

Data Centre Financing 2027

First Edition

Contributing Editor:

Jeremiah Wagner

Latham & Watkins LLP

glg Global Legal Group

TABLE OF CONTENTS

Expert Analysis Chapters

1 **Key risks for data centre funders**
Jonathan Dames & Matthew Taylor
CMS

9 **Data centres and procuring power: what is bankable?**
Jonathan Cohen
Fladgate LLP

Jurisdiction Chapters

17 **Brazil**
José Roberto Oliva Junior, Luiz Felipe Fleury Vaz Guimarães, Tomás Filipe Schoeller Paiva & Stephanie Hong
Pinheiro Neto Advogados

31 **Iceland**
Guðmundur Ingvi Sigurðsson, Ólafur Haraldsson & Helga Lena Garðarsdóttir
LEX Law Offices

42 **Indonesia**
Dominik Kepinski, Michelle Vickers & Clarinda Tjia-Dharmadi
Watson Farley & Williams LLP

54 **Ireland**
Keith Newman & Micheál Grace
Mason Hayes & Curran LLP

64 **Malaysia**
Jonathan Lim Hon Kiat & Nadarashnaraj Sargunaraj
Zaid Ibrahim & Co

71 **Netherlands**
Michelle Broere, Mark Rebergen, Lonne Rooseboom & Kim Koops
Loyens & Loeff N.V.

83 **Poland**
Sławomir Karasiński & Agata Cynkier
Fortak & Karasiński Radcowie Prawni Spółka Partnerska

87 **Switzerland**
Roger Ammann & Johannes A. Bürgi
Walder Wyss AG

95 **Thailand**
Sonya Kalnin & Clarinda Tjia-Dharmadi
Watson Farley & Williams LLP

Netherlands

Michelle Broere
Mark Rebergen
Lonne Rooseboom
Kim Koops

Loyens & Loeff N.V.

Market overview

Within Europe, the Netherlands is one of the most mature and densely developed data centre markets. The Amsterdam Metropolitan Region (**AMR**) had long functioned as a key digital gateway, hosting most of the Dutch colocation capacity. This concentration has resulted in pronounced capacity constraints, with the market reaching a perceived "ceiling" after rapid expansion between 2015 and 2019. Grid congestion, planning restrictions and political scrutiny have significantly limited further large-scale development in the AMR.[1] In response, authorities and market participants encourage geographical diversification to regions such as Groningen, Zuid-Holland and Noord-Brabant, where land availability and renewable energy access offer better growth prospects.[2]

The market is shifting towards high-density colocation for hyperscalers and artificial intelligence (**AI**) workloads, while retail colocation remains resilient. Despite various constraints, the Dutch data centre sector remains significant, with colocation firmly established as the dominant growth segment and installed capacity approaching 1 gigawatt (**GW**). Total IT power capacity is expected to nearly double by 2031, with annual investments exceeding EUR 1.5 billion.[3] A notable recent development is the emergence of securitisation as a viable financing tool for Dutch data centre assets. In this context, the ECX 2026-1 transaction of 20 March 2026 is particularly illustrative.

Financing structures

Transactions typically combine real estate, corporate, leveraged and project finance, reflecting data centres' dual nature as property assets and capital-intensive infrastructure. The following types of data centre financings are used in the Netherlands:

(i) *Real estate finance*: Real estate finance remains the foundation of data centre funding during early development stages without long-term customer contracts. In these circumstances, limited revenue favours real estate finance over infrastructure structures reliant on long-term contracted cashflows. This approach allows lenders to rely primarily on the value of the real estate. In the Netherlands, this structure aligns with market data showing colocation as the dominant segment.[4]

(ii) *Project finance*: Project finance remains a core structure for greenfield developments and asset portfolios. It is typically structured on a limited recourse basis, relying on long-term contracted revenues from hyperscalers or colocation tenants.

(iii) *Blended and evolving structures*: Some transactions are structured to evolve over time. A project may begin under a real estate framework and transition to an infrastructure financing once long-term contracts are entered into.

(iv) *Borrowing base facilities*: Borrowing base facilities are gaining traction in Europe, including the Netherlands. These umbrella facilities allow assets to be added or removed as debt capacity adjusts with maturity and cashflow stability. They enable scalable portfolio financing, with loan-to-cost ratios reflecting asset maturity.

(v) *Development Company (**DevCo**)/Yield Company (**YieldCo**)*: Development-phase assets sit within a DevCo, which relies on higher margin construction loans or mezzanine debt. Stabilised, revenue-producing assets are transferred into a YieldCo, which uses long-term, lower-cost debt provided by institutional investors such as pension funds and insurers. This structure enables capital recycling and aligns risk profiles with appropriate investors.

