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Fractional Ownership of Art in India: Case for a Bespoke Framework

M P Ram Mohan[*] and Rishabh Kumarpal Mehta[**]

Abstract

India's art market is increasingly gaining traction. Yet the regulatory framework governing trading in artwork and access to art markets remains underdeveloped. The Supreme Court of India's decision in *Osian's Connoisseurs of Art v. SEBI* established that pooled investment in artworks can constitute a Collective Investment Scheme ("**CIS**"). However, the CIS regime has had limited success in making art accessible as an asset class to a broader investor base. This paper examines the resulting gap. Against the backdrop of commercialisation of art, the paper first examines the prevalent business models used for fractional ownership before analysing Indian securities regulation, tax law, property law, art and cultural laws. The paper argues that the present fragmented regime is inadequate for a functional fractional ownership platform in art. It draws on India's real estate and bullion regulations while drawing comparisons from the United States, South Korea, and the European Union. The paper proposes a '**Small and Medium Art Investment Trust**' ("**SM AIT**") framework built around single-artwork special purpose vehicles, regulated investment managers, exchange-listed units, independent authentication and valuation, securities-grade disclosure, business-trust taxation, and compliance with art laws. The framework seeks to convert art from a legally recognised investment concept into a regulated and scalable investment product.

Keywords: *fractional ownership of art; collective investment scheme; fractional trading; securities regulation; SM REIT; SM AIT; Art Investment Trust.*

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INTRODUCTION

Art is increasingly being treated not merely as a cultural object, but as an investable asset.[1] The growing financialization of the art market has transformed artworks into assets that can be valued, traded, securitised, and increasingly divided among investors.[2] Global sales of art and antiques reached an estimated US$59.6 billion in 2025[3]. While Indian modern and contemporary art recorded ₹1,016 crore in FY 2024–25 with auction sales surging to 43.7% year-on-year to ₹1,548.9 crore in the first half of 2026.[4] Raja Ravi Varma's Yashoda and Krishna alone, sold for ₹167.2 crore, setting a new record for an Indian painting.[5] Yet participation in this market remains concentrated among a small class of high-net-worth collectors because investment-grade works command prices of several crores.[6]

Fractional ownership offers a means of widening access to this asset class.[7] It treats the artwork as an object of investment rather than collection.[8] The investor therefore acquires an economic interest in the artwork rather than the physical possession valued by a traditional collector.[9]

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[1] Clare McAndrew, *The Art Basel and UBS Global Art Market Report 2026*, https://www.ubs.com/global/en/our-firm/art/art-market-research.html (last visited 27 August 2026); Arun Kakar, *The global art market rebounded to $59.6 billion in 2025, Art Basel and UBS report finds. Artsy* (2026), https://www.artsy.net/article/artsy-editorial-global-art-market-rebounded-596-billion-2025-art-basel-ubs-report-finds (last visited 27 August 2026).

[2] VELTHUIS, OLAV, AND ERICA COSLOR, *The Financialization Of Art*, in KARIN KNORR CETINA, and ALEX PREDA (eds), *The Oxford Handbook of the Sociology of Finance* (2012; online edn, Oxford Academic, 03 June 2013), https://doi.org/10.1093/oxfordhb/9780199590162.013.0025 (last visited 27 August 2026); *see, e.g.*, Erica Coslor, *Transparency in an Opaque Market: Evaluative Frictions Between "Thick" Valuation and "Thin" Price Data in the Art Market*, 50 Acct., Org. & Soc. 13, 13–17 (2016).

[3] Art Market Report, *supra* note 1, at 16.

[4] Cyrus Naji, *Record Sales and a Tax Break Close Out Blockbuster Year for South Asian Modern Market*, The Art Newspaper (06 October 2025), https://www.theartnewspaper.com/2025/10/06/record-sales-in-delhi-and-london-close-out-a-blockbuster-year-for-south-asian-modern-market (last visited 27 August 2026); Indian Art Investor, *Indian Art Market Report*, 2024–25 (2025); *see* Smita Tripathi, *It's Raining Records in India's Art Market: Saffronart Sees Rs 217.81 Cr Sales Value at Auction*, Business Today (07 April 2025), https://www.businesstoday.in/lifestyle/story/its-raining-records-in-indias-art-market-saffronart-sees-rs-21781-cr-sales-value-at-auction-470837-2025-04-07 (last visited 27 August 2026); Varuni Khosla, *Indians are spending more on art, but don't mistake art for investment*, LiveMint (07 September 2026) https://www.livemint.com/news/indian-art-market-auction-sales-dadiba-pundole-11788755301142.html (last visited 09 September 2026).

[5] Janhavee Moole, *Iconic 19th Century painting sets Indian art record with $17.9m sale*, BBC (02 April 2026) https://www.bbc.com/news/articles/cje4l98wjzwo (last visited 27 August 2026).

[6] Art Market Report, *supra note* 1, at 31 and 144.

[7] Whitaker & Kräussl, *Fractional Equity, Blockchain, and the Future of Creative Work*, 66 Mgmt. Sci. 4594 (2020), https://pubsonline.informs.org/doi/10.1287/mnsc.2020.3633 (last visited 27 August 2026); Xiang, *Unlocking the Potential of Art Investment Vehicles*, 127 Yale L.J. 1698, 1702–04 (2018), http://www.jstor.org/stable/45222581 (last visited 27 August 2026).

[8] LUC BOLTANSKI & ARNAUD ESQUERRE, *Enrichment: A Critique of Commodities,* Wiley (April 2020) https://www.wiley.com/en-us/shop/general-sociology/enrichment-a-critique-of-commodities-p-9781509528745 (last visited 27 August 2026); *cf.* United Hous. Found., Inc. v. Forman, 421 U.S. 837, 852–53 (1975).

[9] Asset Land Inv. Plc v. Fin. Conduct Auth. [2016] UKSC 17, [83] (appeal taken from Eng.) (Lord Sumption).

Through an intermediary, multiple investors can acquire interests in a single artwork, reducing the entry price from several crores to a few thousand rupees.[10] Platforms such as Masterworks in the United States reflect the potential of this model.[11] India, however, has no such platform.

In *Osian's Connoisseurs of Art v. Securities and Exchange Board of India* ("**SEBI**"), the Supreme Court recognised pooled investment in artworks within the Collective Investment Schemes ("**CIS**") framework.[12] Yet the existing CIS framework provides no operational pathway through which a fractional art platform can reach investors. The relevant securities, property, tax, and art and cultural laws address different aspects of trading in art without providing a dedicated framework for fractional trading.

This paper proposes a Small and Medium Art Investment Trust ("**SM AIT**") framework modelled on India's Small and Medium Real Estate Investment Trust ("**SM REIT**") framework[13]. The proposed framework uses single-artwork special purpose vehicles, regulated investment managers, listed units, independent authentication and valuation, securities-grade disclosure, and appropriate compliance with art and cultural laws. It seeks to provide a regulated pathway for fractional investment while addressing the particular risks associated with the valuation, authenticity, custody, and sale of artworks.

The paper proceeds in four Parts. Part I examines art as an asset class, defines fractional ownership, and evaluates the principal business models. Part II analyses the Indian regulatory position under securities, property, art and cultural, and tax laws. Part III analyses India's REIT and bullion frameworks and draws comparative insights from fractional-ownership models in the United States, South Korea, and the European Union. Part IV develops the proposed SM AIT framework and considers its structure, governance, disclosure, investor access, taxation, exit mechanisms, and investor protection. The analysis is confined to non-blockchain, special purpose vehicle and securitisation based fractional ownership of physical artworks.

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[10] Anne-Laure Allehaut, *Fractional Interests in Artwork: A Possible Asset Class and Investment Opportunity*, WealthManagement (March 2023) https://www.wealthmanagement.com/estate-planning/fractional-interests-in-artwork (last visited 27 August 2026); KEAN BIRCH & FABIAN MUNIESA eds., *Assetization: Turning Things into Assets in Technoscientific Capitalism*, MIT Press (2020) https://direct.mit.edu/books/oa-edited-volume/4848/AssetizationTurning-Things-into-Assets-in (last visited 27 August 2026).

[11] Laurie Sepulveda, *Masterworks Review 2026*, Forbes Advisor (22 April 2026), https://www.forbes.com/advisor/investing/masterworks-review/ (last visited 27 August 2026).

[12] Osian's Connoisseurs of Art (P) Ltd. v. SEBI, (2020) 16 SCC 745 ¶¶16-17 [**Osian's Supreme Court (2020)**].

[13] Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, Gazette of India, Extraordinary, Part III, § 4 (26 September 2014) ["**REIT Regulations**"]; Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, Notification No. SEBI/LAD-NRO/GN/2024/166 (08 March 2024) ["**SM REIT Regulations**"].

I. BACKGROUND: ART AS AN ASSET CLASS AND FRACTIONAL OWNERSHIP

This Part contextualises artworks within the literature on assetization and financialization and examines the emergence of fractional ownership as an investment structure. It first considers how artworks acquire characteristics of financial assets. It then defines fractional ownership and distinguishes it from conventional co-ownership. Finally, it surveys the available business models for fractional ownership before identifying the special purpose vehicle ("**SPV**") model as the structure most suited to a regulated fractional art market.

A. Assetization and Financialization of Art

Art is increasingly treated as an investable asset alongside its cultural and aesthetic functions. Birch & Muniesa describe '*assetization*' as the process through which things acquire the capacity to generate future economic value.[14] Boltanski & Esquerre similarly distinguish the "collection form" of value, derived from an object's historical and cultural significance, from the "asset form", in which the object acquires characteristics of quasi-money.[15] Art can embody both forms simultaneously. The same painting may therefore function as a family heirloom for one owner and as an investment asset for another.

Financialization has created institutional mechanisms that facilitate this transformation. Art-backed lending, securitisation, and other financial arrangements allow investors to derive economic value from artworks without treating them primarily as objects of possession.[16] The investment case rests principally on potential capital appreciation, portfolio diversification, low correlation with conventional financial assets, and its perceived utility as an inflation hedge.[17]

[14] Birch & Muniesa, *supra* note 10.

[15] Boltanski & Esquerre, *supra* note 8.

[16] Syra Kalbermatten, *The 'Assetization' of Art on an Institutional Level—Fractional Ownership Implemented in the Royal Museum of Fine Arts Antwerp*, Arts 2024, 13, 16. https://doi.org/10.3390/arts13010016 (last visited 27 August 2026); Adriano Picinati di Torcello, *Why Should Art Be Considered as an Asset Class?*, Deloitte Luxembourg (2010), https://www.deloitte.com/lu/en/services/consulting-financial/research/art-as-investment.html (last visited 27 August 2026); Deloitte & ArtTactic, *Art & Finance Report 2025* at 28, 394, 418 and 423, (9th ed. 2025) https://www.deloitte.com/lu/en/services/consulting-financial/research/art-finance-report.html (last visited 27 August 2026).

[17] Xiang, *supra* note 7; Jeremy Eckstein, *Investing in Art: Art as an Asset Class*, in *The Art Business* 69, 71–73 (Iain Robertson & Derrick Chong eds., 2008); *see also* William N. Goetzmann, *Accounting for Taste: Art and the Financial Markets over Three Centuries*, 83 Am. Econ. Rev. 1370 (1993); Georgina Adam, *Dark Side of the Boom: The Excesses of the Art Market in the 21st Century*, Lund Humphries (2017) https://www.lundhumphries.com/products/dark-side-of-the-boom (last visited 27 August 2026).

This transformation also alters investors' physical relationship with artworks. Investment-grade works are increasingly stored in specialised facilities and freeports rather than collectors' homes. [18] This allows financial interests to change hands while artworks remain in professional custody.[19] Such separation creates conducive conditions for fractional investment.

Fractional ownership treats the artwork as an object of investment rather than collection. Multiple investors can therefore obtain interests in a single artwork through an intermediary, reducing the entry price from several crores to a few thousand rupees. The resulting product provides exposure to the financial performance of an artwork while centralising its custody, insurance, management, and eventual sale.

B. Concept of Fractional Ownership of Art

Fractional ownership refers to a structure through which multiple investors obtain proportionate economic interests in a single asset. [20] The interests may be constituted through direct ownership of the underlying asset or through securities issued by an entity that owns it.

