# Structuring Bankable Renewable-Plus-Storage Projects: Legal Implications of India's 2026 Viability Gap Funding, Customs Duty Exemptions & Financing Reforms

**PUNYAM BHUTANI**
Associate

**RAESS SOHAIL**
Intern

## Introduction: From Capacity Addition to Dispatchable Power

India's renewable energy transition has decisively moved beyond capacity addition into the era of dispatchable and firm power. For nearly a decade, the sector focused on achieving record-low tariffs for solar and wind generation. Today, the policy architecture reflects a structural pivot toward grid reliability, peak management, and firm and dispatchable renewable energy (FDRE).

The Central Electricity Authority (CEA), in its "Optimal Generation Mix 2030" report, has estimated that India will require 60.63 GW of energy storage capacity by 2029–30, including 41.65 GW from Battery Energy Storage Systems (BESS). This projection underscores that storage is no longer optional infrastructure; it is central to grid planning.

In response, the Government has undertaken a series of coordinated policy measures, including notifying procurement guidelines for BESS across generation, transmission and distribution assets, issuing a National Framework to promote Energy Storage Systems, granting 100% waiver of Inter-State Transmission System (ISTS) charges for eligible Pumped Storage Projects (PSP) and co-located BESS commissioned on or before 30 June 2028 (subject to conditions), and expanding Viability Gap Funding schemes.

These reforms, combined with customs duty recalibration and financing interventions in 2026, signal that renewable-plus-storage (RE+BESS) projects are now the preferred procurement model. However, while policy support has strengthened economic viability, the legal structuring required to make such projects bankable has become significantly more intricate.

## The Expanded VGF Architecture and Its Contractual Consequences

The Government's March 2024 approval of a VGF scheme for development of 13,220 MWh of BESS with an outlay of ₹3,760 crore at ₹27 lakh/MWh, followed by a June 2025 approval of an additional 30 GWh VGF scheme funded through ₹5,400 crore from the Power System Development Fund at ₹18 lakh/MWh, demonstrates the scale of fiscal commitment toward grid-scale storage. These schemes, when read together, reflect an aggressive subsidy-led acceleration of storage deployment.

However, VGF eligibility is not merely financial support, it is conditional compliance. The introduction of Domestic Content Requirements (DCR) for subsidy qualification transforms procurement into a regulatory obligation. EPC contracts must therefore embed origin certification mechanisms, traceability audits, and indemnity protections to shield project companies from VGF clawback exposure. The failure to align procurement documentation with DCR norms could lead to disqualification or subsidy recovery.

Further, front-loaded disbursement structures and compressed commissioning timelines intensify the importance of synchronising Commercial Operation Date (COD) definitions across EPC contracts, PPAs, and subsidy conditions. Any delay in grid readiness, energisation approvals, or transmission connectivity may defer VGF release. In a capital-intensive storage project, such delay could materially affect debt servicing schedules.

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Accordingly, deemed COD provisions and extension-of-time clauses must anticipate transmission dependencies.

Operational conditions under the scheme, including minimum storage duration thresholds and cycling parameters, require that OEM warranties mirror PPA availability obligations. Battery degradation curves must be contractually acknowledged. Where degradation projections diverge from PPA performance guarantees, the project company risks availability penalties and revenue erosion. Financing documents must therefore incorporate reserve mechanisms or augmentation strategies to mitigate mid-life replacement exposure.

**ISTS Waivers and Transmission-Linked Structuring**

The Government has granted 100% ISTS charge waiver for Pumped Storage Projects awarded construction work on or before 30 June 2028 and for co-located BESS commissioned before 30 June 2028, subject to prescribed conditions. This waiver is not merely a transmission incentive; it is a structural determinant of project viability.

ISTS waiver eligibility is time-bound and conditional. Consequently, COD alignment assumes critical importance. If a project misses the commissioning cut-off date, it may forfeit transmission waiver benefits, directly impacting project economics. Legal drafting must therefore integrate transmission readiness risk into milestone schedules, ensuring that grid approvals and energisation certifications are coordinated with subsidy and PPA timelines.

