files/publications/wp/2023/english/wpica2023151-print-pdf.pdf>> accessed 6 January 2026.

⁹⁸ *ibid.*

emerging risks and non-compliance. However, revocation would only apply to future issuances and must be accompanied by a wind-down responsibility. The reason behind the prospective application of revocability is to prevent the IFN from becoming a tool for abuse. For instance, if a platform can revoke its fiduciary note after a token is issued, it might leave investors stranded. Hence, a selectively permeable mechanism would ensure the dynamic nature of voluntary signaling, while providing an opportunity to the platforms to take steps to mitigate the potential risks.

However, the idea of an IFN raises a crucial question: having a “voluntary signaling” mechanism would mean that a bad actor can easily lie on an IFN making it susceptible to strategic misuse. This would help the platforms to do their reputational marking while escaping their most fundamental responsibility. To prevent this misuse, it is important for the IFNs to operate as responsible instruments rather than as mere reputational labels. *Firstly*, a misleading “voluntary signaling” through an IFN shall estopped the platforms from escaping the liability or claiming the status of a passive intermediary. *Secondly*, revocability of an IFN must be prospectively constructed to mitigate instances of false or misleading signaling. *Lastly*, misleading signaling would subject the platforms to penalties while excluding them from participating in further issuance process. These safeguards seek to establish accountability with flexibility, serving as a mechanism to regulate the fiduciary responsibility and accountability of tokenised platforms in the absence of any mandatory fiduciary obligations.

D. MANDATORY FIDUCIARY OBLIGATIONS AT SCALE

a) Defining the “Structural Scale” Threshold

The transition from voluntary signaling through IFN to mandatory fiduciary obligations is due to the tokenised platforms’ attainment of structural scale. Attaining structural scale would not mean the mere structural dominance of the platform by virtue of its market share and transaction volume, but rather through its qualitative transformation within the industry.⁹⁹ It refers to a stage which is marked by the functional indispensable nature of the tokenised platforms, and its control over market access, information architecture, and financial gateways.¹⁰⁰ Additionally, the statutory duties of the SEBI under Section 11 of the SEBI Act, 1992, requires the Board to protect the interests of investors in securities.¹⁰¹

b) The Sandbox Approach

Building on the comparative approaches to regulate tokenised securities markets, the Indian securities regime should aim to formulate a framework necessary and suitable for the Indian securities market to

⁹⁹ Deloitte, ‘Tokenization in financial services: Embracing a new ecosystem’ <<https://www.deloitte.com/us/en/Industries/financial-services/articles/tokenization-in-financial-services.html>> accessed 6 January 2026.

¹⁰⁰ Shraddha Zope Ladhe ‘Payment Gateway Edge Servers: Architecture, PCI Compliance, Tokenization & Fraud Detection Guide’ (*Medium*, 27 December 2025) <<https://medium.com/@shraddhazladhe/payment-gateway-edge-servers-architecture-pci-compliance-tokenization-fraud-detection-guide-cc48508e175f>> accessed 6 January 2026.

¹⁰¹ The Securities and Exchange Board of India Act, 1992 (15 of 1992) s 11.

address the fiduciary vacuum created by the operation of the tokenised platforms. One such comparative model is the UK's Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023. Introduced as a sandbox regulatory framework, it aims to test emerging technologies like the DLT and how they can be used in the issuance, trading and settlement of securities in a controlled manner.¹⁰²

By establishing a Digital Securities Sandbox (hereinafter referred to as “DSS”) in India, SEBI can attach fiduciary responsibility and accountability to the tokenised platforms at an early stage instead of regulating it in a traditional post-hoc manner. Participation in the DSS would be conditional upon meeting the baseline requirements such as ensuring investor protection, due diligence requirements, anti-money laundering rules, etc.

Once the licensing and conduct requirements are fulfilled, these platforms can be provided a Sandbox Approval Notice labelling them as Structurally Significant Tokenised Market Platforms (hereinafter referred to as “SSTMP”). In order to classify a platform as SSTMP, it is important to define the contours of what constitutes “structurally significant.” Giving SEBI a “number” would make the labelling purely objective and mitigate any ambiguities. However, providing a definitive threshold at this stage would not be feasible as it must be formulated by analysing the existing market dynamics. For instance,

¹⁰² Anita Edwards et al, ‘The Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023’ (*Norton Rose Fulbright*, 10 January 2024) <<https://www.regulationtomorrow.com/eu/the-financial-services-and-markets-act-2023-digital-securities-sandbox-regulations-2023/>> accessed 6 January 2026.

these thresholds may include stipulating a monetary value (say 500 crores INR) in assets under management (hereinafter referred to as “AUM”) and/or having a certain number of retail investors, etc.