The commercial origins of fractional ownership are generally associated with aviation.[21] NetJets, introduced by Richard Santulli in 1986, allowed customers to acquire fractional interests in specific aircraft while a central management company handled their operation and administration.[22] The model separated ownership from exclusive use and distributed the costs of a high-value asset among multiple owners.[23] Similar structures subsequently developed across real estate and commodities and have more recently been adapted for artworks.[24]

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[18] John Zarobell, *Freeports and the Hidden Value of Art*, 9(4) Arts 117 (2020) https://doi.org/10.3390/arts9040117 (last visited 27 August 2026); Erik Post & Filipe Calvão, *Mythical Islands of Value: Free Ports, Offshore Capitalism, and Art Capital*, 9(4) Arts 100 (2020) https://doi.org/10.3390/arts9040100 (last visited 27 August 2026); *see* Deloitte & ArtTactic, *supra* note 16.

[19] Eckstein, *supra* note 17.

[20] Kalbermatten, *supra* note 16 at 4-5*;* Whitaker & Kräussl, *supra* note 7.

[21] Eileen Gleimer, *When Less Can Be More: Fractional Ownership of Aircraft-The Wings of the Future*, 64 J. Air L. & Com. 979 (1999) https://scholar.smu.edu/jalc/vol64/iss4/2/ (last visited 27 August 2026); Mikolaj Ratajczyk, *Fractional Ownership Programmes: Commercial Air Transport or General Aviation*, 30 Air & Space L. 217 (2005) https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/30.3/AILA2005018 (last visited 27 August 2026).

[22] Kenneth P. Krohn, *Fractional Ownership and Timeshare Programs: Are They Subject to the Securities Act of 1933 and Securities Exchange Act of 1934?*, 54 Bus. Law. 1181 (1999) https://www.jstor.org/stable/40687880 (last visited 27 August 2026).

[23] Gleimer, *supra* note 21.

[24] Michael Bakht & Alan Snyder, White Paper, *Exploring the Mega Trend of Financial Asset Fractionalization* 6-7 (2025) https://www.asharex.com/news-posts/exploring-the-mega-trend-of-financial-asset-fractionalization (last visited 27 August 2026).

In the art market, fractionalisation separates economic exposure from physical possession.[25] Investors ordinarily have no individual right to display, possess, or dispose of the artwork.[26] Instead, a manager or issuing entity holds and administers the work, while investors receive defined economic rights.[27] Such rights may include a proportionate claim on sale and, where applicable, interim income.[28] The artwork remains in professional custody, with insurance.[29]

Further, fractional ownership differs from joint ownership. Joint ownership ordinarily arises from a common acquisition or pre-existing relationship among identified owners.[30] Each co-owner holds an undivided interest in the underlying property.[31] Fractional investment, by contrast, creates interests for investment and circulation. Fractional interests are designed to be acquired by multiple investors and, in an appropriate structure, transferred independently.[32] A fractional art investor primarily seeks economic returns, rather than possession of the artwork.[33]

A regulated product must therefore establish who holds title, how the investor's economic interest is constituted, who manages the artwork, how its value is determined, and how the investment can be exited. The business models below address these questions in varying ways.

C. Business Models and Structures

Three principal structures facilitate fractional art investment: direct co-ownership, pooled funds, and specialised-purpose-vehicle based securitisation. Each differs in title, control, management, valuation, custody, and exit rights, shaping the regulatory concerns they present.

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[25] *See* Whitaker & Kräussl, *supra* note 7, at 4595–96; Aparajita Jain, *Mapping the Rise of the Indian Art Market*, ArtTactic (02 May 2025), https://arttactic.com/editorials/mapping-the-rise-of-the-indian-art-market (last visited 27 August 2026).

[26] See Xiang, *supra* note 7, at 1704; Masterworks, *How It Works*, https://www.masterworks.com/about/how-it-works (last visited 27 August 2026).

[27] Bakht & Snyder, *supra* note 24.

[28] *Id.*

[29] *Id.*

[30] See Sale of Goods Act, No. 3 of 1930, § 4(2) (India); *see* Nanalal Girdharlal v. Gulamnabi Motorwala, AIR 1973 Guj. 131 (India) https://indiankanoon.org/doc/23253/ (last visited 27 August 2026).

[31] *Id*.

[32] *See* Mihir Vashishtha, *Demystifying Overlap in Collective Investment Schemes and Joint Ownership Structures*, IndiaCorpLaw (14 April 2024), https://indiacorplaw.in/2024/04/14/demystifying-overlap-in-collective-investment-schemes-and-joint-ownership-structures/ (last visited 27 August 2026).

[33] Xiang, *supra* note 7, at 1702–04; *cf.* Forman, *supra* note 8, at 852–53.

(i) Co-ownership

Under the co-ownership model, investors acquire undivided interests in the artwork itself, typically without an intervening investment vehicle. In 2023, for instance, the Tate and the Museum of the Home jointly acquired Rebecca Solomon's A Young Teacher (1861), with the work subsequently alternating between the two institutions for display.[34] More recently, in 2024, the Hammer Museum, the Los Angeles County Museum of Art, and the Museum of Contemporary Art, Los Angeles established the Mohn Art Collective (MAC3), a collection jointly owned and managed by the three institutions.[35] Similar forms of direct co-ownership may arise among private collectors and dealers, where parties acquire interests in a work without interposing a separate investment vehicle.[36]

Indian law permits co-ownership of movable property.[37] Each co-owner holds an undivided interest in the entire artwork and may transfer that interest independently.[38] Ten investors could therefore, in principle, hold equal undivided interests in a single painting.

The structure becomes more difficult when the co-owners are dispersed investors. First, decisions concerning the use or disposal of the artwork require coordination among the co-owners.[39] Second, an investor seeking to sell an undivided interest encounters a limited market because the purchaser also enters into a relationship with the remaining co-owners. Third, valuation, custody, insurance, voting, disclosure, and dispute resolution depend largely upon

[34] Arts Council England, *Export of Works of Art and Objects of Cultural Interest Annual Report 2024-25*, at 35 (2025), https://www.artscouncil.org.uk/supporting-arts-museums-and-libraries/supporting-collections-and-cultural-property/reviewing-committee-0/export-works-art-and-objects-cultural-interest-annual-report-2024-25 (last visited 27 August 2026).

[35] Press Release, Hammer Museum, LACMA, and MOCA Establish MAC3, Joint Collection of Contemporary Art by Los Angeles Artists through Gift from Jarl and Pamela Mohn (26 August 2024), https://hammer.ucla.edu/sites/default/files/2024-08/MAC3%20Hammer%20LACMA%20MOCA%20Press%20Release_0.pdf (last visited 27 August 2026).

[36] Press Release, Musée du Louvre, *Portraits of Maerten Soolmans and Oopjen Coppit by Rembrandt: An Exceptional Acquisition Exhibited at the Musée du Louvre* (10 March 2016) https://presse.louvre.fr/les-portraits-de-maerten-soolmans-et-doopjen-coppit-par-rembrandt_4614_4614/?lang=en (last visited 27 August 2026); Ana T. Lacob, *Common European Heritage: The French and Dutch Government Joint Acquisition of Two Rembrandt Portraits*, Center for Art Law (20 July 2016), https://itsartlaw.org/art-law/common-european-heritage-the-french-and-dutch-government-joint-acquisition-of-two-rembrandt-portraits/ (last visited 27 August 2026); *see* Shivraj Krishna Gupta v. Rahul Savara, OMP (Comm.) No. 43/2021 (Dist. Ct. (Saket), Delhi 18 December 2024), https://indiankanoon.org/doc/167625133/ (last visited 27 August 2026).

[37] Sale of Goods Act, No. 3 of 1930, § 4 (India); *see* Nanalal Girdharlal v. Gulamnabi Motorwala, AIR 1973 Guj 131 https://indiankanoon.org/doc/23253/ (last visited 27 August 2026).

[38] *Id.*

[39] *Id.*

the parties' contractual arrangements. The structure consequently provides limited standardisation for a public investment product.

A further issue arises where a promoter organises the investment. Investors may contribute capital, acquire interests in identified artworks, and rely upon the promoter to store, insure, manage, market, and ultimately sell the works. The legal label of "co-ownership" then becomes less important than the substance of the arrangement. The Supreme Court in *PGF Ltd. v. Union* focused on investors' contribution of funds, their expectation of appreciation, the promoter's management of the underlying property, and the investors' absence of day-to-day control.[40]

The reasoning is directly relevant to fractional art. A structure that gives investors nominal interests in an artwork while placing its management entirely with a promoter may attract the CIS framework notwithstanding its form as co-ownership. The question is therefore not simply who owns the artwork, but who controls and manages the investment.[41]

Direct co-ownership remains useful for closely held acquisitions among collectors, families, museums, or dealer syndicates. Its characteristics, however, make it less suitable for a scalable investment product involving dispersed investors and transferable interests.

(ii) Art fund structure

An art fund pools investor contributions and deploys them across a portfolio of artworks. Investors hold units in the fund rather than direct interests in individual works.[42] The structure separates the investor from the artwork and places the portfolio with a professional manager.

An instance of adoption of the art fund structure in India is the Osian's Art Fund and Yatra Art Fund. Osian launched in 2006 as a private trust, raised ₹102.4 crore from 656 investors and

[40] PGF Ltd. v. Union of India, (2015) 13 SCC 50, ¶¶ 51-58.

[41] The same conclusion has been reached in two other jurisdictions on facts closer to art than to land. *See* Asset Land Inv. Plc v. Fin. Conduct Auth., *supra* note 9, [99] (Sumption, L.) (the "fundamental distinction which underlies the whole of section 235" is between investors who retain "entire control of the property" and those who "surrender control over their property to the operator of a scheme"); Fin. Servs. Comm'n (Kor.), *Resolution Exempting Musicow from Sanctions and Recognising the Securities Nature of Cattle and Artwork Fractional Investment* (29 November 2022), https://www.fsc.go.kr/no010101/79010 (last visited 27 August 2026) (Korean) (holding that even where investors hold civil-law co-ownership, the arrangement may constitute a security where the operator's expertise materially affects returns).

[42] Saima Rizvi, *Art as an Investment Option*, 11 Mgmt. Dynamics 106 (2011) https://managementdynamics.researchcommons.org/journal/vol11/iss1/9/ (last visited 27 August 2026).

invested in artworks from the Indian subcontinent.[43] Similarly, Yatra raised ₹10.95 crore from fifty investors and ₹21.92 crore from 132 investors.[44] These funds subsequently became the subject of SEBI proceedings and eventually were discontinued.[45] The closure of these funds is discussed in depth at Part II-A of this paper.

The international experience also demonstrates the challenges of pooled art funds. Fernwood Art Investments, launched in 2003 with a US$150 million target, failed to establish its proposed funds.[46] The Fine Art Fund Group subsequently operated a series of private funds targeted at high-net-worth investors, and later segmented into advisory, valuation, and art-secured lending.[47] These experiences suggest that pooled funds can provide professional management but may also concentrate valuation, liquidity, and manager-dependence risks.

For a regulator, the principal attraction of the fund model is also its foremost concern: investors entrust the manager with decisions concerning acquisition, valuation, custody, and disposal across a portfolio. The investor's economic interest therefore depends substantially upon managerial conduct. A fund structure also makes it more difficult for an investor to identify the performance and risks associated with an individual artwork.

For a fractional product designed around one artwork, a portfolio fund therefore provides lower asset-level transparency than a structure in which each artwork is separately held.

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[43] Osian's Supreme Court (2020), *supra* note 12; SEBI, *Order in the matter of Osian's-Connoisseurs of Art Private Limited*, 2021 SCC OnLine SEBI 122 https://www.sebi.gov.in/enforcement/orders/may-2021/order-in-the-matter-of-osian-s-connoisseurs-of-art-private-limited_50313.html (last visited 27 August 2026).

[44] SEBI, *Order in the matter of Yatra Art Fund* (06 November 2015) https://www.sebi.gov.in/enforcement/orders/nov-2015/order-in-the-matter-of-yatra-art-fund_30966.html (last visited 27 August 2026).

