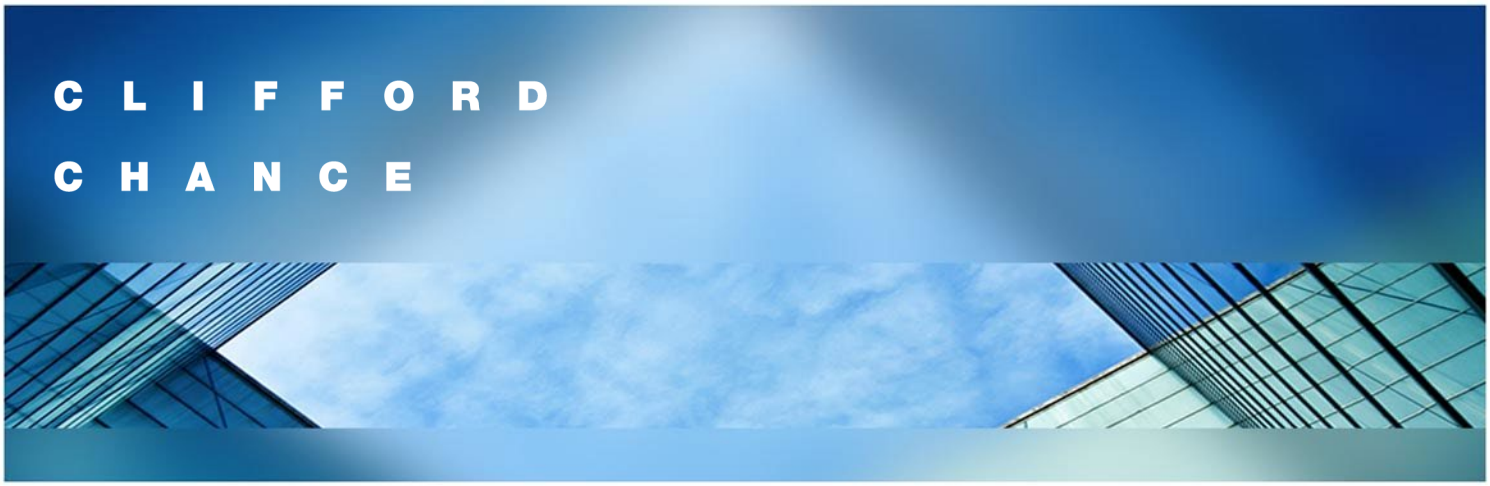

ASSET BACKED SECURITISATION FOR EUROPEAN DIGITAL INFRASTRUCTURE – WHAT'S NEXT?

Digital infrastructure has been an area of significant focus for asset backed securitisation (ABS) in recent years. In a European context this has been primarily on data centre ABS, with Clifford Chance having structured and acted on the first two public data centre ABS deals in Europe for Vantage: the first, in 2024, financing two data centres on its Cardiff campus, followed by the financing of four data centres spread over two campuses in Berlin and Frankfurt.

Key points

- Key structuring features of data centre ABS
- The viability of a secured loan/CMBS structure as an alternative
- Applicability to other digital infrastructure asset classes

ABS funding for data centres is a trend that will continue, given the vast funding this asset class will require in the coming years. According to McKinsey & Company, global demand for data centre capacity could more than triple by 2030, but what of the potential of European ABS for other assets that fall within the digital infrastructure umbrella? We start by taking a look at data centres again and then consider the application of structuring features to fibre and cell towers.

Key legal structuring features and hurdles in a data centre context

The main structuring challenge is driven by rating requirements to have insolvency remote Issuer and PropCo entities. The logic is: in a data centre ABS the securitised assets are the customer contracts, the securitised assets need to be owned by the SPV, and the customer contracts attach to the real estate asset. Hence the US structures, which the European structures have so far replicated, have the PropCos as subsidiaries of the Issuer, but with each structured as an insolvency remote entity.

