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INDIAN DEPOSITORY RECEIPTS: A STUDY OF LEGAL PROVISIONS

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ABSTRACT:

Indian Depository Receipts: A Gateway to Global Investment in India:

In an era of rapid globalization, financial markets have become increasingly integrated, allowing capital to flow across borders with unprecedented ease. Investors, whether institutional or retail, now seek exposure to a diverse array of opportunities, not just within their domestic markets but also internationally. This global appetite for cross-border investment has led to the creation of financial[1] instruments that facilitate such transactions while navigating the complex web of domestic regulations and foreign exchange controls. Among these, Depository Receipts (DRs) have emerged as a vital tool for enabling foreign companies to access new markets and for domestic investors to tap into international equities without leaving their own jurisdictions.

The Indian financial landscape, shaped by a robust regulatory framework and a large pool of investors, offers fertile ground for innovation and cross-border participation. Recognizing the need to integrate more deeply with global capital markets, India introduced Indian Depository Receipts (IDRs) as a legal and financial instrument to allow foreign companies to raise capital in India and Indian investors to invest in foreign equities through a structured and regulated mechanism.An Indian Depository Receipt is a financial instrument denominated in Indian Rupees and issued by a domestic depository in India against the underlying equity shares of a foreign company. These instruments are listed and traded on Indian stock exchanges[2] and represent a fixed number of equity shares held with an overseas custodian. Much like American Depository Receipts (ADRs) and Global Depository Receipts (GDRs), which allow foreign

[1] Emily Jones, Peter Knaack, Global Financial Regulation: Shortcomings and Reform Options, Online Library (March 20, 2025, 8:10 P.M), Global Financial Regulation: Shortcomings and Reform Options - Jones - 2019 - Global Policy - Wiley Online Library.
[2] Prepp, Indian Depository Receipt (IDR) - Indian Economy Notes (last visited March 20, 2025).

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entities to raise capital in the United States and European markets, respectively, IDRs serve as India's version of facilitating inbound investment in a regulated and transparent manner.

The journey of IDRs in India, however, has been cautious and limited. Despite the potential benefits, the practical uptake of IDRs has been minimal, with only a handful of foreign companies opting to utilize this route—most notably, Standard Chartered PLC in 2010, which remains the first and only notable IDR issue in India to date. This limited adoption has sparked academic and regulatory interest in evaluating the legal underpinnings, challenges, and opportunities associated with IDRs in India. This article aims to provide an in-depth analysis of the legal provisions governing Indian Depository Receipts, tracing their regulatory framework, eligibility norms, compliance requirements, and operational mechanisms. It also delves into the comparative structures of DRs in other jurisdictions to highlight the distinctiveness and commonalities of India's approach. By dissecting the statutory framework, particularly under the Companies Act, SEBI regulations, FEMA, and the Depositories Act, this study seeks to highlight the strengths and weaknesses of the current IDR regime.

Furthermore, the article explores the practical and regulatory challenges that have contributed to the tepid response from foreign companies, including tax implications, compliance burdens, and investor awareness issues. Through an examination of case laws, SEBI circulars, and scholarly commentary, the paper will assess whether the existing legal framework adequately facilitates the intended goals of internationalization and investment access. The ultimate objective is to propose constructive legal reforms and policy suggestions that could revitalize the IDR framework, making it a more attractive and efficient tool for cross-border investment. This becomes especially relevant in the current context where India is seeking to become a global financial hub[3] and integrate more seamlessly with international markets. By studying IDRs as a unique intersection of corporate law, securities regulation, and international finance, this article contributes to a better understanding of how legal structures can either enable or hinder financial innovation. It also offers insights into how India can position itself as a viable destination for foreign issuers while safeguarding the interests of its domestic investors.

[3] Times of India, It's India's moment in history, well poised to become developed nation by 2047: ITC chief Puri - The Times of India (last visited March 20, 2025).