[45] *Rise and Fall of Indian Art Funds*, Global Art Hub (26 November 2015), https://globalarthub.com/blogs/art-news/rise-and-fall-of-indian-art-funds (last visited 27 August 2026).

[46] Brian L. Frye, *New Art for the People: Art Funds & Financial Technology*, 93 Chi.-Kent L. Rev. 113, 133 (2018) https://scholarship.kentlaw.iit.edu/cklawreview/vol93/iss1/4/ (last visited 27 August 2026); Daniel Grant, *$8M Embezzlement Suit Targets Fernwood CEO*, ARTnews (17 April 2007) https://www.artnews.com/art-news/news/8m-embezzlement-suit-targets-fernwood-ceo-1625/ (last visited 27 August 2026); Whitmore Brey LLC v. Taub, No. 1:07-cv-01446 (S.D.N.Y. 2008); Companies House, *The Fine Art Group Limited*, company no. 04311999 (name changed 15 March 2016) https://find-and-update.company-information.service.gov.uk/company/04311999 (last visited 27 August 2026); Anny Shaw, *The Problem with Art Funds*, Artsy (9 January 2017) https://www.artsy.net/article/artsy-editorial-problem-art-funds (last visited 27 August 2026); *Strategic or Speculative? Once Again, Art Investment Funds Are on the Rise*, The Art Newspaper (23 June 2025) https://www.theartnewspaper.com/2025/06/23/strategic-or-speculative-once-again-art-investment-funds-are-on-the-rise (last visited 27 August 2026).

[47] Deloitte & ArtTactic, *supra* note 16; NOAH HOROWITZ, *Art of the Deal: Contemporary Art in a Global Financial Market*, Princeton University Press (2014) https://press.princeton.edu/books/ebook/9781400836444/art-of-the-deal-0 (last visited 27 August 2026); Frye, *supra* note 46, at 130; cf. Xiang, *supra* note 7.

(iii) Securitisation via Special Purpose Vehicle (SPV)

The SPV model separates each artwork into a distinct investment vehicle. The SPV acquires title to the artwork, while investors subscribe to securities representing an economic interest in the vehicle. Each artwork can therefore constitute a separate investment opportunity with its own valuation, disclosures, custody arrangements, and exit.

Masterworks provides a prominent example. It establishes a separate entity for each artwork, which acquires and holds the work before offering interests to investors.[48] The artwork is professionally maintained and insured, and the investment can subsequently be transferred through the platform's secondary-market arrangements.[49] Figure 1 illustrates the structure typically used in an SPV model.

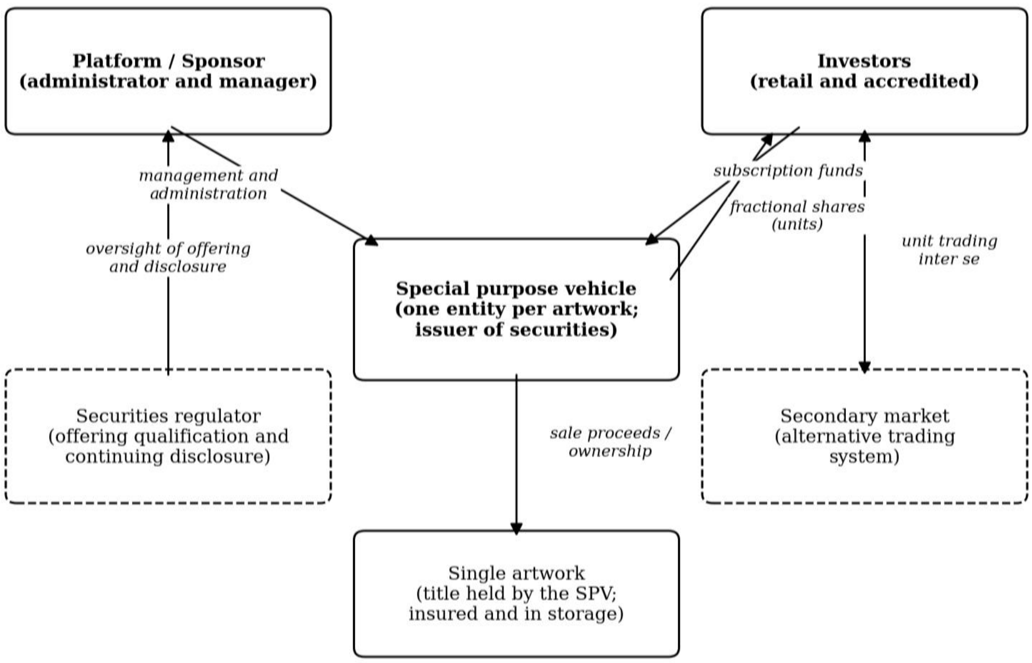

Figure 1: The SPV: Securitisation Model of Fractional Art Ownership

[*Source: Authors' own illustration*]

The structure has four principal advantages. First, asset segregation: each artwork remains within a separate vehicle. Second, transparency: the offering can disclose the acquisition price, valuation, provenance, condition, insurance, and anticipated exit strategy for that particular

[48] *See* Masterworks, *How It Works*, *supra* note 26; *see also infra* notes 115–116.

[49] Masterworks, *How It Works*, *supra* note 26.

work. Third, governance: custody and management can be entrusted to regulated or otherwise accountable service providers. Fourth, transferability: investors hold a security capable of being transferred independently of the underlying artwork.

These features also make the SPV structure more readily accommodated within securities regulation. Rather than creating direct proprietary relationships among potentially hundreds of co-owners of a single artwork, the SPV interposes a separate legal entity that holds title to the artwork and issues defined securities to investors. Investors therefore acquire rights in the SPV such as shares or other investment interests rather than fractional title to the underlying artwork. The structure thus allows securities regulation to operate at the level of the investment instrument issued by the SPV, rather than directly regulating the artwork.

The model nevertheless introduces its own regulatory questions. The issuing vehicle requires governance standards. The artwork requires independent authentication and valuation. The manager requires accountability. Investors require meaningful disclosure and a mechanism for exit. The securities also require rules governing issuance, transfer, market conduct, and investor protection. These questions form the basis for the regulatory framework proposed in Part IV.

II. REGULATORY POSITION IN INDIA

This Part maps the regulatory position applicable to a hypothetical fractional art platform structured through an SPV. It first examines the CIS framework under the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"). It then considers the implications of the Antiquities and Art Treasures Act, 1972 and the income-tax framework. The Part concludes by identifying the features that an operational art platform would need to address.

A. Collective Investment Scheme: Section 11-AA, SEBI Act, 1992

Section 2(1)(ba) of the SEBI Act defines a "collective investment scheme" by reference to the conditions in section 11AA. Section 11AA(2) identifies four cumulative conditions:[50]

(i) Investors' contributions are pooled and utilised for the scheme;
(ii) contributions are made with a view to receiving profits, income, produce, or property;

[50] Securities and Exchange Board of India Act, No. 15 of 1992, § 11AA(2) (India) (inserted by the Securities Laws (Amendment) Act, 1999, effective Feb. 22, 2000).

(iii) the property, contribution, or investment forming part of the scheme is managed on behalf of investors; and

(iv) investors lack day-to-day control over the management and operation of the scheme.

The proviso to section 11AA(1) further creates a deeming provision for unregistered schemes involving a corpus of ₹100 crore or more.[51] Units issued by a CIS qualify as securities under section 2(h)(ib) of the Securities Contracts (Regulation) Act, 1956.[52] Their issuance and trading therefore engage the wider securities-law framework.

Section 12(1B) requires registration before a person sponsors or carries on a CIS. Regulation 3 of the CIS Regulations provides for registration of a Collective Investment Management Company ("**CIMC**") as the vehicle for operating a CIS.[53] The regulatory structure therefore addresses both the substantive character of the investment and the institutional form through which it may be operated.

A fractional art platform structured through an SPV satisfies the four substantive elements with relative ease. Investors contribute capital to acquire an artwork. They expect returns from its appreciation and eventual sale. The artwork is held, insured, managed, and marketed on their behalf. Investors exercise no day-to-day control over these functions. The absence of individual management is, in fact, intrinsic to the investment proposition.

The position becomes more specific in the context of art. SEBI's Whole-Time Member held in 2013 that Osian's Art Fund constituted an unregistered CIS and directed winding-up and refund.[54] The Securities Appellate Tribunal affirmed the CIS finding in 2015.[55] The subsequent Yatra litigation brought this question before the Supreme Court. [56]

In *Osian's Connoisseurs of Art v. SEBI*, the Supreme Court's 2020 proceedings ultimately addressed the legal consequences of operating art investment schemes within the CIS

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[51] *Id.* § 11AA(1) proviso (inserted by the Securities Laws (Amendment) Act, 2014).

[52] Securities Contracts (Regulation) Act, No. 42 of 1956, § 2(h)(ib) (India).

[53] SEBI Act § 12(1B); SEBI (Collective Investment Schemes) Regulations, 1999, regs. 2(h), 3 (India) [hereinafter "**CIS Regulations**"].

[54] SEBI, *Order in the matter of Osian's-Connoisseurs of Art Private Limited* (15 April 2013).

[55] Osian's Connoisseurs of Art Pvt. Ltd. v. SEBI, Appeal No. 62 of 2013 (13 October 2015); *Tribunal Sets Aside Refund Order for Osian's Art Scheme*, Business Standard (13 October 2015), https://www.business-standard.com/article/markets/tribunal-sets-aside-refund-order-for-osian-s-art-scheme-115101300667_1.html.

[56] Osian's Supreme Court (2020), *supra* note 12.

framework. The connected *Yatra* proceedings clarified the permissible institutional form. The Court held that a CIS could be floated only through a registered CIMC and treated the operation of the scheme through a private trust as contrary to the statutory framework. The cases therefore establish two propositions relevant to fractional art: the investment character of pooled art brings the arrangement within SEBI's CIS jurisdiction; and the CIS framework prescribes the institutional form through which the investment may operate.

The CIS Regulations set demanding conditions for a CIMC. A CIMC must meet prescribed net-worth, experience, and track-record requirements, and must satisfy governance and disclosure obligations, before it operates a scheme.[57] SEBI has granted provisional registration to a single CIMC, GIFT Collective Investment Management Company Limited, under registration number IN/CIMC/00001.[58] The terms of that provisional registration allow the company to launch a scheme or raise money from investors only once SEBI grants it a certificate of registration.[59] SEBI's October 2024 FAQ recorded that no Collective Investment Management Company held such a certificate.[60] More than two decades after the framework began, it supports one provisionally registered manager and no operating scheme.[61]

For fractional art, the consequence is significant. A promoter seeking to create a pooled investment product must enter a framework designed around the CIMC model. The framework provides the legal classification and investor-protection framework, while leaving the proposed art product without several asset-specific mechanisms: single-artwork segregation, art-specific valuation, authentication, custody, artwork-level disclosure, and a suitable secondary market.

This distinction should drive the proposed SM AIT framework. The objective is not to remove fractional art from securities regulation. It is to provide a specialised vehicle within securities regulation that addresses the characteristics of the underlying asset.

B. Considerations under the Antiquities and Art Treasures Act, 1972

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57 SEBI (Collective Investment Schemes) Regulations, 1999, regs. 8–11.

58 SEBI, Provisional Registration: GIFT Collective Investment Management Company Limited, Reg. No. IN/CIMC/00001, https://www.sebi.gov.in/sebi_data/docfiles/23271_t.html (last visited Aug. 26, 2026).

59 *Id*. (condition 1: "*The entity shall not launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted*.").

60 SEBI, Frequently Asked Questions: Collective Investment Schemes, FAQ 15 (Oct. 2024), https://www.sebi.gov.in/sebi_data/faqfiles/oct-2024/1729231283214.pdf.

61 See *Id*. FAQ 14 (no existing CIS granted a certificate of registration).

The Antiquities and Art Treasures Act, 1972 ("**AATA**") has three principal objectives: (1) regulating the export of antiquities and art treasures, (2) preventing their smuggling and fraudulent dealings, and (3) enabling their compulsory acquisition for preservation in public places.[62] These objectives mean that any transaction involving artwork, including a fractional ownership arrangement, must account for restrictions governing the underlying asset, particularly where the work qualifies as an "antiquity" or "art treasure" under the Act.

