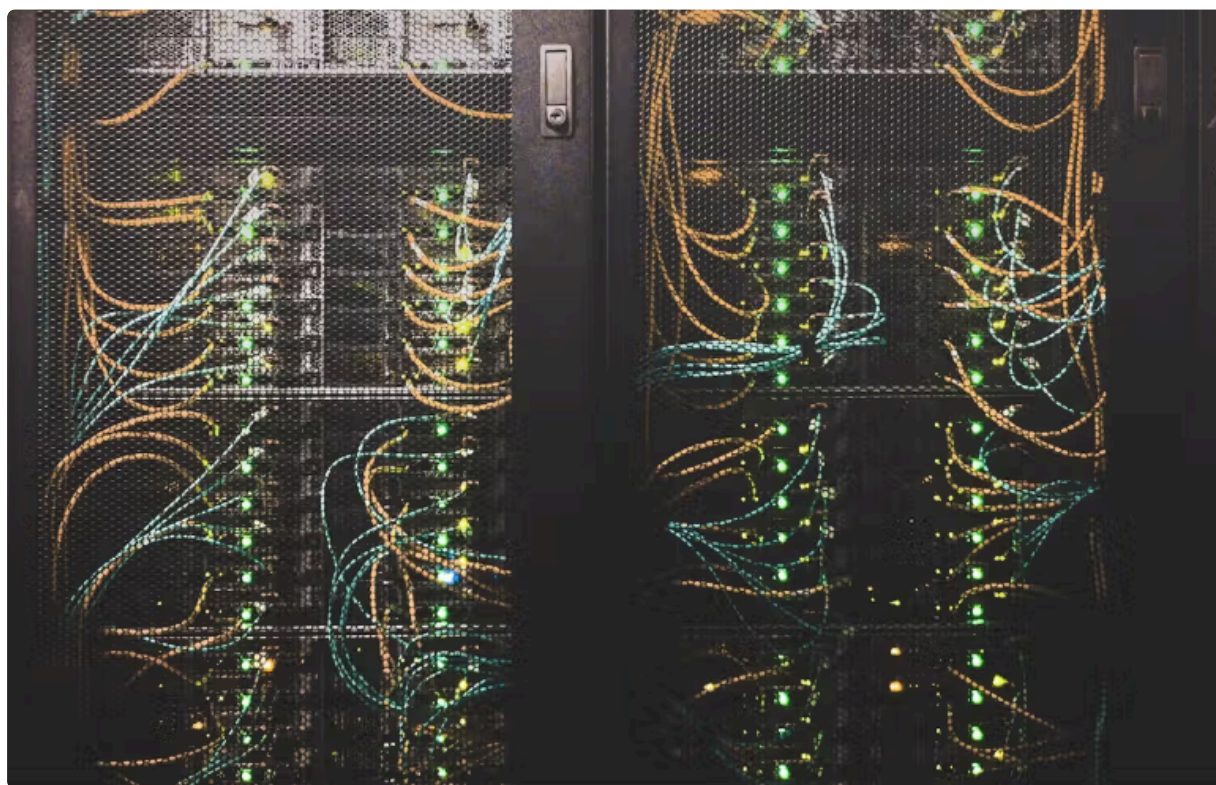


NEWS & ANALYSIS

Straddling two structures? Unpacking Europe's data centre securitisations

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Should data centre securitisations be structured as ABS, CMBS or somewhere in between? As the European market expands, sponsors and their advisers are exploring a range of structures to solve the unique issues involved in the asset class.

The ABS approach has proven more popular so far, having been used in three of the four public deals to date. These use the tenancy contracts as the basis for security — but throw up real complexities because of their commercial real estate characteristics and real-world constraints such as power connections.

At the heart of many of these issues is the notion of bankruptcy remoteness, which is central to credit rating agency analysis, as well as the tax treatment of real estate assets.

Pivoting to CMBS can sidestep some of these problems, as one deal this year showed, but its structure was very different from the five-year floating-rate securitised loans typically seen in commercial real estate securitisation.

Planning ahead

Developers often fund the construction of data centres initially with project finance loans from banks or other lenders. Once the asset is up and running, or “stabilised,” the idea is to replace that project finance lending with funding from the capital markets, freeing up bank lines for more construction.

In project finance, the borrower is a special purpose vehicle that owns the data centre assets, and also usually a subsidiary of the developer, but with a degree of bankruptcy remoteness.