This throws up several challenges. Power supply is critical for data centre operation, but shared power and other infrastructure arrangements can undermine insolvency remoteness, since PropCos may be potentially liable for obligations of other asset-owning entities which do not sit within the ABS ring-fence. Issuing vehicles which own (directly or indirectly) real estate assets will also be unlikely to qualify for securitisation tax treatment, so adding the risk of secondary tax liabilities and other tax implications, all of which can be structured around to a degree (for instance, through appropriate coverage in a tax deed of covenant and sufficient adviser tax comfort being provided to the rating agencies and investors), but that all needs careful assessment given its potential to undermine insolvency remoteness.

The need to move employees, operating contracts and management out of the financing ringfence and into separate management/operating companies is another element that will be driven by the need to preserve insolvency remoteness as far as possible.

Two other points to consider are the likely presence of ongoing construction risk (for example, delayed fit out); and an issue upon which rating agencies have particularly focused – the ability to replace the operator in the event of insolvency, given the expertise required in managing these assets. While particularly important for data centres, both of these will be relevant (as structuring considerations) to varying degrees across complex digital infrastructure assets which require both ongoing maintenance and specialist skills and expertise to operate.

For data centre ABS in particular, which involve assets that are particularly operationally intensive, thought will need to be given to building in an appropriate decision-making framework in the documentation, the key being to preserve an operational regime that enables the operator to carry on running its business, but giving creditors a say on certain matters.

What about the alternative of a CMBS structure?

A secured loan/CMBS structure might provide an alternative to an ABS underpinned by the customer leases and we anticipate a number of sponsors may ultimately favour this route, given its potentially greater scalability and repeatability (for example, the CMBS structure may lend itself to some pan-European deals along the lines that we've seen for other real estate assets). Although many of the considerations around risks that attach to the assets themselves will be equally relevant to CMBS, the focus here would be on the value of the data centres on enforcement.

In addition, it's possible that the CMBS structure may be able to mitigate some of the insolvency remoteness issues described above, since there will be a proper securitisation SPV at issuer level that just owns the loan (because in the CMBS structure, where the underlying asset is the loan rather than the leases, there is no requirement for the Issuer to own the data centres directly or indirectly). While one of the potential drawbacks of CMBS structures is the refinancing risk due to securitising a short-dated loan (five years typically), for data centre CMBS it would be possible to structure the loan to match the soft-bullet maturity profile that we currently see in data centre ABS – i.e. the longer legal maturity coupled with the earlier anticipated repayment date (we have seen this sort of structure in some residential CMBS deals).

How can all of this be applied to fibre assets?

Based on fibre ABS deals in the US – for example, in February 2025, Zayo Group became the latest in a number of fibre network operators in the US to enter the ABS space – the legal structure (with Issuer typically owning the AssetCos) looks similar to data centre ABS. With fibre, as with data centre ABS (given the credit given to the liquidation value of the real estate in rating agency methodologies), security is typically granted over the underlying real estate assets (in this case the fibre optic cables and conduits, and related equipment and facilities), but a key focus remains the cashflows generated by the underlying customer contracts.

We expect that in a European fibre context, similar considerations of the insolvency remoteness of the financing ring-fence will be prevalent, including

issues around tax and shared infrastructure, all of which would need to be examined on a jurisdiction-specific basis when the time comes. As with data centres and, for that matter, cell towers, rating methodologies will also look to the risk of redundancy of the technology/future loss of demand due to competition. The good news, however, is that data centre ABS, at least from a legal and structuring perspective, will likely form a good template for fibre ABS transactions. As with data centres, the secured loan/CMBS structure may be a viable alternative and, for the reasons noted earlier, possibly remove some of the structuring hurdles around insolvency remoteness.