The AATA defines "antiquity" broadly to include, among other things, a work of art or craftsmanship that has existed for not less than one hundred years.[63] It separately empowers the Central Government to declare, by notification, certain works of art or craftsmanship to be "art treasures" where they are considered to have national importance.[64]

These classifications have direct consequences for transactions involving fractional ownership. Section 3 restricts the export of antiquities and art treasures. [65] Section 5 requires a licence to carry on the business of selling or offering to sell antiquities.[66] Sections 14–17 establish registration and transfer-reporting requirements to the registering officers of both jurisdictions (buyer's and seller's) for notified works.[67] Contravention of the registration and transfer requirements may attract imprisonment of up to six months, a fine, or both.[68] AATA therefore attaches regulatory obligations to the underlying artwork, irrespective of the investment structure through which investors purchase the artwork or stake in an artwork.

Two independent routes bring an artwork within the AATA: age[69] and notification[70]. The age threshold operates continuously, so works reaching one hundred years enter the statutory

[62] Antiquities and Art Treasures Act, 1972, No. 52 of 1972 ["**AATA**"], Statement of Objects and Reasons, India Code, https://www.indiacode.nic.in/bitstream/123456789/1693/1/A1972-52.pdf (last visited 27 August 2026).
[63] *Id*. § 2(a).
[64] *Id*.§ 2(1)(b), read with § 14 (factors the Central Government considers: (i) the necessity of conserving objects of art; (ii) the need to preserve such objects within India for the better appreciation of India's cultural heritage; and (iii) other factors likely to contribute to safeguarding that heritage).
[65] *Id.* § 3(1)(a)–(b).
[66] *Id*. § 5.
[67] *Id*. § 14(3), 16-17.
[68] *Id*. §§ 3, 5, 14–17, 25; Antiquities and Art Treasures Rules, 1973, rr. 8, 11–13 & Forms IV, VII–IX (India) https://www.unesco.org/en/cultnatlaws/antiquities-and-art-treasures-rules-1973 (last visited 27 August 2026).
[69] AATA, *supra* note 62, § 2(1)(a).
[70] *Id*. § 2(1)(b).

category. The Central Government has also declared works of specified artists as art treasures irrespective of age.[71]

This creates a particular consideration for a closed-ended art investment scheme. A work may enter the AATA during the investment period. A painting completed in 1930, for example, reaches the one-hundred-year threshold in 2030. An investment vehicle acquiring such a work must therefore account for the date on which the statutory classification changes.

The AATA also shapes the exit market. Section 3 places the export restriction directly upon the underlying artwork. A scheme holding an antiquity or art treasure therefore operates within a domestic exit market for that asset. This consideration becomes particularly important where the investor base includes non-resident investors, although the implications of the Foreign Exchange Management Act, 1999 and the foreign investment regime fall outside this paper.[72]

The proposed framework should therefore require the offer document to disclose the artwork's AATA status, applicable registration requirements, export restrictions, and any foreseeable change in classification during the scheme's life. This converts an asset-specific cultural-law obligation into an identifiable investment risk.

For instance, Raja Ravi Varma's Yashoda and Krishna, painted in the 1890s, sold in Mumbai on 01 April 2026 for ₹167.2 crore as both a registered antiquity and an art treasure, and the artwork was necessarily required to remain within India.[73] Amrita Sher-Gil's works of the 1930s are not yet antiquities, but are art treasures by notification and equally non-exportable. By contrast, much of the modern Indian art market including works by M.F. Husain, F.N. Souza, S.H. Raza, V.S. Gaitonde and Tyeb Mehta currently falls outside its scope but will one day be regulated.

C. Tax Treatment of Fractional Art

The tax analysis should begin by separating the artwork held by the vehicle from the security held by the investor.[74] Under the Income-tax Act, 1961, paintings, sculptures and other works

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[71] Rabindranath Tagore, Amrita Sher-Gil, Jamini Roy, Nandalal Bose, Raja Ravi Varma, - Ministry of Education and Social Welfare, Notification No. G.S.R. 904(E) (01 December 1976); Department of Culture, Notification No. G.S.R. 477(E) (10 August 1979).

[72] Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India); Foreign Exchange Management (Non-debt Instruments) Rules, 2019, G.S.R. 632(E) (India).

[73] Brady, *supra* note 5.

[74] See Income-tax Act, 1961, §§ 2(14), 45, 115UA (India); Income-tax Act, 2025, §§ 4, 197, 223 (India).

of art constitute capital assets, subject to the statutory exclusion for personal effects.[75] The capital-gains framework was substantially amended with effect from 23 July 2024.[76] Artwork falls within the twenty-four-month holding period for determining whether a capital asset is long-term, and long-term capital gains are generally taxed at 12.5 per cent without indexation.[77] The Income-tax Act, 2025, which applies from 01 April 2026, retains the relevant distinction between twelve- and twenty-four-month holding periods.[78]

Under the proposed Small and Medium Art Investment Trust ("**SM AIT**") structure, the vehicle would hold the artwork while investors would hold units or other securities issued by the vehicle. The tax treatment of these two interests should therefore be analysed separately. The artwork would remain an asset of the vehicle, while the investor would derive income or gains from the investment interest.

A second issue arises at acquisition. Section 56(2)(x) of the Income-tax Act, 1961 may apply where specified property, including paintings, sculptures and other works of art, is received without consideration or for inadequate consideration.[79] Income Tax Rule 11UA provides specific methods for determining the fair market value of such artistic works.[80] Where an artistic work is purchased from a registered dealer on the valuation date, its invoice value constitutes its fair market value.[81] In other cases, the value is determined by reference to the price the work would fetch in the open market, and where the prescribed conditions are met, a registered valuer's report may be obtained.[82] The proposed independent valuation mechanism therefore serves both an investor-protection and tax-compliance function.[83]

A further policy question concerns the taxation of SM AIT units. Section 115UA provides the existing tax framework for business trusts, including pass-through treatment for specified categories of income distributed to unit holders.[84] Sections 111A, 112 and 112A prescribe the capital-gains treatment applicable to different classes of securities and business-trust units,

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[75] Income-tax Act, 1961, § 2(14) (India).
[76] Income-tax Act, 1961, § 112, as amended by the Finance (No. 2) Act, 2024, No. 15 of 2024, § 16 (India).
[77] Income-tax Act, 1961, § 2(42A) (India), as amended by Finance (No. 2) Act, 2024, No. 15 of 2024, § 4; *Id*. § 112, as amended by Finance (No. 2) Act, 2024, § 16.
[78] Income-tax Act, 2025, §§ 2(79), 2(82), 197 (India).
[79] Income-tax Act, 1961, § 56(2)(x) (India).
[80] Income-tax Rules, 1962, r. 11UA(1)(b) (India).
[81] Income-tax Rules, 1962, r. 11UA(1)(b)(ii) (India).
[82] Income-tax Rules, 1962, r. 11UA(1)(b)(i), (iii) (India).
[83] *See* Income-tax Rules, 1962, r. 11UA(1)(b) (India).
[84] Income-tax Act, 1961, § 115UA(1)–(3) (India).

subject to their respective statutory conditions.[85] Following the 2024 amendments, long-term capital gains falling within section 112A are generally taxed at 12.5 per cent above the ₹1.25 lakh threshold.[86]

Section 2(13A), however, defines "business trust" by reference to a Real Estate Investment Trust ("REIT") or an Infrastructure Trust ("InvIT").[87] An SM AIT would therefore fall outside the existing definition unless the legislation is amended to recognise it as an additional category of business trust.[88] Part IV proposes such an extension. This would allow the tax treatment of SM AIT units to be aligned with the existing business-trust framework rather than creating a separate tax regime for fractional art.[89] Taxation, however, is only one component of the broader regulatory regime required for fractional ownership of art.

D. The Regulatory Gap

Indian law already provides rules regarding investment in pooled art, the transfer and export of protected artworks, and the taxation of artworks and investment interests. These regimes operate independently and address different stages of the investment lifecycle. A regulated fractional art product, however, requires these regulatory components to operate together. It requires a recognised investment vehicle, asset-level segregation, independent authentication and valuation, appropriate custody standards, disclosure, investor eligibility, transfer mechanisms, taxation, and compliance with restrictions applicable to the underlying artwork.

The absence of a framework integrating these requirements is the regulatory gap that this paper seeks to address. Part IV therefore proposes an Art Investment Trust ("**AIT**") as a unified SEBI-regulated structure for fractional investment in artworks. The proposal draws on the domestic regulatory models examined in Part III, particularly the SM REIT framework, while adapting them to the distinctive characteristics of artworks as both financial and cultural assets.

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[85] Income-tax Act, 1961, §§ 111A, 112, 112A, 115UA(2) (India), as amended by the Finance Act, 2025, No. 7 of 2025, § 25.

[86] Income-tax Act, 1961, § 112A(1) (India), as amended by Finance (No. 2) Act, 2024, No. 15 of 2024, § 17.

[87] Income-tax Act, 1961, § 2(13A) (India).

[88] See Income-tax Act, 1961, § 2(13A) (India).

[89] See Income-tax Act, 1961, § 2(13A), 115UA (India).

III. COMPARATIVE ANALYSIS

This Part examines India's experience with REITs and bullion before turning to fractional-ownership models in the United States, South Korea, and the European Union. It draws from these models to identify features that may inform the proposed Art Investment Trust.

A. Real Estate in India

The REIT Regulations, 2014 originally required a REIT to hold assets worth at least ₹500 crore and prescribed a minimum initial public offer of ₹250 crore. [90] These thresholds favoured larger portfolios and left smaller commercial properties outside the conventional REIT structure.

Fractional real-estate platforms subsequently emerged by offering interests in SPVs holding individual commercial properties, often at entry points of ₹10–25 lakh.[91] In its 2023 consultation paper, SEBI noted that these platforms operated outside the regulatory perimeter and raised concerns relating to Know Your Customer ("**KYC**"), anti-money laundering, disclosure and investor exit.[92] SEBI also observed that such arrangements "may amount to unregistered collective investment schemes".[93]

SEBI responded by introducing the SM REIT framework through the 2024 amendment to the REIT Regulations. An SM REIT is a registered trust that may establish separate schemes, with each scheme holding its property through an SPV and maintaining separate assets, accounts and records. Each scheme must hold assets worth at least ₹50 crore and less than ₹500 crore,[94] with at least 95 per cent invested in completed and revenue-generating properties. A scheme must have at least 200 unitholders, with a minimum subscription of ₹10 lakh, and its units must

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[90] SEBI (Real Estate Investment Trusts) Regulations, 2014, reg. 14(2)(a)–(b) (India).

[91] Prashant Das & Charles R. Thomas Jr., *Strategic development of REITs in India,* 24 J. REAL EST. LIT. 103 (2016) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2876941 (last visited 27 August 2026); Swathi G, Uma V, *Beyond brick and mortar: determinants of retail investors' investment intention in indirect real estate through REITs in India,* 51 MANAGERIAL FIN. 216-235 (30 September 2024) https://www.emerald.com/mf/article-abstract/51/2/216/1242826/Beyond-brick-and-mortar-determinants-of-retail?redirectedFrom=fulltext (last visited 27 August 2026).

[92] Following public consultation and deliberation by SEBI's Hybrid Securities Advisory Committee, SEBI introduced the Small and Medium REIT framework through the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2024, effective March 8, 2024; SM REIT Regulations, *supra* note 13; Nishith Desai Associates, *Governance of Fractional Ownership Platforms: Are REITs the Right Answer?* (2023) 1-2 https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Policy-Paper/Governance_of_Fractional_Ownership_Platforms.pdf (last visited 27 August 2026).

[93] SM REIT Regulations, *supra* note 13 at 26P(2a).