(vi) *Private placements and institutional capital*: Institutional investors are increasingly active in long-term data centre financing in Europe through private placements, with typical tenors between 20 and 35 years. These structures face renewal risk where customer contracts are shorter than financing tenors. Private placements tend to be most viable for large portfolios with diversified cashflows, strong track records and high-quality locations.

(vii) *Equipment and AI infrastructure financing*: AI-focused data centres differ from traditional cloud facilities because developers often must finance not only the shell but also the equipment (the "core"), including Graphics Processing Units (**GPIs**), chips and high-density racks. Equipment value can exceed the building value by a factor of four. As a result, AI equipment financings have short tenors (often capped at five years) and rapid amortisation.

(viii) *Sustainable finance*: Sustainability considerations are increasingly embedded in European data centre financings. Loans and other debt instruments are often linked to environmental performance indicators, including energy efficiency, renewable energy sourcing and heat reuse.

(ix) *Securitisation*: The European data centre securitisation market remains less mature than the U.S. but is gaining traction. Access to securitisation remains largely limited to sponsors with sizeable, stabilised portfolios and predictable cashflows. Cross-border issuance remains challenging due to fragmented regulation, insolvency regimes and rating methodologies.

The first two public European data centre asset-backed security (**ABS**) transactions were issued by Vantage in 2024 and 2025. These transactions refinanced existing debt backed by hyperscale assets in Cardiff, Berlin and Frankfurt. Due to the energy efficiency of the underlying assets, both securitisations were structured and marketed as green bonds.[5] For the Netherlands, as mentioned, a notable development is the ECX 2026-1 transaction by EdgeConneX, which involved the securitisation of a fixed-rate loan backed by data centre assets in the Netherlands. The transaction was structured as a hybrid ABS/Commercial Mortgage-Backed Security (**CMBS**) transaction and established a master trust structure, enabling EdgeConneX to add newly operational data centre assets to the securitisation pool and to issue additional debt instruments over time without the need to establish new issuance platforms. While securitisation is not yet a mainstream financing tool in Europe for data centres, recent transactions suggest that it is evolving from isolated precedent deals into a scalable refinancing mechanism for mature data centre platforms.

Real estate considerations

General

Unlike more traditional commercial assets, data centres are highly specialised and location-sensitive. Spatial planning and permitting are key to both development and financing. The Environment and Planning Act (**EPA**) integrates spatial planning, environmental regulation and technical building requirements into a single framework, with decision-making largely decentralised to the municipal level.

The main zoning/planning instrument is a municipality's mandatory physical environment plan, which determines permitted uses of land and buildings. A data centre may (in principle) only be realised if the intended use qualifies as a permitted activity under the applicable physical environment plan. Many municipalities lack explicit provisions for large-scale or hyperscale data centres, requiring project-specific permissions that introduce planning uncertainty, particularly for energy-intensive developments.

Even where development is permitted, municipalities may adopt a preparatory decision to temporarily freeze new projects while policies are revised. This instrument is increasingly used for hyperscale data centres in light of grid congestion, sustainability targets and regional planning concerns and represents a key diligence issue for financiers.

At a national and provincial level, additional policy frameworks could apply. While there is no single nationwide zoning regulation for data centres, specific rules may apply to hyperscale facilities due to their classification as large-scale, energy-intensive developments. These rules relate to location selection, clustering, landscape integration and energy efficiency.

Once planning is secured, development enters a permitting phase involving multiple regulated activities. Under the EPA, most developments require an environmental permit, which may combine multiple activities in one single permit. For data centres, this includes construction works, environmental impact and, where applicable, a deviation from the physical environment plan. Environmental permits cover technical building compliance, fire safety and occupancy rules. Fire safety is of relevance given the presence of high-density electrical installations and backup power systems.

The construction and operation of data centres generally qualify as environmentally harmful activities under the Environmental Activities Decree, triggering directly applicable environmental rules and, where designated, permit or notification requirements. Depending on the scale and the design of the data centre, relevant issues include noise, nitrogen deposition, heat discharge, emergency power generation, traffic movements, soil disturbance and the storage of hazardous substances. Water use and cooling systems are subject to increasing scrutiny, with permits or notifications often required for groundwater extraction, cooling water discharge or thermal energy systems.

Energy efficiency has become a formal legal consideration. Data centres must comply with statutory energy-saving obligations and hold valid building energy labels. While not always tailored to data centres, labels play an important role in ESG assessments and financing requirements.

Although the EPA aims to streamline procedures, public consultation, objections and appeals can materially delay project timelines. Lenders therefore focus on the irrevocability of key permits, conditions precedent and long-stop dates, and the contractual allocation of permitting risk.