The trouble, according to legal experts, is that there’s bankruptcy remoteness, and then there’s *bankruptcy remoteness*.

The level of bankruptcy remoteness that is required for an unrated project finance bank loan may not make the grade for an ABS that will need to carry credit ratings — for instance, a project finance SPV may be exposed to more potential liabilities than would be acceptable under ABS rating criteria.

Data centres, in particular, are often located next to each other in a single campus and sometimes share power infrastructure, leading to potential shared liabilities.

In an ABS, the sole purpose of the propco is supposed to be holding the asset and passing on cashflows. Other liabilities have to kept to an absolute minimum.

“If you are not an experienced issuer or haven’t obtained tons of legal advice, you wouldn’t be aware of that, and you would probably be facing a lot of issues with the rating agencies,” said Sebastian Oebbels, counsel at **Hogan Lovells** in Frankfurt, who worked on the first German data centre ABS transaction.

Some of these issues would be simplified if, ahead of an ABS transaction, the sponsor could move the actual data centre properties into an orphan SPV to achieve gold-plated bankruptcy remoteness. But there are some serious obstacles to doing so.

One of the main reasons is that it would likely incur some form of real estate transfer tax (stamp duty in the UK), seriously damaging the economics of the transaction.

On top of that, there may also be commercial reasons — for instance, the tenant (or tenants) might not like it, and also have the right to refuse.

“Given the consent rights that tenants often have, it’s hard to move these around,” said Will Sutton, a partner at **Clifford Chance**, which has advised on several European data centre securitisations.

There are even national security considerations in some countries, as digital infrastructure is considered of critical importance.

The upshot of all this is that the corporate structure of the ABS issuer and propcos need to perform a delicate balancing act — remaining part of the corporate structure of the data centre developer while also achieving a degree of bankruptcy remoteness that is acceptable to credit rating agencies.

It helps if the developer has planned carefully in advance of a financing transaction, putting each data centre in its own propco along with everything it

needs to operate.

“On the way in, if it is structured in a way that’s highly financeable, then you have every option,” said Emma Matebalavu, partner and head of global financial markets at Clifford Chance. “If all development and stabilised data centres are in one vehicle or group, or you’ve got some challenges with the customer contracts, or you’ve got some reason why it’s hard to reorganise the group, then it might limit your options.”

Debt and taxes

The tax issues do not end with real-estate transfer taxes. Because the ABS issuer directly owns the data centre assets, rather than merely lending against them, it may not qualify for securitisation tax treatment, exposing it to the risk of incurring corporation or other taxes, depending on the jurisdiction.

This risk was flagged in the rating reports from S&P and DBRS for **Vantage Data Centers UK 2024-1**, the first European data centre ABS, [issued in 2024](#).

S&P said it had factored potential tax bills into its cash flow analysis, based on projections provided by [Vantage](#) and backed up by a tax structuring paper.

“We got a tax memo effectively a covering the 15-year period to legal final maturity,” said Doug Paterson, a managing director at S&P, which rated the first UK deal and the only German deal to date. “We asked some questions on that, and the projections, in our view, looked prudent, in terms of the overall potential tax exposure. And then we just factored those into our cash flow analysis.”

Besides the corporation tax liabilities of the propcos themselves, S&P also considered secondary tax liabilities — where the SPV could be held liable for unpaid taxes of other parts of the group.

Here, S&P thought the likelihood that noteholders would be exposed to such liabilities was “remote”, but only after receiving a tax memo and after the issuer’s

Luxembourg-based parent company, Vantage Valkyrie BidCo, provided a tax deed of covenant.

Edge case

One way to neatly sidestep some of these issues would be to structure the securitisation as a CMBS instead of an ABS.

The issuer of the CMBS notes — a newly established, fully bankruptcy-remote orphan SPV with no historical tax liabilities — would extend a mortgage loan to the sponsor and then securitise the loan repayments. The propco could stay quite happily where it is.

Sources say they expect some sponsors to go down this route eventually, speculating that well-known CMBS enthusiast **Blackstone** — which issues the majority of new CMBS in Europe — would be a prime candidate. CMBS structures could also more easily encompass cross-border portfolios.

But so far there have been no data centre transactions using a classic CMBS template in Europe.

The drawbacks of a traditional CMBS structure include the refinancing risk at the maturity of the underlying loan — usually after five years. That means the rating agencies have to take into account the potential value of the data centre if it had to be sold to repay the loan at that point, rather than assuming that note repayments would continue to be made from lease cashflows over the following 10 years.