[94] REIT Regulations, *supra* note 13; *see* SEBI, Consultation Paper on Regulatory Framework for Micro, Small and Medium REITs (May 2023) ["**SEBI's Consultation Paper**"].

be listed. Borrowings are capped at 49 per cent of scheme assets. Managers must also satisfy prescribed net-worth and experience requirements and retain an interest in each scheme.[95]

Since introduction, Property Share Investment Trust became India's first registered SM REIT in 2024, and its first scheme, PropShare Platina, raised ₹352.91 crore before listing on the BSE on 10 December 2024.[96] By mid 2026, SEBI had registered six SM REITs.[97]

The SM REIT framework offers three useful lessons for fractional art. It permits asset-level SPVs, creates transferable listed interests, and subjects the investment manager to regulatory and governance requirements. These features provide the starting point for the SM AIT framework proposed in Part IV. Art, however, requires additional safeguards for authentication, valuation, custody and provenance because, unlike real estate, each artwork is a unique asset.

B. Commodities in India

Fractional investment in the bullion sector operates within India's securities framework, through exchange-traded funds ("**ETFs**") and Electronic Gold Receipts ("**EGRs**").[98]

A gold ETF gives investors units backed by physical gold held with a custodian.[99] The investor holds the security while the underlying metal remains in a vault. SEBI extended this to silver in 2021.[100] The combined assets under management of gold and silver ETFs increased from approximately ₹57,000 crore in January 2025 to more than ₹2 lakh crore by December 2025.[101]

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[95] SM REIT Regulations, *supra* note 13, ch. VIB; *see* SCC Times, *SEBI Introduces Small and Medium REITs* (14 March 2024), https://www.scconline.com/blog/post/2024/03/14/sebi-notifies-sebi-real-estate-investment-trusts-amendment-regulations-2024-legal-news/; Aditya Vaid, *SEBI's SM REIT (Amendment) Regulations 2024: A Progressive Step?*, IRCCL (29 April 2024), https://www.irccl.in/post/sebi-s-sm-reit-amendment-regulations-2024-a-progressive-step.

[96] SEBI, *Property Share Investment Trust* (Nov. 22, 2024), https://www.sebi.gov.in/filings/sm-reit-issues/nov-2024/property-share-investment-trust-propshare-platina_88713.html (PropShare Platina scheme); *see also* PropShare Titania (₹473 crore), PropShare Celestia (₹244.65 crore), PropShare Lumina (₹484.68 crore).

[97] Amsa SM REIT, Reg. No. IN/SM-REIT/25-26/0006; Emberstone SM REIT, Reg. No. IN/SM-REIT/24-25/0003; HBITS Investment Trust, Reg. No. IN/SM-REIT/25-26/0005; Impact R SM REIT, Reg. No. IN/SM-REIT/24-25/0002; Property Share Investment Trust, Reg. No. IN/SM-REIT/24-25/0001; Yield Foundry SM REIT, Reg. No. IN/SM-REIT/25-26/0007.

[98] *See infra* notes 99–103 and accompanying text.

[99] SEBI (Mutual Funds) (Third Amendment) Regulations, 2021, Notification No. SEBI/LAD-NRO/GN/2021/54 (09 November 2021); SEBI, Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/664, Norms for Silver Exchange Traded Funds and Gold Exchange Traded Funds (24 November 2021).

[100] *Id.*

[101] Gold and Silver ETF Assets Jump Fourfold in 2025, Top ₹2 Trillion, Business Standard (7 January 2026).

EGRs provide a second model. An EGR represents gold deposited with an accredited vault manager and trades on a recognised stock exchange. Parliament amended section 2(h) of the Securities Contracts (Regulation) Act, 1956 through the Finance Act, 2021 to expressly include EGRs within the definition of "securities".[102] SEBI subsequently introduced the SEBI (Vault Managers) Regulations, 2021, which regulate vault infrastructure, governance, purity verification, insurance, audit and reconciliation.[103]

The bullion framework offers two lessons for fractional art. First, the securities framework can accommodate interests in physical assets through an appropriate statutory instrument. Second, physical assets can remain with a regulated custodian while investors hold securities representing their economic interest. SEBI's August 2026 proposal to extend the vaulting framework to other bullion-related instruments further reflects the importance of consistent custody standards and investor protection.[104]

The analogy with art, however, has limits. Gold is fungible and its purity can be tested against established standards. Each artwork is unique, and its authenticity, attribution and value depend substantially on expert assessment. The SM AIT therefore requires a more specialised mechanism: independent authentication and valuation alongside regulated custody.

C. United States: SEC Regulations and the Masterworks Model

The United States regulates fractional art through its federal securities framework.[105] Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") defines "security" to include an "investment contract".[106] In *SEC v. W.J. Howey Co.*, the U.S. Supreme Court interpreted "investment contract" to encompass a contract, transaction, or scheme in which a person invests money in a common enterprise with an expectation of profits delivered by efforts of another:[107]

[102] Securities Contracts (Regulation) Act, No. 42 of 1956, § 2(h)(iia) (India) (inserted by the Finance Act, 2021, No. 13 of 2021).

[103] SEBI (Vault Managers) Regulations, 2021, Gazette of India, Extraordinary, Part III, § 4 (31 December 2021).

[104] SEBI, Consultation Paper on Expansion of the Regulatory Framework for Vault Managers to Bullion-Related Instruments (11 August 2026).

[105] Ong, Novel Governing Documents for Fractional Art Investments, Berkeley Ctr. for L. & Bus., Berkeley Art, L. & Fin. (February 2026), https://www.law.berkeley.edu/business/berkeley-center-for-law-business/; Chung, *Fractionalized Art Ownership and Securities Law*, Center for Art Law (2019), https://itsartlaw.org/art-law/fractionalized-art-ownership-and-securities-law/#post-38277-footnote-0

[106] Securities Act of 1933, ch. 38, § 2(a)(1), 48 Stat. 74, 74 (codified as amended at 15 U.S.C. § 77b(a)(1)).

[107] SEC v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946); Chung, *supra* note 105.

"...In other words, an investment contract, for purposes of the Securities Act, means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."

U.S. courts have applied the *Howey* test to tangible assets. In *Continental Marketing Corp. v. SEC*, the U.S. Court of Appeals for the Tenth Circuit treated the sale of breeding beavers accompanied by ranching services as an investment contract.[108] The animals themselves did not justify the price paid; the promoter's services created the expected return.[109] In *Glen-Arden Commodities, Inc. v. Costantino*, the U.S. Court of Appeals for the Second Circuit reached a similar conclusion for warehouse receipts representing casks of Scotch.[110] The promoter's undertaking to resell was central to investors' ability to realise their investment, particularly given the absence of a market for small quantities.[111] *SEC v. Brigadoon Scotch Distributing Co.* similarly treated investments in rare coins as securities where investors relied on the promoter's expertise to generate returns.[112] In March 2026, the SEC further indicated that an interest enabling individuals to acquire fractional ownership of a single digital collectible could constitute a security.[113]

A prominent fractional ownership model in the U.S. art market is operated by Masterworks.[114] Masterworks was founded in 2017 and uses separate legal entities to structure offerings relating to individual artworks.[115] Under its current structure, Masterworks establishes Delaware series

[108] Continental Mktg. Corp. v. SEC, 387 F.2d 466, 470–71 (10th Cir. 1967).
[109] *Id.* at 470–71.
[110] Glen-Arden Commodities, Inc. v. Costantino, 493 F.2d 1027, 1034–35 (2d Cir. 1974).
[111] *Id.* at 1035.
[112] SEC v. Brigadoon Scotch Distrib. Co., 388 F. Supp. 1288, 1291 (S.D.N.Y. 1975). But see SEC v. Belmont Reid & Co., 794 F.2d 1388, 1391 (9th Cir. 1986) (prepaid gold coin contracts not securities where "profits to the coin buyer depended upon the fluctuations of the gold market, not the managerial efforts" of the promoter).
[113] Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 33-11412, Exchange Act Release No. 34-105020 (2026).
[114] *See* Masterworks, *Invest in Art*, https://www.masterworks.com/invest (last visited 27 August 2026). The U.S. market also includes platforms that offer art alongside other alternative assets; this Part limits the analysis to Masterworks as an illustrative art-focused platform to examine the structural and regulatory features of a fractional art offering in detail rather than to survey all platforms.
[115] Masterworks Advisers, LLC, Form ADV, Part 2A, at 4 (30 March 2026) https://cdn.masterworks.com/u7fuap5iqsvx/3ZkkkDZUxB6UuO1QAZ0VOP/369f33a0fca1d2c3138c47989a4350da/1032849.pdf (last visited 27 August 2026); see also Masterworks, About Us https://www.masterworks.com (last visited 27 August 2026).

limited liability companies, with each artwork held by a separate series and investors offered Class A shares representing an investment in that particular series and, indirectly, the underlying artwork.[116] The relevant series acquires and holds title to the artwork, while Masterworks files an offering circular with the U.S. Securities and Exchange Commission ("SEC") before offering securities in the series to investors.[117] Investors therefore obtain an economic interest in the artwork through their ownership of securities issued by the relevant series, rather than through direct co-ownership of the artwork itself.[118] During the investment period, the artwork is professionally stored and insured, and certain works may also be lent to museums and galleries.[119]

Masterworks generally holds an artwork for three to ten years.[120] Investors can seek an earlier exit through its secondary market, but a secondary market does not guarantee liquidity.[121] The number of sellers may exceed the available buyers, affecting the price and timing of an exit.[122] Masterworks also charges substantial fees. Investors pay acquisition expenses and an annual 1.5 per cent servicing fee. Masterworks additionally retains 20 per cent of profits from a sale.[123]

The U.S. experience therefore offers two lessons for the proposed SM AIT. First, securities law can accommodate fractional exposure to a single physical artwork through an SPV. Second, the regulatory framework must disclose the costs, holding period, valuation, and limits

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[116] *See* e.g., Masterworks Vault 1, LLC, Annual Report (Form 1-K), at 4–5 (28 March 2025) https://www.sec.gov/Archives/edgar/data/1999710/000149315226014273/partii.htm (last visited 27 August 2026).

[117] *See id.*; Masterworks Advisers, LLC, Form ADV, Part 2A, *supra* note 115, at 4; *see also* Masterworks Vault 1, LLC, Offering Circular (Form 253G2) (SEC) https://www.sec.gov/Archives/edgar/data/1976546/000149315223020393/form253g2.htm (last visited 27 August 2026).

[118] *See* Masterworks Vault 1, LLC, *supra* note 116, at 4–5; Masterworks Advisers, LLC, Form ADV, Part 2A, *supra* note 115, at 4.

[119] *See also* Masterworks, *Our Collection*, https://www.masterworks.com (last visited 27 August 2026).

[120] *Id.*

[121] Masterworks 001, LLC, Annual Report on Form 1-K for Fiscal Year 2025 (2026) https://www.sec.gov/Archives/edgar/data/1999710/000149315226014273/partii.htm (last visited 27 August 2026) (Historically, trading in Masterworks issued securities has been characterized by low transaction volume and inefficient pricing).

[122] *Id.* (Class A shares are thinly traded and dealers do not typically participate in the trading market, which means that trading is episodic and prices at which trades are executed often do not reflect the value of artwork).

[123] Elizabeth Gravier, *Masterworks: The platform that allows nearly anyone to invest in multimillion-dollar art*, CNBC Select (30 July 2023) https://www.cnbc.com/select/what-is-masterworks/ (last visited 27 August 2026).

of secondary-market liquidity.[124] The artwork remains a physical asset; the investor trades a regulated financial interest in the entity that owns it.

D. South Korea: Investment Contract Securities and Fractional Art

South Korea offers the most direct regulatory precedent for fractional art. The precedent began with music. Musicow ran a platform on which investors bought fractional claims to the royalty income of copyrighted songs.[125] On 20 April 2022, the Securities and Futures Commission held that these royalty-participation claims were investment contract securities under the Financial Investment Services and Capital Markets Act.[126] Eight days later, on 28 April 2022, the Financial Services Commission issued its Guideline on fractional investment.[127] The Guideline treats an arrangement as an investment contract security where investors depend materially on the operator's efforts or business to earn their return.[128]

The Commission extended this reasoning to artwork on 29 November 2022.[129] It examined four art platforms that sold co-ownership interests in individual works alongside service contracts for custody, management, sale, and the distribution of profit and loss: Tessa, Yeolmae Company (operating Art & Guide), Seoul Auction Blue (operating Sotwo), and Together Art.[130] It classified each arrangement as an investment contract security.[131] The same resolution recognised cattle fractional investment as securities and exempted Musicow from sanctions, which showed the Commission reading economic substance across asset classes rather than

[124] Masterworks Vault 2 LLC File No. 024-12271, U.S. Securities and Exchange Commission p. 7 (13 August 2025) https://www.sec.gov/Archives/edgar/data/1979634/000164117225023594/partiiandiii.htm (last visited 27 August 2026).