Leasing

Data centre lease structures differ from conventional real estate leases. Operators typically require bespoke arrangements to address high-value technical fit-outs, long-term maintenance obligations, and the allocation of operational risks. From a financing perspective, these deviations directly affect asset valuation. Attention is paid to the separation of ownership interests, the allocation of downtime risk, and the financial and legal treatment of end-of-lease obligations. Depending on whether the data centre

operates under a colocation, shell or built-to-suit model, different legal and structural considerations apply under Dutch law, particularly with respect to liability allocation, ownership of installations and reinstatement obligations.

In the Netherlands, data centre sites are typically held either in full ownership or leasehold. Leasehold, which is common in the AMR, requires close scrutiny by financiers of the remaining term, the flexibility to adjust ground rent, and any municipal covenants that may constrain operational continuity.

Dutch property law applies the principle of accession, under which permanent fixtures become the property of the landowner. Given the substantial value of data centre installations (such as power supply, cooling, and other critical infrastructure), this principle necessitates careful structuring. In practice, a right of superficies is often established to separate ownership of the installations from the land, preventing automatic accession. As a right *in rem*, the right of superficies can be mortgaged, which is essential for financing purposes.

Accession concerns are generally limited in colocation leases, as servers do not qualify as permanent fixtures. In shell leases, however, a right of superficies is commonly used for fixed fit-out components that the tenant intends to own and finance.[6] In built-to-suit projects, such arrangements are frequently relevant, depending on whether the tenant (usually a hyperscaler) requires legal title to specific installations.

Dutch lease agreements are almost exclusively governed by the Dutch Council for Real Estate (**ROZ**) models.[7] The ROZ offers different models, depending on the legal regime applicable to the premises – residential, retail and "other" business space. Data centres are classified as the latter.[8] This regime offers the highest degree of contractual freedom and is subject to fewer mandatory statutory provisions than residential or retail property. While the ROZ model is the market standard, data centres consistently require specific deviations in two critical areas: liability; and reinstatement:

(i) *Liability*: Under the standard ROZ lease, the landlord must provide uninterrupted use of the premises. In a data centre context, any interruption in utility supply (such as power or cooling) could result in complete downtime, which constitutes a breach of the landlord's core obligation and may trigger substantial consequential damage claims by the tenant. To mitigate this risk, and while granting the tenant with more control over operational resilience, it is common to adopt a Triple Net structure coupled with specific indemnification clauses. Under this structure, all maintenance responsibilities shift from the landlord to the tenant. Further, the landlord is typically held harmless for malfunctions in the installations the tenant maintains. The landlord will seek to exclude all consequential damages (e.g., data loss or business interruption), often with a narrow carve-out only for the landlord's gross negligence or wilful misconduct. For a colocation lease, liability generally remains with the landlord, as they provide and manage the critical infrastructure, including backup generators, cooling systems, and physical security. Parties may specify the landlord's maintenance duties through "end-of-life" clauses, mandating the replacement of systems based on defined failure intervals or technical lifespans. As this lease functions as a service level agreement (**SLA**), the landlord is responsible for ensuring the continuous availability of the services required for operations. For a shell lease, parties may opt for a Triple Net agreement, depending on the level of operational control the tenant requires and the extent of liability the landlord is willing to assume. In built-to-suit leases, a Triple Net arrangement is standard: the landlord develops the facility as an investment, while the tenant (typically a hyperscaler) assumes full responsibility for operation, maintenance, and security.[9]

(ii) *Reinstatement*: A critical component of a data centre lease is the "yield-up" provision, which governs the condition of the premises upon expiration of the lease. Under standard ROZ provisions, the tenant is generally required to return the premises to its original state, which is often referred to as the "strip-out" obligation. For a colocation lease, reinstatement is typically straightforward, as

the tenant's obligations are limited to the removal of IT equipment (servers), leaving the landlord's infrastructure intact. For a shell lease, the strip-out could represent a significant financial liability for the tenant and a risk for the landlord. The costs of decommissioning and removing a specialised technical fit-out are substantially higher than in other asset classes, particularly due to the disposal of hazardous materials in compliance with environmental regulations. Landlords therefore often negotiate discretionary clauses allowing them to determine whether fit-out components must be removed or may remain. While a high-quality fit-out may add value for future tenants, parties must clearly define the required maintenance state upon handover. Further, parties may agree to compensate the tenant for the fit-out; however, the cost savings realised by the tenant by avoiding removal may be considered sufficient compensation for the transfer of the installations to the landlord. The built-to-fit lease often includes a purchase option for the tenant (the hyperscaler). If the option is not exercised, the tenant typically leaves the facility and all integrated installations behind. Given that the hyperscaler has likely managed all maintenance for a significant duration, the landlord may consider establishing stringent handover criteria to ensure the building and systems meet the landlord's expectations.