Given the rapid growth and technological change in the market, the agencies are cautious about the future value of data centres being built today.

In March, however, **EdgeConneX** priced a [securitisation of Dutch data centres](#), with **Morgan Stanley** as structuring agent, which occupies a kind of middle ground between ABS and CMBS, apparently solving the insolvency remoteness problem without introducing refinancing risk at year five.

Unlike the previous European data centre ABS deals, **EdgeConneX Data Centers Europe 2026-1** featured notes issued by a bankruptcy-remote, orphan SPV, which extended a loan to the propcos — making it technically a CMBS.

Because the note issuer holds a mortgage loan rather than owning the propcos directly, propco corporate tax liabilities are subordinated to the mortgage claim in an enforcement scenario, according to a presale from Fitch.

However, this was no ordinary CMBS. The underlying term loan has a 25-year tenor and pays a fixed-rate coupon, as do the notes, eliminating the need for an interest rate hedge.

There is still a five-year tail period between loan maturity in 2051 and note maturity in 2056, exposing the transaction to the disposal value of the properties if the securitisation is not refinanced by then, but the cashflow analysis for ratings purposes is overwhelmingly based on lease payments in the first 20 years.

Sources say there is no reason why other sponsors could not copy this structure, or come up with other solutions to suit their preferences and aims.

“No European jurisdictions pose insurmountable challenges,” said Matebalavu. “Expansion depends primarily on sponsor appetite and investor demand rather than legal barriers.”

Room for creativity

Matebalavu is at pains to point out that the tax and other issues are not a barrier to data centre sponsors using whatever structure they prefer.

“We can do an ABS structure, *à la* Vantage, or we can do more of an orphan SPV structure, like the EdgeConneX deal with Morgan Stanley, and we also see US private placement being used as an option,” said Matebalavu.

As is often the case, much of the innovation has taken place first in the US, where **Meta** and **Blue Owl** raised a massive US\$27bn for data centres in Louisiana last year through a project bond issuance in 144A format, dubbed Project Beignet, which was placed with private credit investors led by **Pimco**.

The proliferation of multi-billion-dollar project bonds backed by data centres in the US has turned the role of tech credit analyst on its head, as *9fin* explored in [depth](#) earlier this month.

That phenomenon is yet to fully take hold in Europe, but Norwegian company **PolarDC** priced an €800m high-yield floating-rate note on Wednesday (27 May) backed by three contracted but mostly under-construction data centres (see *9fin*'s Credit QuickTake [here](#)).

“The question for sponsors and arrangers is, what are you trying to maximise on any one trade? What is it that you need and want? What are you targeting?” said Matebalavu. “The thing about data centres, and the reason it's quite fun, is that as there is volume and significant capital markets need, we anticipate operators and sponsors are going to try lots of different structures.”

Digital deficit

The solutions cannot come too soon. Demand for computing power is soaring, thanks largely to the artificial intelligence boom.

Leased data centre power demand in core European markets is forecast to reach almost 12 gigawatts by 2030, more than double what it was last year, according to a recent presentation by S&P.

All those data centres are going to need a lot of capital. S&P expects more than \$1.5trn of investment globally in the five years through to the end of 2030.

European data centre development is centred on five main markets — Frankfurt, London, Amsterdam, Paris and Dublin, collectively known as ‘Flap-D’.

So far, there have only been four public securitisations of European data centres — two in the UK, one in Germany and one in the Netherlands — raising about €2.9bn of debt to finance a combined roughly 305 megawatts of capacity.

Stretching the definition of “London” to include Slough and Cardiff, that leaves the Paris and Dublin data markets still to crack.

Beyond Flap-D, Madrid and Milan are other areas of focus. Sources say the tax challenges are particularly acute in the Italian legal system.

Because of the different tax and legal regimes in different European countries, tax structure problems need to be solved again for each new jurisdiction — potentially acting as a drag on cross-border expansion.

The challenges involved in tackling these issues for the first time produces what Paterson described as a “potential first-mover disadvantage”.

However, once they are addressed in each legal and tax regime, it should be easier for rival data centre owners to follow up with their own transactions.

“There’s a lot of heavy lifting in terms of the legal work that needs to be done to get the first transaction done,” said Paterson. “And then, future issuances can leverage off how those tax issues have been resolved.”

As advances are made in structuring, lawyers are confident that solutions can be found — even in Italy.