[125] On Musicow's model, *see* Fin. Servs. Comm'n (Kor.), Guideline for New Securities Business, Including Fractional Investment (28 April 2022), https://www.fsc.go.kr/eng/pr010101/77745 (last visited 27 August 2026).

[126] Sec. & Futures Comm'n (Kor.), Determination on Musicow (20 April 2022); see also Kim & Chang, FSC Publishes Guideline on Securities Business Dealing with Fractional Investment (2022), https://www.kimchang.com/en/insights/detail.kc?idx=25310 (last visited 27 August 2026). Investment contract securities are defined in the Financial Investment Services and Capital Markets Act art. 4(6) (S. Kor.).

[127] Fin. Servs. Comm'n (Kor.), *supra* note 125.

[128] *Id*.

[129] Fin. Servs. Comm'n (Kor.), Resolution Exempting Musicow from Sanctions and Recognising the Securities Nature of Cattle and Artwork Fractional Investment (2022), https://www.fsc.go.kr/no010101/79010 (Korean).

[130] *Id*.; Samil PwC, Understanding Fractional Investment and the STO Market (June 2024), https://www.pwc.com/kr/ko/insights/issue-brief/samilpwc_understanding-fractional-investment-and-sto.pdf (last visited 27 August 2026).

[131] *Id*.

any single label.[132] It stressed that even a civil-law co-ownership interest may be a security where the operator's expertise or business activity materially affects investor returns.[133]

The Commission gave the operators six months to restructure and to adopt six investor-protection measures:

- proof of each investor's co-ownership share and of the object's storage location, or legal insulation from the operator's insolvency;
- segregated deposit of investor money with an external financial institution;
- closure of the operator's own distribution market;
- adequate explanatory materials and advertising standards, with the relevant content stated in the registration statement;
- dispute resolution and a system for compensating investor harm caused by operator negligence, by insurance or an investor protection fund; and
- arrangements for an independent third party to perform custody, management, disposal and settlement should the business cease.[134]

Korean regulation also separates the issuing and trading of fractional securities.[135] An operator generally cannot issue fractional securities and run the market on which they trade at the same time.[136] The Guideline allows a temporary exception where such a market is necessary for investor protection and no alternative exists.[137] The Commission declined that exception for artwork, on two grounds.[138] It treated artwork as especially exposed to information asymmetry, because art fractions generate no continuous cash flow and their value tracks a single underlying work.[139] It also pointed to the established auction market as an alternative venue.[140]

The first regulated offering shows how valuation was handled. In December 2023, Yeolmae Company offered 12,320 units in Yayoi Kusama's Pumpkin (2001) at ₩100,000 per unit, an

[132] Fin. Servs. Comm'n (Kor.), *supra* note 129.
[133] *Id.*
[134] *Id.*; Samil PwC, *supra* note 130.
[135] Fin. Servs. Comm'n (Kor.), *supra* note 125.
[136] *Id.*
[137] *Id.*
[138] Fin. Servs. Comm'n (Kor.), *supra* note 129.
[139] *Id.*
[140] *Id.*

offering of ₩1.232 billion, and the first investment contract securities offering in Korea.[141] The valuation proceeded in layers. The operator applied a comparative-sales method drawn from 43 domestic and international transactions.[142] A licensed appraisal corporation valued the work at ₩1.30 billion, and the Korea Art Market Appraisal Association valued it at ₩1.35 billion.[143] The work had been acquired for ₩1.12 billion and was offered at ₩1.232 billion.[144] Subscriptions reached ₩7.206 billion, about 5.85 times the offering.[145]

The Korean experience therefore offers a close model for the proposed SM AIT. It rests securities regulation on the economic arrangement rather than the co-ownership label. It separates custody and market functions. It subjects valuation and authenticity to layered, independent scrutiny and enhanced disclosure. The proposed SM AIT adopts that approach through an independent Authentication and Valuation Panel.

E. European Union: AIFMD and ELTIF Regulations

The European Union regulates pooled fractional investment primarily through the Alternative Investment Fund Managers Directive ("AIFMD").[146] Under Article 4(1)(a), an alternative investment fund ("AIF") pools capital from multiple investors, invests according to a defined investment policy, and does not give investors day-to-day control.[147] The test therefore bears similarities to the Howey test in the United States and section 11AA of the SEBI Act.

The AIFMD provides a lighter registration route for smaller managers. Article 3(2) applies where the manager's assets remain below €100 million, or €500 million for unleveraged funds that provide no redemption rights for five years. Registration, however, does not provide a Union-wide marketing passport. The manager remains subject to the national rules of each Member State in which it markets its fund.[148]

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[141] Korea's First Fractional-Investment Offering, Kyunghyang Shinmun (2023), https://www.khan.co.kr/article/202312150101001; Yeolmae Company, Investment Contract Securities No. 1, Financial News (2023), https://www.fnnews.com/news/202312171145274752 (last visited 27 August 2026).

[142] Fractional Investment White Paper II, iNews24 (December 2023), https://www.inews24.com/view/1667293.

[143] Unified Appraisal Corporation, ₩1.30bn; Korea Art Market Appraisal Association, ₩1.35bn).

[144] *Id.*; Financial News, *supra* note 141.

[145] A Smash Hit, Seoul Economic Daily (2023), https://www.sedaily.com/NewsView/29YNE22HFY.

[146] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ["**AIFMD**"].

[147] *Id.*, art. 4(1)(a).

[148] *Id.*, art. 3(2).

The European Long-Term Investment Fund ("**ELTIF**") provides a more direct route for retail investment in long-term and illiquid assets. The 2023 amendment, applicable from 10 January 2024, broadened the definition of "real asset" to include assets with "intrinsic value due to [their] substance and properties" and removed the earlier €10 million minimum value.[149] It also reduced the proportion of an ELTIF's capital required to be invested in eligible assets from 70 to 55 per cent. An artwork can therefore qualify as a real asset under the revised framework.

The framework nevertheless creates a difficulty for a single-artwork vehicle. An ELTIF marketed to retail investors generally cannot invest more than 20 per cent of its capital in a single real asset.[150] A fund centred on one painting would therefore require a diversified portfolio to access the retail ELTIF market.

Practical experience within the European Union is emerging through different structures rather than through a single prevalent model. Belgium provides the clearest example. Rubey partnered with the Royal Museum of Fine Arts Antwerp to fractionalise *James Ensor's Carnaval de Binche*.[151] Investors acquired financial rights associated with the painting, while the physical painting remained in the museum under a long-term custody arrangement and on public display.[152] The structure followed for the *Ensor* offering used a Luxembourg special purpose vehicle, Rubey Paintco1 S.à r.l., which issued tokenised debt instruments.[153] The SPV held the artwork as its assets, and investor claims were linked to the proceeds from its eventual sale.[154]

The Belgian Financial Services and Markets Authority has recognised this issue in its guidance on fractional investments.[155] It notes that where such investing creates a financial product with legal and economic characteristics different from the underlying asset, the fractional interest itself may constitute an investment instrument requiring separate regulatory treatment.[156]

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[149] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European Long-Term Investment Funds, 2015 O.J. (L 123) 98, *as amended by* Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023, 2023 O.J. (L 80) 1 ["**ELTIF Regulation**"].

[150] Regulation (EU) 2015/760, art. 13, as amended by Regulation (EU) 2023/606; *See also* Commission Delegated Regulation (EU) 2024/2759 of 19 July 2024, 2024 O.J. (L series).

[151] Rubey, *Carnaval de Binche (James Ensor)*, https://www.rubey.be/projects (last visited 27 August 2026).

[152] Kalbermatten, *supra* note 16, at 16.

[153] Rubey, *Carnaval de Binche (James Ensor) – 1924*, https://www.rubey.be/projects/carnaval-de-binche-james-ensor (last visited 27 August 2026).

[154] Rubey, *supra* note 151.

[155] Financial Services and Markets Authority (Belgium), Classification of Fractional Investments as Investment Instruments, FSMA_2023_06 (29 March 2023).

[156] *Id*.

France provides a second model. Matis is authorised by the Autorité des Marchés Financiers ("AMF") as a crowdfunding service provider and is permitted to place transferable securities issued by project owners or special purpose vehicles.[157] For each artwork, Matis establishes a project company in the form of a French société par actions simplifiée ("SAS").[158] Investors subscribe to convertible bonds issued by that company rather than acquiring direct interests in the artwork.[159] Investments begin at €20,000, with a target holding period of twenty-four months and a maximum period of five years.[160] Matis then places the artwork with specialist galleries that seek to identify buyers for the relevant artist. Investors receive their investment and any realised capital gain when the artwork is sold.[161]

Parten.art adopts a more direct model. Another French platform allows investors to acquire a fractional interest in an artwork through an investor group.[162] The artwork is acquired collectively and stored through a specialist partner.[163] Investments begin at €1,000 and the stated holding period is between two and ten years, after which the artwork is sold and the proceeds distributed among investors.[164]

The European experience therefore does not yet establish a uniform model for artworks. It instead demonstrates the range of structures through which the same economic objective can be achieved. For India, this supports the case for a dedicated securities-regulated vehicle that separates ownership and custody of the artwork from financial rights acquired by investors.

IV. PROPOSAL: THE SMALL AND MEDIUM ART INVESTMENT TRUST FOR INDIA

This Part proposes a framework for fractional ownership of art in India through Small and Medium Art Investment Trusts ("**SM AITs**"). It sets out the proposed structure and the safeguards needed for its operation. The proposal also identifies the principal implementation concerns. It is intended as a regulatory blueprint, leaving detailed rules, procedures, and fee structures for subsequent legislative and regulatory action.

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[157] Autorité des Marchés Financiers, Matis, AMF Licence No. FP-2023-19 (07 November 2023).

[158] Matis, *Modalités d'investissement*, https://www.matis.club/comment-investir/schema-investissement (last visited 27 August 2026).

[159] *Id.*

[160] *Id.*

[161] Matis, Co-investment in Contemporary Art.

[162] Parten.art, *Comment ça marche*, https://www.parten.art/comment-ca-marche (last visited 27 August 2026).

[163] *Id.*

[164] Parten.art, *supra* note 162.

A. Legislative Model

SEBI regulates pooled investment through regimes built for particular asset classes.[165] Real estate falls under the REIT Regulations, infrastructure under the InvIT Regulations, and bullion custody under the Vault Managers Regulations.[166] The Collective Investment Schemes Regulations operate as the general category for pooled schemes that no dedicated regime governs.[167] Two routes could therefore bring fractional art within securities regulation: amending the CIS Regulations to accommodate it, or introducing standalone SEBI (Art Investment Trusts) Regulations under sections 11 and 30 of the SEBI Act.[168] A dedicated regime is the better route, and the choice should not turn on how much existing law must be amended, since either approach will require consequential regulatory changes. The important question is which framework offers the more natural and appropriate home for the asset.

First, a dedicated regime places fractional art within SEBI's asset-class architecture rather than inside a framework designed for a different vehicle. The CIS Regulations are built around the Collective Investment Management Company as the operating vehicle, a requirement the Supreme Court has treated as integral to the CIS framework.[169] A SM AIT, by contrast, would use a trust with separate schemes, asset-level SPVs, and listed units, none of which the CIMC model contemplates.[170] Accommodating that structure inside the CIS Regulations would require reworking their basic design, and would still leave art-specific rules operating as exceptions to a framework meant for general pooled investment.[171] That framework has, in any event, produced a single provisionally registered manager and no live scheme.[172]

Second, the trust structure is already established in India's securities market. REITs, InvITs, and SM REITs hold assets for investors through a trust, a regulated manager, and an independent trustee.[173] SEBI introduced the SM REIT framework in March 2024 by inserting

[165] *See* REIT Regulations, *supra* note 13; SEBI (Infrastructure Investment Trusts) Regulations, 2014 (India); SEBI (Alternative Investment Funds) Regulations, 2012 (India); SEBI (Vault Managers) Regulations, 2021 (India).