To minimise disputes and unforeseen decommissioning liabilities, data centre leases commonly include a detailed demarcation list agreed at commencement. This document specifies (i) the allocation of ownership between landlord and tenant, (ii) responsibility for maintenance and associated costs, and (iii) the technical condition required upon lease expiry.

Power and infrastructure

Access to reliable and sufficient electricity is a key prerequisite for Dutch data centre development and financing. Under Dutch law, power supply is typically secured through three agreements: (i) a grid connection realisation agreement; (ii) a grid connection and transport agreement with the grid operator (**CTA**); and (iii) a power supply agreement with a power supplier (**PSA**). While PSAs are generally readily available, CTAs are scarce due to persistent congestion on the Dutch electricity grid. This congestion is expected to continue for at least the next decade.

Grid connection realisation works

Grid connections are constructed by the grid operator pursuant to a realisation agreement, although third-party realisation may, in limited cases, be possible. Since April 2024, statutory lead times apply to grid connection realisation. These depend on technical complexity and the operator's backlog. In practice, these legally binding timelines do not provide certainty, as grid operators face capacity constraints and enforcement through litigation has proven ineffective. Developers and financiers should therefore critically assess communicated commissioning timelines and implement mitigation measures where delays are foreseeable.

Furthermore, as the grid operator only constructs the grid connection up to the agreed transfer point, it is the data centre developer's responsibility to construct the remaining electrical infrastructure from the transfer point to the data centre itself. This should not be an issue if the transfer point is located on the data centre's own plot of land. However, it may be possible that the transfer point is located at the grid operator's substation, in which case potentially significant construction works by the data centre developer may be necessary. This can cause commissioning delays, e.g., due to the necessity to obtain public and private law consents. Developers and financiers should thus verify the relevant responsibilities in the realisation of the grid connection and whether there are any expected roadblocks to the timely grid connection.

Securing grid transport rights

Following commissioning, the relationship with the grid operator is governed primarily by the CTA and

applicable grid codes. CTAs provide firm transport capacity for an indefinite term and are, in principle, not subject to unilateral revocation. Therefore, a data centre operator that has secured transport rights would not, in principle, be affected by the presence of grid congestion. However, to combat capacity hoarding, the Dutch grid codes were also amended in April 2024 to allow grid operators to unilaterally revoke contracted but unused transport capacity that has remained unused for at least the prior 12 months, and that, following notification, is still not used within a "reasonable timeframe" (which is open for interpretation on a case-by-case basis). This poses a risk for data centres facing delays in their development, e.g., due to permitting issues, or to data centres requiring a power ramp-up period following their commissioning, as the unused capacity could potentially be subjected to the use-it-or-lose-it principle by the relevant grid operator. Although it is the authors' understanding that grid operators currently do not plan to initiate use-it-or-lose-it processes for data centres that are ramping up, it remains an issue that requires close attention by prospective developers and financiers.

Grid operators may also require parties with contracted transport capacity exceeding 1 megawatt (**MW**) to participate in congestion management using flexible consumption. While data centre loads are generally inflexible, back-up generators used beyond emergency purposes may qualify as flexibility. Ensuring that such assets are not classified as flexible is critical to maintain tenant power security. Due to scarce transport rights, operators should remain party to the CTA, as forfeited capacity may be impossible to reclaim for years.

Grid congestion remains politically sensitive. Growing public scrutiny over the prioritisation of data centres relative to housing projects may trigger regulatory or enforcement changes concerning grid access, congestion management, or use-it-or-lose-it rules. Continuous monitoring of political and legal developments is therefore essential.

Power supply agreement contracting considerations

PSAs are typically available without material scarcity and may be entered into by the data centre operator or tenants directly. Suppliers offer fixed-price per MWh contracts or flexible click-style agreements that allow incremental price locking based on wholesale markets. The latter require active energy management and are mainly suitable for single-tenant data centres seeking autonomy over power sourcing.

From a regulatory perspective, it is important to note that, depending on the data centre's size and PSA contracting structure, data centre operators or tenants procuring electricity directly may qualify as market participants under the European REMIT regime, with corresponding registration, reporting and disclosure obligations.[10] To prevent becoming uncompliant and risk enforcement by the Dutch energy regulator, the data centre's consumption capacity and PSA structure should be verified in view of REMIT.

Where the operator contracts both the CTA and PSA, a point of attention is the verification of adequate power costs and pass-through provisions in the lease agreements with the tenants. Given the materiality and diversity of cost components – such as grid fees, supply charges, metering costs, and penalties – comprehensive pass-through mechanisms are essential to avoid residual exposure at operator level.