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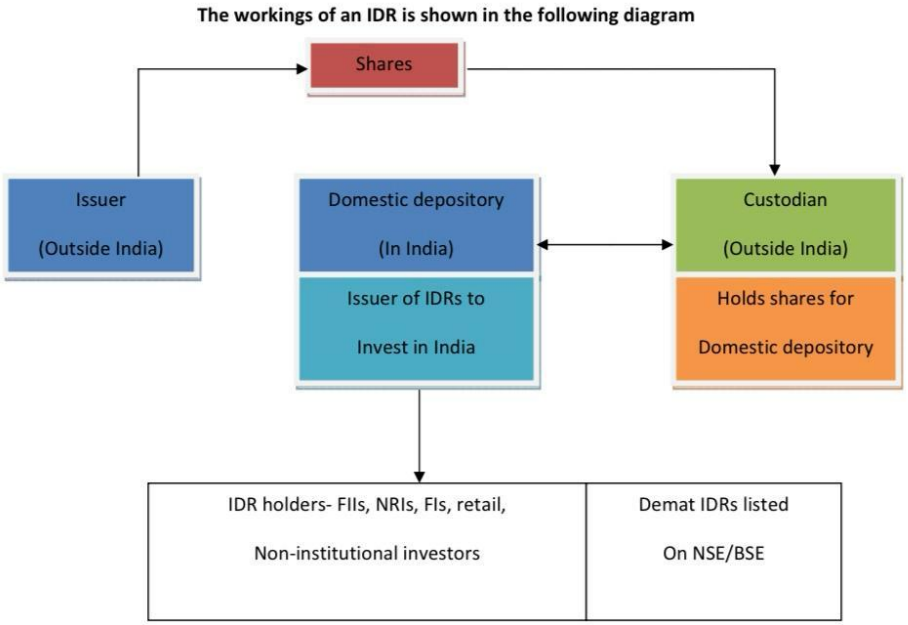

Conceptual Framework of Indian Depository Receipts (IDRs):

Definition and Nature of Indian Depository Receipts:

Indian Depository Receipts (IDRs) are financial instruments issued by a domestic depository in India, representing ownership in equity shares of a foreign company. In essence, they are like a mirror of shares listed on foreign exchanges[4] but made available for trading within India. The foreign company deposits its shares with[5] an overseas custodian bank, which in turn allows an Indian depository (usually a bank registered with SEBI) to issue IDRs to Indian investors. These instruments are denominated in Indian Rupees and traded on Indian stock exchanges, thereby allowing Indian investors to invest in foreign companies without dealing directly with foreign stock markets or currencies. The IDR mechanism ensures that investors in India can diversify their portfolio internationally while still operating within a domestic legal and regulatory framework. At the same time, foreign companies gain access to the vast Indian capital market without undergoing the complex procedures involved in directly listing in India.

Structure of an IDR Transaction:

[4] Jeremy Milleson, Investing Abroad: Weighing the Decision Between Foreign Ordinaries and ADRs, (March 20, 2025, 8:10 P.M), Parametric---Whitepaper---Investing-Abroad-Weighing-the-Decision-Between-Foreign-Ordinaries-and-ADRs.pdf.

[5] Faster capital, Depositary Receipts: Depositary Receipts: The Dual Listing Passport for Global Markets - FasterCapital (last visited March 20, 2025).

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The issuance and trading of IDRs follow a structured multi-tier process. Here is a breakdown of the key steps:

1. **Appointment of Parties**: The foreign company appoints an overseas custodian and a domestic depository in India.[6]
2. **Deposit of Underlying Shares**: The foreign company issues or deposits a fixed number of its equity shares with the overseas custodian.
3. **Issuance of IDRs**: The Indian depository issues corresponding IDRs in India, which are backed by the underlying shares held with the custodian.[7]
4. **Regulatory Filings**: The foreign company and domestic depository file required documents with SEBI and follow disclosure norms under the SEBI (ICDR) Regulations, 2018[8].
5. **Trading**: IDRs are listed on recognized Indian stock exchanges and are traded like any other equity security.
6. **Investor Participation**: Investors subscribe to these IDRs during the issuance and can buy/sell them in the secondary market.

This system is designed to maintain the integrity and legality of the transaction while ensuring that the IDRs accurately represent ownership of the underlying foreign equity.

Parties Involved in an IDR Issuance:

1. Foreign Issuing Company: This is the entity whose shares are represented by the IDRs. It must comply with Indian as well as home country regulations.
2. Overseas Custodian Bank: A bank in the foreign company's home jurisdiction holds the underlying shares and coordinates with the Indian depository.
3. Domestic Depository: A SEBI-registered entity in India that issues IDRs against the underlying shares.
4. Securities and Exchange Board of India (SEBI): The primary regulator overseeing the IDR issuance process, ensuring transparency, investor protection, and compliance.

[6] Faster Capital, Cross Border Investment: Understanding the Nuances of Cross Border Investment and FDI - FasterCapital (last visited March 20, 2025).
[7] Abey Francis, Indian Depository Receipts (IDRs), MBAKnol (March 20, 2025, 8:10 P.M), Indian Depository Receipts (IDRs) - MBA Knowledge Base.
[8] Putrevu Ratna Susmitha, Demystifying SEBI (ICDR) Regulations, 2018: A Comprehensive Guide, Tax Concept (March 20, 2025, 8:10 P.M), Demystifying SEBI (ICDR) Regulations, 2018: A Comprehensive Guide TAXCONCEPT.