Nuances between data centre and fibre ABS will however include, for example, customer contract concentration, in that in a data centre context rating agencies and investors can be comfortable with single-tenant data centre ABS due to the high demand for, but low supply of, available data centre space (whereas in a fibre context, given the nature and purpose of the assets, more emphasis will be placed on having a wider pool of customer agreements across various industries and the overall portfolios are likely to be more granular in nature, which will have its advantages but also its challenges, for example in relation to tenant roll off). Other issues are the manner in which security can be taken over the fibre assets given the greater span of physical distance, different types of security and different perfection methods for different parts of the network, as well as greater diligence on easements and other matters that would impact the ability to repair and maintain the network; and diversity of the types of assets/technology and the services provided.

Is now really the time for fibre?

The question remains whether fibre ABS is ready to take off in Europe as it has begun to do so in the US. For fibre assets in Europe, project financing or on-balance sheet financing may remain the preference where regional or national telecoms operators can be comparable to utilities that benefit from supportive regulatory frameworks, are quasi-monopolistic, and thus obtain better pricing on a corporate basis. This contrasts with the US where fibre companies may well be younger companies, with first-mover advantage in their region but not national monopolies and therefore a higher cost of funding on a corporate or project finance basis, and so the superior pricing available from ABS may make more sense.

Furthermore, fibre is still in the roll-out stage, so the embedded construction risk may as things stand make it more suitable for project financing rather than ABS (both in pricing and in terms of rating methodology). Certainly, of the three main digital infrastructure asset classes, fibre is probably the newest to emerge in the US and the least well developed, with Frontier having pioneered the use of ABS for its broadband buildout in 2024.

What about cell towers?

Cell towers are probably the most mature mainstream asset class within digital infrastructure, with more of a track record for ABS than both data centres and fibre in the US. Cell towers are no stranger to publicly rated structured debt solutions in a European context either: for instance, until the carve-out of its towers business several years ago to Cellnex, Arqiva's tower assets sat within its whole business securitisation.

Cell tower ABS has been common in the US market for some time, but structuring a cell tower ABS transaction in a European context will include many of the above structuring considerations. For these deals, the underlying

assets will typically be the wireless towers, real property and associated rights, managed and leased third-party towers (if any), rights to current and future tenant leases, owned equipment on towers or at sites, and any relevant licences. As noted earlier with fibre, similar insolvency remoteness considerations will apply as with data centres, and data centre deals are likely to be a good template for cell tower ABS. In the same way, a CMBS/secured loan structure may also provide an attractive alternative.

Such deals can also include substitution and repurchase features in favour of the sponsor and there will be a similar kind of focus on customer contracts to that deployed in fibre (such as term, ability to terminate, diversification, ability to find replacement tenants if existing tenants default), even if the transaction is structured more closely to a secured loan/CMBS structure. Like fibre, diversity of the types of assets/technologies and the services provided will also potentially be an important factor, and there will be a wider pool of customer agreements (with some of the same related advantages and disadvantages around granularity as noted earlier in the context of fibre).

Given its longer history, the broader towers model, specifically, has been used as inspiration for a number of other platforms in the digital infrastructure sphere. Take, for instance, two examples: (i) the 2024 announcement of the carve out of a portfolio of satellite ground stations by Eutelsat to EQT, a transaction which was modelled to a great degree on best practice from platform establishments in a cell towers context (and there have been similar potential carve-out transactions in the space sector where we have preliminarily been asked to look at securitisation financing as an option); and (ii) the establishment of platforms consisting of digitised outdoor media assets and related securitisation billboard cashflow financings.

Indeed, cell tower ABS was cited as one of the structuring inspirations for the debut Frontier ABS previously mentioned, and the primary Moody's rating methodology applied for Zayo's recent fibre ABS issuance in the US was its 2024 "Wireless Tower Securitizations" methodology. So many of the structuring and credit considerations are common to the two asset classes.

What's next?

Given the trend that has occurred in data centres more recently, we believe that it's only a matter of time before ABS becomes a mainstream funding tool for the broader suite of digital infrastructure assets in a European context. While there will clearly be nuances, much of the technology we have developed for the first public data centre ABS financings are ready for deployment in structuring these transactions when they come to Europe.

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