Grid costs and transport fee developments

Another notable long-term development is the expected increase of transport fees in the coming decades. Specifically, according to a study by the Dutch energy regulator, the capital costs of the Dutch grid and resulting transport fees are expected to increase two- to five-fold over the next 25 years (excluding indexation) as a result of grid expansion works.[11] Additionally, the Dutch regulator, the Dutch Authority for Consumers and Markets (**ACM**), has also indicated that the transport fee structure may be revised to include a volume-based rate where there is currently none (as the fees are currently capacity-based only).[12] Considering that data centres have a high consumption volume compared to the peak load, such change in fee structure may cause an increase in the overall transport fees for data centres. These grid fee

developments underscore the necessity for adequate tenant pass-through arrangements and should be considered for their potential impact on the competitiveness of data centres in the Netherlands.

Taking and enforcing security

Overview of Dutch security rights and perfection

Under Dutch law, two proprietary security rights exist: right of pledge; and right of mortgage. For date centre financings, depending on the financing structure, the following security rights are relevant:

(a) *A right of mortgage over real estate*: Created by a Dutch law-governed notarial deed executed by a Dutch civil law notary based on powers of attorney granted by the mortgagee and the mortgagor. The power of attorney for the mortgagor is a notarial deed so needs to be executed as such. The power of attorney for the mortgagee is not a notarial deed, but needs to be legalised and, if not executed in front of a civil law notary practising in the Netherlands, furnished with an apostille.

(b) *A right of pledge over movable assets*: This type of security right can either be possessory or non-possessory. A non-possessory right of pledge requires the creation of effective control over the movable assets for the pledgee, which is not the intention of the parties in a data centre financing. A non-possessory right of pledge is created by execution of a private deed and registration thereof with the Dutch Tax Authorities or by notarial deed. The latter is uncommon as it is considered less cost-efficient. Normally, in data centre financing, a non-possessory right of pledge is created with control rights to be triggered when events of default are continuing.

(c) *A right of pledge over shares*: In real estate financings, lenders prefer to have the flexibility of either enforcing on the shares or on real estate. A right of pledge over shares in a Dutch private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) is created by execution of a Dutch law-governed notarial deed by a Dutch civil law notary based on powers of attorney granted by the pledgee, the pledgor and the company in which the shares are being pledged. The powers of attorney need to be legalised and, if not executed in front of a civil law notary practising in the Netherlands, furnished with an apostille.

(d) *A right of pledge over receivables arising under material contracts and against the account bank*: A right of pledge over receivables can either be disclosed or undisclosed. A disclosed right of pledge is created by private deed and notification (in writing) to the relevant debtor. An undisclosed right of pledge is created by notarial deed or by private deed and registration thereof with the Dutch Tax Authorities. As mentioned, a notarial deed is considered less cost-efficient and is therefore uncommon. Pursuant to Dutch law, for receivables arising from the exercise of a profession or business (excluding certain receivables, such as bank account receivables), it is not possible to agree on a ban on assignment clause. A clause between a creditor and a debtor that aims to exclude the assignability of such a receivable will be void (irrespective of whether the ban on assignment clause has contractual or *in rem* effect). For operational data centres, we note that Dutch lease receivables are considered future receivables, meaning that receivables that arise after bankruptcy shall not be subject to security but shall form part of the bankruptcy estate. Further, Dutch account banks use general banking conditions that render the bank account receivables incapable of being pledged without the consent of the account bank. Hence, security over bank accounts held in the Netherlands requires consent of the account bank. Payments paid into a Dutch bank account post-insolvency are no longer caught by the pledge. In this case, the pledgee still has a priority right but must share in the bankruptcy costs (e.g., salary of the bankruptcy trustee). For this reason, lenders sometimes require having the right to divert payments to a bank account held in their name in another jurisdiction upon a certain trigger or to transfer ownership of the Dutch bank account to the agent (if the account bank cooperates).

Pledges may extend to future assets. A mortgage cannot be established over future registered assets. A Dutch undisclosed right of pledge in a future receivable can only be created if such receivable directly results from, at the time of creation of such right of pledge, an existing legal relationship. Hence, if new receivables arise that are not pledged pursuant to a security agreement, the pledgor is obliged to enter into supplementals and arrange for registration thereof with the Dutch Tax Authorities. Depending on the frequency of such obligation, this might be burdensome for the pledgor. This restriction is not applicable for a Dutch disclosed right of pledge, which is perfected by entering into a security agreement and notification to the relevant debtor. As mentioned, if the relevant receivable arises after bankruptcy, it shall not be subject to a right of pledge. Please note that this issue is less relevant if the security agent is a Dutch bank. The security agent will be appointed as attorney of the pledgor to enter on its behalf into any right of pledge over the receivables by means of a collective supplemental security agreement (*verzamelpandakte*), which will be registered automatically by the security agent on a daily basis. We note that this restriction is on the verge of fundamental modernisation. The Dutch bill on the modernisation of pledges and assignments was recently published for consultation. With this bill, the Dutch government aims to reduce administrative burdens, make lending more accessible and ensure a level playing field between banks and alternative lenders.