Thereafter, platforms can be notified with their authorised activities, permitted duration of participation, governance standards, and other applicable regulatory requirements that have been enacted and/or modified. Additionally, SEBI can also modify or amend the regulatory compliance requirements wherever required while ensuring that the core fiduciary obligations remain non-derogable.

c) *Safe Harbour Provision and the Enforcement of Breaches*

Providing safe harbour while having a definite mechanism for the enforcement of breaches becomes crucial to determine once fiduciary responsibilities have been attributed. Under Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI has provided certain conditional safeguards and exemptions to acquisitions making an open offer upon the fulfilment of the stipulated conditions.¹⁰³ Thus, adopting a similar approach to provide conditional safeguard and not absolute immunity would be a welcomed step to balance innovation with regulation. These conditional safeguards can include providing regulatory exemption from prosecution and protection from post-hoc reclassification of liability, when mandatory due diligence obligations have been met. However, inducing investors’

¹⁰³ SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg 10.

trust and confidence by means of fraud or misinterpretation such as misleading IFNs can trigger enforcement action, thereby withdrawing the safe harbour blanket.

An administrative enforcement ladder ranging from warnings, fines, license suspension, and civil class actions can also be framed.¹⁰⁴ These enforcement actions can be undertaken by way of evidence gathering through blockchain analytics, subpoenas and cross-border Mutual Legal Assistance Treaties (hereinafter referred to as “MLATs”).¹⁰⁵ Additionally, failure to comply with the sandbox requirement can attract a graduated regulatory response by SEBI. This can include exit from the sandbox environment, coupled with mandatory cessation of its operations by discharging all the mandatory disclosures and an orderly wind-down of existing tokens.

Hence, the primary objective of the digital securities sandbox will be to provide a temporary yet state of the art infrastructure to address the fiduciary gaps, while serving as potential evidence to formulate a permanent regulatory framework for tokenised securities markets in India.

¹⁰⁴ Dharmishta Raval, ‘Improving the legal process in enforcement at SEBI’ (*Indira Gandhi Institute of Development Research*, April 2011) <<http://www.igidr.ac.in/pdf/publication/WP-2011-008.pdf>> accessed 6 January 2026.

¹⁰⁵ Dadang Herli Saputra and Fardana Kusumah, ‘Blockchain Forensics and the Evidentiary Challenges of Crypto-Based Corruption in Developing Countries’ (2025) 10 (2) *INDONESIAN JOURNAL OF CRIMINAL LAW STUDIES* <<https://journal.unnes.ac.id/journals/ijcls/article/download/28795/6740/117713>> accessed 6 January 2026.

VI. CONCLUSION

In conclusion, this paper has examined the implications of asset tokenisation within the Indian securities market and found that existing market conditions demonstrate significant potential for the integration of tokenisation platforms into securities infrastructure. However, the successful integration of this newly found technology can be achieved through a regulatory framework that provides a controlled environment to uphold trust, accountability and investor protection.

To fully capitalise on the potential benefits and assist future growth, an appropriate regulatory approach is necessary. Devising a function-based approach through a FFT is fundamental to addressing fiduciary accountability within tokenised infrastructure. India must enact a suitable framework, coupled with regulatory onboarding through a sandbox-based approach, while keeping in mind the interdisciplinary issues surrounding the fiduciary role of the tokenised platforms.

The FFT approach proceeds on the premise that fiduciary responsibility should not be determined merely through formal characterisation, but through the functional role performed within the ecosystem. A comprehensive framework combining pre-operational oversight, voluntary signalling through an Issuer Fiduciary Note and mandatory obligations upon attaining scale allows innovation to develop within the bounds of regulatory protection. Aligning fiduciary responsibility with functional control would enable innovation and regulation to

thrive together within the same resilient and future ready Indian securities market.