Misalignment between COD for VGF eligibility and COD for ISTS waiver can create cascading commercial consequences. Projects must be structured on the assumption that these regulatory triggers operate independently and must be contractually harmonised.

**Procurement Guidelines, National Framework and Tender Evolution**

The Government has notified guidelines for procurement and utilisation of BESS as part of generation, transmission and distribution assets, issued a National Framework to promote Energy Storage Systems, and released advisories encouraging co-location of storage with solar projects to enhance grid stability and cost efficiency.

Additionally, the Government has sensitised Renewable Energy Implementing Agencies (REIAs) to shift from plain renewable tenders toward solar or wind with storage, peak-hour supply configurations, and Firm and Dispatchable Renewable Energy (FDRE) tenders. This evolution in tender design materially affects PPA drafting.

In FDRE and peak-supply configurations, availability definitions, dispatch control rights, and curtailment compensation frameworks become more complex. Storage-backed PPAs must clearly delineate obligations regarding state of charge, minimum dispatch windows, and compensation for grid-induced non-scheduling. Ambiguity in these clauses could expose developers to performance deductions unrelated to generation capability.

Further, the Government's measures to facilitate PPA signing, including urging States to comply with Renewable Consumption Obligations under the

Energy Conservation Act and advising REIAs to aggregate demand before issuing tenders, suggest a policy emphasis on bankable procurement. For lenders, aggregated demand and pre-aligned off-taker commitments enhance revenue predictability, reducing merchant exposure risk.

**Customs Duty Recalibration and Change in Law Risk**

Parallel to subsidy expansion, the Union Budget 2026–27 introduced calibrated customs duty exemptions on capital goods used in lithium-ion cell manufacturing, critical mineral processing equipment, and certain raw materials. While these measures reduce capital expenditure, they introduce Change in Law sensitivity.

Projects bid prior to such exemptions must examine whether fiscal reductions trigger tariff adjustment claims by offtakers. Conversely, if exemptions are withdrawn, developers may invoke compensatory Change in Law relief. The enforceability of such claims depends on the drafting precision of PPA clauses defining "Law," "cut-off date," and economic restitution.

Procurement contracts must retain flexibility to navigate evolving localisation norms while protecting intellectual property exposure and performance integrity. Fiscal incentives without contractual agility can transform policy benefit into litigation risk.

**Financing Reforms and Capital Stack De-Risking**

Storage projects have historically carried higher cost of capital due to technology risk and uncertain degradation modelling. The Government's multi-pronged approach, including earmarking 10 GWh capacity under the National Programme on Advanced Chemistry Cell (ACC) Battery Storage and supporting R&D under the Renewable Energy Research and Technology Development Programme and Clean Energy Material Initiative, signals long-term industrial strategy.

Financing reforms such as partial credit support mechanisms and accelerated concessional lending are designed to reduce spreads and improve debt structuring. However, these reforms also intensify lender scrutiny of fire safety compliance, thermal runaway risk allocation, environmental liabilities and end-of-life recycling obligations under the Battery Waste Management framework.

Debt documentation must therefore reflect not only cash flow projections but safety certification, insurance coverage alignment, and environmental compliance warranties. Storage assets are increasingly treated as regulated infrastructure requiring layered technical and legal due diligence.

**Conclusion: Structuring as Strategic Advantage**

India's 2026 reforms have materially improved the economic viability of storage-backed renewable projects. The Government's expansion of VGF schemes, ISTS waivers, procurement guidelines and institutional support measures reflects a coordinated policy shift toward dispatchable renewable power. Yet economic viability does not automatically translate into bankability.

Bankability in the RE+BESS era demands precise allocation of regulatory, procurement, performance and financing risks. Change in Law clauses must be drafted with clarity, EPC warranties must mirror PPA performance obligations, COD definitions must align across subsidy and transmission frameworks, and compliance with DCR and environmental obligations must be structurally insulated.

The shift from megawatts to megawatt-hours marks a transition from tariff-driven competition to contract-driven sophistication. In this evolving market, first movers will hold a tangible advantage. Developers and lenders who internalise these structuring disciplines early will shape contractual standards and secure capital more efficiently. As the storage market matures, it will not be policy announcements alone that determine success, it will be the precision of legal architecture underpinning each project.

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