A Dutch law right of mortgage or pledge can only secure monetary payment obligations. If Dutch law security is held by an agent or trustee for the benefit of other parties, it is standard market practice to secure a parallel debt as it is generally assumed that a Dutch law security right cannot be validly created in favour of a person who is not the creditor of secured liabilities. There is no statutory law or case law available on the parallel debt. In our opinion, which is supported by the general view of leading authors in Dutch legal literature, a parallel debt creates a claim of the security holder that can be validly secured by a security right.

Enforcement

A security holder may, in principle, enforce their security rights as if there were no bankruptcy or suspension of payments. However, a bankruptcy trustee may require the security holder to enforce its security right within a reasonable period. If the security holder fails to do so, the bankruptcy trustee may sell the assets. The security holder has a statutory priority right on the proceeds, but will not be paid until the bankruptcy estate is distributed and will have to share in the bankruptcy costs. In addition, the Dutch courts may suspend enforcement of any security rights for a maximum period of four months if the pledgor has been declared bankrupt or has been granted a suspension of payments, or for a maximum period of eight months if the pledgor is subjected to a statutory composition proceeding. Also, if the pledgor is subjected to a statutory composition proceeding, the security holder of pledged receivables is prevented from notifying the debtors and collecting the pledged receivables during the aforementioned period.

A Dutch law right of pledge and mortgage may be enforced if the debtor is in default in the performance of the secured liabilities. A right of pledge can be enforced by way of: a public auction; a private sale authorised by the competent Dutch court; or a private sale agreed between the pledgor and the pledgee after the pledgee has become entitled to enforce or, in respect of receivables only, by collection of such receivables (after notice of the right of pledge to the relevant debtor), all with due observance of the applicable provisions of Dutch law. A Dutch law right of mortgage may be enforced by way of a public auction or a private sale authorised by the competent Dutch court, each with due observance of the applicable provisions of Dutch law. Appropriation by the pledgee is not allowed, but the competent Dutch court may authorise that the pledged assets will remain with the pledgee as buyer for an amount to be determined by such court and the pledgee may bid on the assets in a public auction. Appropriation by the mortgagee is also not allowed, but the mortgagee may bid on the assets in a public auction and, if a private sale is requested and the mortgagee submits a more favourable bid before the end of the hearing of such request, the Dutch competent court may authorise that the assets are sold to the mortgagee.

Tax considerations

Dutch tax considerations may be relevant for a non-Dutch lender financing a third-party Dutch borrower, including Dutch data centres. These primarily include Dutch conditional withholding tax on interest (**CWT**) and Dutch (non-resident) corporate income tax (**CIT**). In addition, in certain financing structures (including CMBS), Dutch value-added tax (**VAT**) and Dutch real estate transfer tax (**RETT**) may be of specific relevance.

As a general rule, interest payments by a Dutch taxpayer (including a permanent establishment (**PE**) in the Netherlands) to third-party lenders are not by default subject to withholding tax. However, 25.8% CWT may apply to such interest payments to a lender that is a related party and is located in a specifically listed low-tax or non-cooperative jurisdiction, is a hybrid entity, or acts as intermediary in abusive structures, often not mitigated by double tax treaty provisions. This CWT is therefore generally not expected in third-party financings but is nonetheless covered in financing documentation to address potential changes in law (borrower's risk) or fact (lender's risk) through gross-up/indemnity mechanics in line with European tax risk allocation standards.

From a CIT perspective, non-Dutch resident lenders holding a "substantial interest" (generally ≥5%) in a Dutch resident entity may qualify as foreign taxpayers, resulting in the inclusion of interest income in their Dutch non-resident CIT base. Where no such substantial interest is held, a non-Dutch resident lender's interest income may be subject to Dutch CIT if the loan is attributable to a Dutch PE. In line with European tax risk allocation standards, such Dutch CIT arising at lender level is typically excluded from the tax indemnity in financing documentation. Entering into a regular third-party debt-financing transaction should not result in Dutch tax residency or PE or becoming otherwise subject to Dutch CIT.

Several CIT considerations at Dutch borrower level may be relevant to a lender, such as:

(i) Interest deductibility may be restricted under the Dutch earnings-stripping rule, which generally limits the deduction of a Dutch borrower's net borrowing costs to the higher of EUR 1 million or 24.5% of EBITDA per year, regardless of whether the financing is intragroup or third-party. Other interest deduction limitation rules should generally not apply to arm's length interest payments to third-party lenders.