[166] *Id. see supra* Part III.B.

[167] SEBI Act, *supra* note 50, § 11AA; CIS Regulations, *supra* note 53.

[168] SEBI Act, *supra* note 50, §§ 11, 30. SEBI's asset-class regulations are framed "in exercise of the powers conferred by section 30 read with sections 11 and 12" of the Act; *see* REIT Regulations, *supra* note 13, pmbl.

[169] Osian's Supreme Court (2020), *supra* note 12; *see supra* Part II.A.

[170] *See infra* Part IV.B.

[171] CIS Regulations, *supra* note 53, reg. 3 (registration of a Collective Investment Management Company as the operating vehicle).

[172] *See supra* Part II.A and note 58.

[173] REIT Regulations, *supra* note 13; SEBI (Infrastructure Investment Trusts) Regulations, 2014 (India).

a dedicated chapter, Chapter VI-B, into the REIT Regulations to govern a fractional product.[174] That precedent shows SEBI's method for a new fractional product: a purpose-built sub-regime within the appropriate asset-class framework, rather than an adaptation of the general CIS regime.[175] Because no art-asset regulation yet exists to house such a chapter, the equivalent step for art is a dedicated SM AIT regime that borrows the same trust template.[176]

Third, art carries risks that conventional CIS products do not. These include authentication, provenance, specialised valuation, custody, and compliance with the Antiquities and Art Treasures Act, 1972.[177] A dedicated regime can make these safeguards the core of the scheme, rather than graft them onto rules written for other assets.[178]

The two frameworks (CIS Regulations and proposed SM AIT Regulations) would continue to operate side by side. The SM AIT regime would govern SEBI-registered art trusts, while the CIS Regulations would remain available for other pooled products.[179] To prevent the same arrangement from being classified under both, the reform should be accompanied by a consequential amendment to the CIS Regulations expressly excluding SEBI-registered SM AITs from their scope.[180] The SEBI Act should be amended correspondingly, so that a registered SM AIT does not attract classification as a CIS under section 11AA of SEBI Act.[181]

B. Structure

The SM AIT will be constituted as a trust and registered with SEBI. Each scheme will correspond to a single, identified artwork. A wholly owned Art SPV will acquire and hold title to that artwork, while the SM AIT will hold the SPV units for its unitholders. This structure separates the artwork from the investors while preserving asset-level segregation.

The scheme units will be mandatorily listed on a recognised stock exchange.[182] Mandatory listing serves the regulatory design rather than a promise of liquidity.[183] It subjects each scheme

[174] SM REIT Regulations, *supra* note 13 (inserting Chapter VI-B, "Small and Medium REITs," into the REIT Regulations, 2014).
[175] *Id*.
[176] *See supra* Part III.A.
[177] AATA, *supra* note 62; *see supra* Part II.B and *infra* Part IV.I.
[178] *See infra* Parts IV.C–IV.E.
[179] SEBI Act, *supra* note 50, § 11AA; CIS Regulations, *supra* note 53.
[180] *Cf.* CIS Regulations, *supra* note 53, reg. 3.
[181] SEBI Act, *supra* note 50, § 11AA.
[182] *Cf.* SM REIT Regulations, *supra* note 13, ch. VI-B.
[183] *See infra* Part IV.F.

to continuous disclosure, independent price discovery, and market-conduct supervision, and it gives investors a transparent and regulated venue for exit. These protections matter most for an asset whose value is otherwise difficult to observe, and they apply whatever the size of the scheme. Listing on regulated terms extends fractional access across investor segments, in the manner already established for REITs, InvITs, and exchange-traded commodity products.[184]

The SM AIT will have a SEBI-registered investment manager and an independent trustee. The investment manager will manage the scheme and the underlying artwork, subject to prescribed net-worth and art-market experience requirements. The trustee will hold the trust assets for the unitholders and oversee the manager. An independent Authentication and Valuation Panel will certify the artwork before acquisition and periodically thereafter.

Each scheme should have a value between ₹5 crore and ₹100 crore. This band sits below the SM REIT scheme range of ₹50 crore to less than ₹500 crore, and the difference is deliberate.[185] Investment-grade artworks trade at far smaller tickets than commercial real estate, and a ₹50 crore floor would place most of the Indian market beyond reach.[186] A lower floor keeps the product within the investment-grade segment while allowing a scheme to form around a single work, and the upper threshold keeps the SM AIT within the small and medium segment.[187]

Because the floor sits below the SM REIT floor, the subscription and unitholder requirements should scale with scheme size rather than adopt the SM REIT figures unchanged.[188] At a ₹10 lakh minimum subscription, a ₹5 crore scheme would admit only about fifty investors, too few to sustain a listed security or the two-hundred-unitholder dispersion required of an SM REIT.[189] The minimum subscription and the minimum number of unitholders should therefore be calibrated to the scheme's value, with a lower minimum subscription for smaller schemes, so that even a ₹5 crore scheme forms a genuine and dispersed investor base.[190] This calibration tracks the phased investor-access model, under which retail participation at lower minimums follows only after the framework is tested.

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[184] *See supra* Part III.B.

[185] SM REIT Regulations, *supra* note 13, reg. 26P(2); *see also* ICRA, Indian Real Estate Sector — Small and Medium REITs (April 2024).

[186] See *supra* Introduction.

[187] See *supra* Part III.A.

[188] SM REIT Regulations, *supra* note 13, ch. VI-B.

[189] *Id*.

[190] *See infra* Part IV.G.

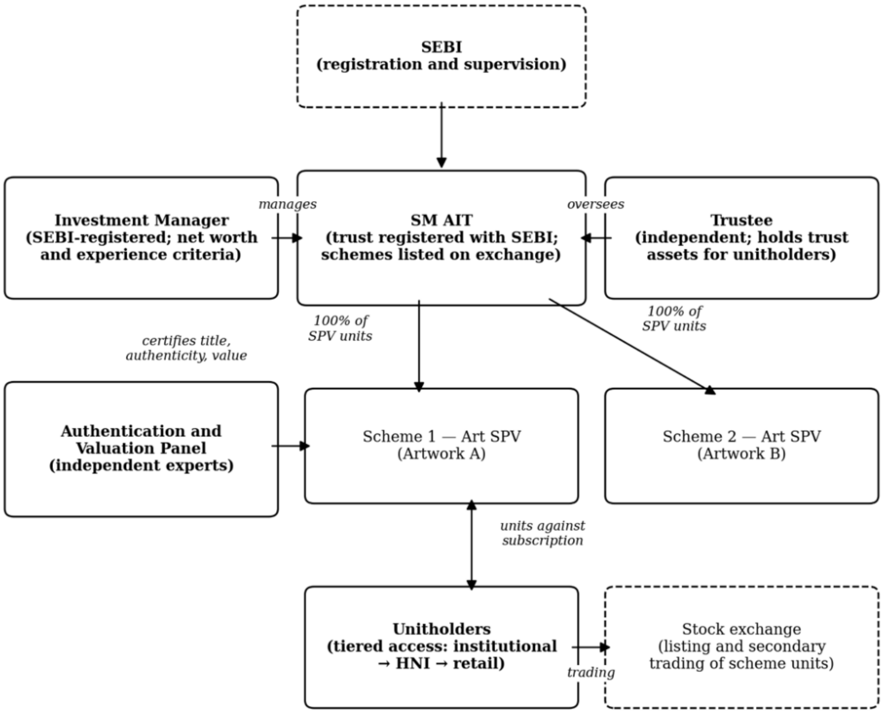

Figure 2: Proposed structure of the Small and Medium Art Investment Trust

[*Source: Authors' own illustration*]

C. Governance: Manager, Trustee and the Authentication and Valuation Panel

The governance structure should draw on the separation of functions adopted under the SM REIT framework, under which the investment manager is responsible for managing the scheme while the trustee provides an independent layer of oversight.[191] The proposed SM AIT should similarly distinguish between investment management, trusteeship, and independent scrutiny of the artwork itself. This is particularly important for art because the manager may otherwise exercise significant influence over acquisition, valuation, custody, and disposal of an asset whose value is inherently difficult to determine independently.

The investment manager should have a certain minimum net worth with some positive liquid net worth. This condition is drawn from the SM REIT framework, which adopted a ₹20 crore requirement of minimum net worth with ₹10 crore liquid component for the investment manager. SEBI explained that the ₹10 crore liquid component was intended to ensure that the investment manager could quickly deploy its financial resources when required. The same rationale is relevant to an SM AIT: an art investment manager may need to meet unexpected

[191] SM REIT Regulations, *supra* note 13, ch. VI-B.

costs relating to conservation, insurance, transportation, authentication, litigation, or other asset-level contingencies without impairing the scheme's assets. The manager should also demonstrate experience in art trading, art-fund management, or the management of comparable alternative assets, and should designate a compliance officer. The manager should also retain at least five per cent of the units in every scheme for the life of the scheme. This requirement would give the manager an economic stake in the performance of the scheme and align its interests with those of unitholders.

The Authentication and Valuation Panel should comprise independent experts, registered valuers, conservators, and provenance researchers. The manager may empanel its members, subject to approval by the trustee. Members should have no material relationship with the artwork, its consignor, or any person connected with its acquisition within a prescribed look-back period. Before an offer, the Panel should certify the artwork's title and provenance, authenticity, condition, and value. Its report should disclose the methodology used and the evidence supporting each conclusion.

The artwork should be revalued at least annually and whenever a material event may affect its value or status. Such events may include damage, significant comparable sales, loans, or an authenticity challenge. The scheme's net asset value should be disclosed at least half-yearly, following the approach applicable to SM REIT schemes.

Custody should remain with an approved custodian in a climate-controlled, insured facility. The artwork should be fully insured against physical loss and, where available, title-related risks. Any movement of the artwork should require prior notification to, or approval by, the trustee. Public exhibition should also be permitted where appropriate. Loans to accredited museums, subject to adequate insurance and custody arrangements, would allow the artwork to remain accessible while preserving its value and condition. A structured museum-loan programme could therefore form part of the SM AIT's disclosures and provide a public dimension to an otherwise financialised asset.

D. Disclosure Standards

Each scheme should prepare a detailed offer document specific to the artwork. It should disclose the work's identification and images, provenance and title opinion, and the Authentication and Valuation Panel's reports. It should also disclose the work's condition and conservation history, acquisition price, intermediary margins, storage and insurance arrangements, recurring costs, and all fees payable to the manager.

The offer document should further set out the proposed holding period, exit strategy and sale mechanism. For artworks subject to the AATA it should disclose the work's registration status and applicable restrictions. Relevant market information should include the artist's auction history, comparable sales, and unsold rates. The risk factors should meet securities-offering standards and expressly state that listing does not assure liquidity in the secondary market.

Continuing disclosure should include the scheme's Net Asset Value ("**NAV**") and financial statements at least half-yearly, immediate disclosure of material events affecting the artwork or scheme, and an annual custody and insurance certificate from the trustee. All prescribed disclosures should be filed with the recognised stock exchange. SEBI's Complaints Redress System ("**SEBI SCORES**") should also be extended to SM AIT unitholders.[192]

This gives investors information at three levels: the artwork, the investment structure, and the risks of exit. That distinction is useful for the SM AIT because the value of the investment depends not only on the financial terms of the scheme but also on the condition, provenance, authenticity, and market for the underlying work.

E. Exit Strategies and Liquidation

Art generally does not generate recurring income merely by being held.[193] Unlike an SM REIT, therefore, an SM AIT cannot be subject to a distribution mandate based on periodic rental or operating income.[194] The default model should instead be closed-ended, with investors primarily receiving their return through appreciation realised upon disposal of the artwork.

This does not, however, preclude the artwork from generating interim economic value. The framework should permit an SM AIT to enter into institutional display or loan arrangements with museums and other cultural institutions, including public institutions, where such arrangements are commercially and culturally appropriate. Such arrangements could provide

[192] SEBI, Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156, *Redressal of Investor Grievances Through the SEBI Complaint Redressal* (SCORES) Platform (20 September 2023); see SEBI, Press Release No. 06/2024, SCORES 2.0 (01 April 2024).