(ii) A borrower may form part of a Dutch CIT or VAT fiscal unity, which usually provides for certain tax and administrative benefits for the relevant members. However, for CIT purposes, all members are jointly and severally liable for such taxes due by the fiscal unity during the relevant period. If the fiscal unity extends beyond the borrowing group, this may result in tax leakage. In addition, deconsolidation of a CIT fiscal unity, including following share pledge enforcement, may cause adverse CIT consequences at borrower level. Similar joint and several liability may apply in case the borrower is part of a VAT fiscal unity. These aspects potentially affect lenders' recourse and are typically addressed in financing documentation, if applicable.

(iii) Settlement of debt other than by repayment of principal, such as by waiver, set-off or conversion, may trigger adverse CIT consequences for the borrower. This could be relevant, e.g., in the context of restructurings or refinancings.

The Netherlands does not levy stamp, transfer, registration or other documentary tax or duty in respect of financing documentation, other than potentially RETT upon, e.g., the acquisition or enforcement of security over (deemed) Dutch real estate in connection with the financing.

As granting of credit is a VAT-exempt activity from a Dutch VAT perspective, (interest) payments by a Dutch borrower to a lender that are related to the debt financing itself should not attract VAT.

As noted above, securitisation structures have become increasingly prominent in the European, and Dutch, data centre financing landscape. The precise mechanics of a securitisation structure (including aspects such as true sale, recourse or non-recourse structures) may have varying Dutch tax consequences.

In case of a special purpose vehicle (**SPV**) typically used in Dutch securitisation structures, a specific point of attention is its CIT treatment. If an SPV has limited substance and economic function, it may be treated as an agent. In such cases, the originator continues to be treated as the economic owner of the secured assets and as the holder of the secured debt, which are recognised on the originator's balance sheet for tax purposes. Accordingly, the SPV functions solely as a ringfencing structure. Further, VAT and transfer pricing aspects of income and costs at every level of the transaction are highly relevant in securitisation financing. These structures should therefore always be analysed carefully from a tax perspective. When structured properly, securitisation financings may be tax-efficient from a Dutch tax perspective, without significant tax leakage or uncertainties.

The year ahead

The Dutch data centre sector appears to be moving beyond the plateau that characterised the period from 2020 to 2023 and into what is increasingly described as a critical era for digital infrastructure. Colocation remains the primary growth driver, with multi-year investment between 2025 and 2030 estimated at approximately EUR 4.9 billion. Demand is increasingly driven by hyperscale cloud providers and AI-related workloads. By 2031, total investment in hyperscale data centres in the Netherlands is projected to approach EUR 5 billion, supported by average annual IT power growth of around 6.5%. While the AMR continues to dominate, new developments are emerging in regions such as Groningen, Zuid-Holland and Noord-Brabant. At the same time, structural challenges persist; grid congestion, limited site availability, labour constraints and lengthy permitting procedures will continue to test the sector's ability to grow while preserving the Netherlands' role as a European digital gateway.

Regulatory developments will be a defining factor in the years ahead. Since 2024, large data centres have been subject to enhanced transparency obligations. These national measures reflect broader European initiatives such as the EU Energy Efficiency Directive and the Climate Neutral Data Centre Pact. While Dutch regulation is gradually adapting, fragmentation across jurisdictions/municipalities remains a challenge.

On the financing side, Capital markets are increasingly supporting sector expansion. While traditional bank financing remains central to construction and term lending, sponsors and lenders are seeking to diversify funding sources and manage balance sheet exposure through structured finance solutions. The EdgeConneX transaction highlights how scalable structures, such as master trust frameworks, may facilitate repeat issuance as new assets become operational. In the years ahead, further issuances, refined covenant structures and broader investor participation are expected, contributing to a more sophisticated and resilient financing landscape for the Dutch data centre sector.



Endnotes

1 Dutch Data Center Association, "State of the Dutch Centers", 2025, pp 7, 11 and 12, available at: https://www.dutchdatacenters.nl/publicaties/state-of-the-dutch-data-centers-2025

2 *Ibid.*, p. 52.

3 *Ibid.*

4 *Ibid.*

5 In compliance with the ICMA Green Bond Principles and the issuer's green finance framework. The German transaction was additionally structured to align with the German Energy Efficiency Act, which imposes specific energy efficiency obligations on data centres.

6 It is worth noting that, in principle, the tenant has a "right of removal" (*wegneemrecht*) for such permanent fixtures. This means that towards the end of the lease, the tenant is entitled (or may be required) to remove the permanent fixtures, even if the landlord has become the owner through accession.

7 The models and more information about the ROZ can be found at: https://roz.nl

8 Such "other" business space is often referred to as "230a-space", corresponding with the relevant provision under Dutch law: Article 230a of Book 7 of the Dutch Civil Code.

9 Notably, hyperscalers may also enter into "Absolute Net" leases. In such arrangements, all costs and risks – including those arising from extraordinary events such as natural disasters – are transferred to the tenant.

10 Regulation (EU) No. 1227/2011 on wholesale energy market integrity and transparency (**REMIT**) establishes rules prohibiting abusive practices in wholesale energy markets. More specifically, it prohibits insider trading and (attempted) market manipulation, and obligates the timely publication of inside information, the registration as a market participant under REMIT, and the reporting of certain transactions in wholesale energy products.

11 Dutch Authority for Consumers and Markets, *Ontwikkeling netkosten tot en met 2050 en de kostenverdeling via nettarieven* (in Dutch), available at: https://www.acm.nl/system/files/documents/ontwikkeling-netkosten-tot-en-met-2050-en-de-kostenverdeling-via-nettarieven.pdf

12 Dutch Authority for Consumers and Markets, *Uitgangspunten voor de tariefstructuur elektriciteit* (in Dutch) (regarding the potential introduction of a volume-based tariff component), available at: https://www.acm.nl/system/files/documents/uitgangspunten-voor-de-tariefstructuur-elektriciteit.pdf; see also Dutch Authority for Consumers and Markets, *Codewijzigingsvoorstel tijdsafhankelijke transporttarieven voor grootverbruikers bij de distributiesysteembeheerders* (in Dutch) (regarding time-dependent transport tariffs), available at: https://www.acm.nl/system/files/documents/codewijzigingsvoorstel-tijdsafhankelijke-transporttarieven-voor-grootverbruikers-bij-de-distributiesysteembeheerders.pdf



Michelle Broere

Tel: +31 20 578 51 97 / Email: michelle.broere@loyensloeff.com

Michelle Broere, attorney at law, is a member of the Banking & Finance expertise group in the firm's Amsterdam office. She focuses on working capital solutions, including structured finance (securitisations) and asset-based lending. Michelle has experience in advising (inter)national enterprises, banks and insurance companies in a broad range of national and international financing transactions. In 2017, Michelle was seconded to the capital markets and treasury team of Coöperatieve Rabobank U.A. Michelle also worked in the New York office (2018) and the London office (2019).



Mark Rebergen

Tel: +31 20 578 58 93 / Email: mark.rebergen@loyensloeff.com

Mark Rebergen, civil law notary, is a partner of the Energy & Infrastructure team in the firm's Amsterdam office. Mark has more than 25 years of experience in corporate advisory, M&A and real estate law. His practice focuses on the energy and infrastructure sectors, including industry and logistics, in particular on the real estate and corporate aspects of national and international transactions and projects. He advises clients ranging from multinational companies to private equity firms, financing parties and institutional investors, on complex real estate structures, joint ventures, acquisitions, divestments, governance matters, corporate structuring, real estate transactions and contract law.



Lonne Rooseboom

Tel: +31 20 578 51 74 / Email: lonne.rooseboom@loyensloeff.com

Lonne M. Rooseboom MRE MRICS, attorney at law, is chairman of the Real Estate practice group. He specialises mainly in transactions with regard to commercial real estate, acquisition of (real estate) companies, turnkey projects and project development. He has experience in commercial real estate transactions and the setting up of joint ventures and investment structures, and provides general advice to companies and government bodies on commercial real estate and commercial real estate-related tax issues. Lonne is a member of the Royal Institution of Chartered Surveyors (RICS) and member of the Master of Real Estate Alumni Association (MRE).



Kim Koops

Tel: +31 20 578 54 75 / Email: kim.koops@loyensloeff.com

Kim Koops is a partner and attorney at law at Loyens & Loeff and heads the firm's Banking & Finance expertise group. He specialises in secured lending, with a particular focus on structured finance transactions, including securitisations, loan portfolio transactions and financial restructurings. He advises a broad range of investors, lenders and financial institutions on complex domestic and cross-border financing matters. In addition to his client work, Kim frequently contributes to legal publications and thought leadership initiatives, reflecting his commitment to developments within the financial markets and the broader banking and finance sector. In addition to his Amsterdam-based practice, Kim gained international experience while working in the firm's New York office from 2013 to 2015.

Loyens & Loeff N.V.

Parnassusweg 300, 1081 LC Amsterdam, Netherlands

Tel: +31 20 578 57 85 / URL: www.loyensloeff.com

Global Legal Insights – Data Centre Financing provides analysis, insight and intelligence across a number of jurisdictions, covering:

- Market overview
- Financing structures
- Real estate considerations
- Power and infrastructure
- Regulatory approvals
- Taking and enforcing security
- Tax structuring
- The year ahead

globallegalinsights.com