[193] Benjamin J. Burton & Joyce P. Jacobsen, *Measuring Returns on Investments in Collectibles*, 13 J. Econ. Persp. 193 (1999); *see also* Luc Renneboog & Christophe Spaenjers, *Buying Beauty: On Prices and Returns in the Art* Market, 59 Mgmt. Sci. 36 (2013) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1352363.

[194] *Cf.* REIT Regulations, *supra* note 13, reg. 18(16); SM REIT Regulations, *supra* note 13.

the artwork with an institutional setting during the investment period while potentially generating income through agreed exhibition, loan, or related arrangements. For instance, the Royal Museum of Fine Arts Antwerp in its collaboration with the Rubey platform, fractional investors acquired economic interests in James Ensor's Carnaval de Binche, which was placed on public display at the museum for ten years before its proposed sale, with investors participating in the resulting profit or loss.[195]

Accordingly, the SM AIT should recognise two complementary sources of investor value: interim income where the artwork is capable of generating it through an approved institutional or commercial arrangement, and capital appreciation realised through terminal disposal. Any income received by the SPV from the display, loan, licensing, or other permitted use of the artwork should be disclosed to unitholders and distributed in accordance with the scheme's distribution policy, after accounting for applicable costs and reserves. The framework should not, however, require an artwork to be commercially exploited merely to create distributable income. The cultural integrity of the artwork and its preservation should remain paramount.

Exchange listing would provide an interim exit mechanism, although secondary-market liquidity could remain limited.[196] The scheme should therefore be structured on the assumption that investors will principally hold their units until the terminal exit, with secondary-market trading serving as an additional rather than guaranteed liquidity mechanism.[197] Terminal exit should ordinarily occur through the sale of the artwork or, where appropriate and permissible, the SPV holding the artwork, followed by distribution of the net proceeds to unitholders. Any terminal sale should require the Authentication and Valuation Panel's assessment of the proposed transaction, including an independent valuation and fairness opinion, together with approval by a special majority of unitholders unaffiliated with the manager.

The resulting model therefore treats the SM AIT as a hold-to-exit investment with optional interim monetisation, rather than as a yield-distribution vehicle.

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195 Kalbermatten, *supra* note 16.

196 *See* Masterworks, *How It Works*, *supra* note 26; Masterworks Vault 1, LLC, *supra* note 116 ("We cannot guarantee the ATS will provide a reliable or effective means of price discovery. Any posted offer prices or historical transaction information reflected on the ATS should not be construed as being representative of the fair value."); INDmoney, *Property Share InvT — PropShare Platina*, https://www.indmoney.com/stocks/property-share-investment-trust-propshare-platina-share-price (last visited 27 August 2026).

197 See Xiang, *supra* note 7; Kalbermatten, *supra* note 16.

F. Custody and Use of the Artwork

The artwork should remain in the custody of an independent, approved custodian throughout the life of the scheme. The custodian would be responsible for its physical protection, including appropriate storage conditions, insurance, inventory records, condition reports and records of movement. The separation of custody from investment management is already reflected in existing fractional art structures. For example, Masterworks' offering documents separately provide for custodial and storage services, insurance, transportation, appraisal and inspection of the underlying artwork.[198] The proposed framework would similarly place the physical possession of the artwork with the custodian, while leaving the manager responsible for the financial and administrative management of the scheme.

The framework should nevertheless permit loans to accredited museums and galleries. Such loans should be subject to appropriate insurance, conservation and custody requirements and should be disclosed to the trustee and unitholders. This would allow artworks held as financial assets to retain a public and cultural life rather than remaining permanently in private storage. The experience of the Royal Museum of Fine Arts Antwerp illustrates that fractional investment need not sever this connection: under its arrangement with Rubey, investors acquired economic interests in James Ensor's Carnaval de Binche, while the artwork remained on public display at the museum for a ten-year period.[199]

The custodian should maintain a digital and physical record of the artwork's location, condition and insurance status, together with a record of any authorised movement or loan. The trustee should review these records and certify compliance annually. Any material change in custody, condition, location or insurance should constitute a continuing disclosure event.

G. Phase-wise Investor Access

Investor access should be introduced in phases. Phase I should be limited to institutional and qualified investors. Phase II should extend access to accredited investors and High Net Worth Individuals ("**HNIs**"), with a minimum subscription of ₹10 lakh, consistent with the SM REIT framework. Phase III should open the market to retail investors at a lower minimum only after

[198] *See* Masterworks Vault 2, LLC, Offering Statement (Form 1-A), *supra* note 124.
[199] Kalbermatten, *supra* note 16.

the framework demonstrates reliable valuation, functioning exit mechanisms, and effective regulatory enforcement.

H. Tax Treatment

The proposed framework requires four tax considerations. First, SM AIT units should receive the same tax treatment as units of business trusts. As listed securities issued by a SEBI-registered trust, they should have a twelve-month holding period, a 12.5 per cent long-term capital gains rate under section 198, and a 20 per cent short-term capital gains rate under section 196 of the Income-tax Act 2025.[200]

Second, income flowing from the SPV to the trust and ultimately to the unitholder should receive the pass-through treatment under section 223. This would ensure that gains from the artwork are taxed only once, at the unitholder level.[201]

Third, SM AIT units should be expressly excluded from the definition of virtual digital assets. The proposed structure does not rely on blockchain technology. Further, Notification No. 75/2022 excludes certain tokenised interests that confer legally enforceable ownership in an underlying tangible asset.[202]

Finally, the SPV's acquisition of the artwork would attract GST at five per cent as an input cost.[203] The issuance and secondary-market trading of SM AIT units should remain outside the GST net as transactions in securities.

I. Considerations under the Antiquities and Art Treasures Act, 1972

Works falling within the AATA require a regulatory carve-in, rather than a blanket exclusion from the proposed SM AIT framework. Accordingly, an SM AIT scheme proposing to acquire an antiquity or declared art treasure should be permitted to do so only subject to prior verification of the work's provenance, registration status and compliance with the AATA. Where registration is required, the scheme documents should require production of the certificate of registration before acquisition. The proposed framework should also require

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[200] Income-tax Act, 2025, Act No. 30 of 2025, §§ 196, 198 (India).

[201] Income-tax Act, 2025, Act No. 30 of 2025, § 223 (India).

[202] Central Board of Direct Taxes, Notification No. 75/2022, S.O. 2959(E) (30 June 2022).

[203] Central Goods and Services Tax Act, No. 12 of 2017, § 2(52), (102) (India) (securities excluded from "goods" and "services"); on the rate applicable to the underlying artwork, Notification No. 13/2025-Central Tax (Rate), G.S.R. 653(E) (Sept. 17, 2025) (India) (works of art, HSN 9701, reduced from 12% to 5%, eff. Sept. 22, 2025).

disclosure that the asset cannot ordinarily be exported from India and that its eventual disposal must therefore be confined to a legally permissible domestic market. The Act separately requires a licence for carrying on the business of selling or offering to sell antiquities, making the licensing position of the vehicle and any proposed purchaser material to the scheme's exit.

The framework should also consider foreign participation. The AATA does not, by itself, establish a general prohibition on foreign investment in a vehicle holding antiquities. Its principal restrictions operate on the asset and its sale and export. A foreign investor could therefore potentially participate at the level of the investment vehicle, subject to the foreign-exchange, securities and other applicable regulatory requirements. The investment documents should nevertheless make clear that foreign participation in the vehicle does not confer any right to export, physically possess outside India, or otherwise circumvent the restrictions applicable to the underlying antiquity. The AATA Rules themselves contemplate transactions involving foreigners by recording their Indian home addresses and passport details.[204]

Finally, the age threshold in the definition of "antiquity" creates a future regulatory event for works that are not presently within the Act but may enter its scope with the passage of time.[205] The scheme documents should consequently disclose the work's date of creation, its projected date of entering the statutory definition, and the regulatory consequences that would follow. For assets approaching the threshold, the SM AIT should be required to undertake a periodic compliance review rather than treating AATA compliance as a one-time acquisition condition.

J. Considerations under the Insolvency and Bankruptcy Code, 2016

Insolvency presents a distinct challenge where an SPV holds an antiquity. Under section 36 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), assets owned by the corporate debtor form part of the liquidation estate.[206] Section 35 empowers the liquidator to take custody and control of, and sell, the debtor's movable property.[207] An antiquity owned by the SPV would therefore ordinarily form part of the liquidation estate. Its inclusion, however, does not displace the registration, transfer, sale or export restrictions under the AATA. Any liquidation sale must comply with those requirements. This may affect both liquidity and valuation.

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[204] Antiquities and Art Treasures Rules, 1973 (India).
[205] AATA, *supra* note 62, § 2(1)(a).
[206] Insolvency and Bankruptcy Code, No. 31 of 2016, § 36 (India).
[207] *Id.* § 35.

Export restrictions, registration requirements and licensing conditions may narrow the pool of eligible purchasers and increase the time and cost of realisation. The resulting constraints should therefore be reflected in the SM AIT's valuation, risk disclosures and resolution.

The framework should also distinguish between investor-level and vehicle-level insolvency. Where the SPV owns the artwork, an investor's insolvency should ordinarily affect only the investor's units and not the underlying artwork. If the SPV enters liquidation, however, the artwork would form part of its liquidation estate, subject to the restrictions governing its sale. This separation of ownership is therefore central to protecting the underlying asset.

The scheme documents should accordingly prescribe an insolvency protocol identifying the artwork's regulatory status, transfer documentation, eligible purchasers and required licences or permissions. This would allow the liquidator or resolution professional to incorporate these constraints into the resolution or liquidation process from the outset, while preserving the IBC's objective of value maximisation.

K. Market Integrity and Investor Protection

Art markets face particular risks of forgery, provenance fraud, price manipulation and money laundering.[208] The SM AIT framework should address these through four safeguards:

- **Authentication**: The Authentication and Valuation Panel should certify provenance and authenticity, with liability for reckless certification.
- **AML compliance**: Managers and custodians should be designated as reporting entities under the Prevention of Money Laundering Act, 2002, requiring customer and beneficial-owner due diligence, record-keeping and suspicious transaction reporting.

[208] Financial Action Task Force, *Money Laundering and Terrorist Financing in the Art and Antiquities Market* (27 February 2023) https://www.fatf-gafi.org/en/publications/Methodsandtrends/Money-Laundering-Terrorist-Financing-Art-Antiquities-Market.html (last visited 27 August 2026); Duncan Chappell & Kenneth Polk, *Fakers and Forgers, Deception and Dishonesty: An Exploration of the Murky World of Art Fraud*, 20 Current Issues Crim. Just. 393 (2009) https://pdfs.semanticscholar.org/82e0/901d0719e06ef568bc4286e60ca19801b7a7.pdf (last visited 27 August 2026); Julien Pénasse & Luc Renneboog, *Speculative Trading and Bubbles: Evidence from the Art Market*, 68 Mgmt. Sci. 4939 (2022) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2523854 (last visited 27 August 2026).

- **Market conduct**: Trading in SM AIT units should fall within the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, bringing wash trading and manipulative bidding within the securities framework.

- **Conflicts**: Related-party transactions involving the manager, trustee, consignor, valuer, custodian or their associates should require enhanced disclosures and prior approval.

Together, these safeguards would bring the SM AIT within a clear securities-law framework.

CONCLUSION

India's art market is witnessing a growing appetite for art as an investment asset. Yet the current framework offers investors only three unsatisfactory choices. *First*, the existing CIS regime has not produced a functioning art-investment product. *Second*, a co-ownership model offers no practical exit. *Third*, investors may be pushed towards arrangements that test the limits of what the regulator permits. This paper has argued for a bespoke framework suited to the needs of a fractional investment model in the art market. The SM AIT builds on the regulatory model that SEBI has already developed, tested, and successfully deployed for fractional investment in real estate. The proposed model ensures that investors who choose this asset class do so with transparency, regulatory oversight, and effective avenues of redress. If another *Osian* were ever to occur, it would unfold within a supervised market governed by securities law rather than in a vacuum. Ultimately, the purpose of securities regulation is not to eliminate investment risk but to ensure that risk is borne within a system that is transparent, accountable, and fair.