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5. Indian Investors: Retail and institutional investors in India who purchase and trade the IDRs.
6. Merchant Bankers and Legal Advisors: These intermediaries assist in structuring, regulatory compliance, and drafting disclosure documents.

Comparison with ADRs and GDRs:

While IDRs are the Indian counterpart to ADRs (American Depository Receipts) and GDRs (Global Depository Receipts), there are notable differences:[9]

Feature	IDRs	ADRs	GDRs
Issued In	India	United States	Europe/Global
Currency	INR	USD	USD/Euro
Regulator	SEBI	SEC	Varies (e.g., FCA, Luxembourg CSSF)
Fungibility	Limited	Fully/Partially Fungible	Often Fungible
Underlying Shares	Foreign Company	Foreign Company	Foreign Company
Tax Treatment	Indian Law	U.S. Law	Depends on jurisdiction

IDRs are more constrained in terms of fungibility and conversion. Unlike ADRs/GDRs, which often allow conversion back into underlying shares or vice versa, IDRs are typically non-convertible or have limited fungibility, making them less attractive for arbitrage opportunities.

Benefits and Risks for Investors and Issuers:

Benefits for Investors:

- **Access to Global Companies**: Indian investors can gain exposure to the performance of reputed foreign corporations.
- **Diversification**: Investing in foreign equities through IDRs allows portfolio diversification.[10]

[9] Kotak Securities, ADRs vs GDRs: Understand Key Differences & Benefits for Investors | Kotak Securities (last visited March 20, 2025).
[10] Prepp, Indian Depository Receipt (IDR) - Indian Economy Notes (last visited March 20, 2025).

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- **Rupee Denomination**: IDR's are denominated in INR, avoiding foreign exchange risks at the investor level.
- **Domestic Platform**: IDR's are listed on Indian stock exchanges, making them accessible via existing trading accounts.

Benefits for Issuers:

- **Access to Indian Capital Markets**: Foreign companies can raise funds from India without listing directly.
- **Market Expansion**: Helps foreign companies build visibility and brand presence in India.
- **Regulatory Familiarity**: IDR's allow access to capital while avoiding direct compliance with Indian corporate law applicable to domestic issuers.

Risks for Investors:

- **Limited Rights**: IDR holders generally do not enjoy voting rights unless specifically granted.
- **Liquidity Risks**: Given low adoption, IDRs may suffer from poor secondary market liquidity.
- **Regulatory Complexity**: Cross-border compliance and tax rules may change, affecting returns.
- **Lack of Fungibility**: Difficulty in converting IDRs into underlying shares limits exit options.

Risks for Issuers:

- **Compliance Costs**: Meeting Indian regulatory and disclosure norms can be expensive and burdensome.
- **Limited Fundraising Impact**: Given the lukewarm investor interest so far, capital raising may not be very successful.
- **Reputational Risks**: Regulatory or operational missteps in a new market can hurt global reputation.[11]

Legal Framework Governing Indian Depository Receipts (IDRs):

[11] Faster capital, Cross Border Investment: Understanding the Nuances of Cross Border Investment and FDI - FasterCapital (last visited March 20, 2025).

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The issuance and trading of Indian Depository Receipts (IDRs) are governed by a multi-layered legal framework in India, comprising corporate, securities, taxation, and foreign exchange laws. The intricate legal architecture ensures regulatory oversight, investor protection, and transparency while enabling foreign entities to access Indian capital markets. This section provides an overview of the principal legislations[12] and regulations that shape the legal environment for IDRs, including recent reforms aimed at facilitating greater participation and improving market efficiency.

The Companies Act, 2013:

The Companies Act 2013 is the cornerstone[13] of corporate regulation in India and contains several provisions relevant to IDRs. Section 390 of the Act empowers the Central Government[14] to make rules for the offering of securities by foreign companies in India, including through IDRs. The Companies (Registration of Foreign Companies) Rules, 2014, enacted under this Act, provide procedural requirements that foreign companies must comply with before issuing IDRs. These rules mandate the filing of prescribed forms, documentation of financial statements, and appointment of authorized representatives in India. The Act ensures that foreign companies issuing IDRs are brought under a regulatory umbrella similar to that of domestic public companies in terms of disclosure and governance norms.

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018:

The SEBI (ICDR) Regulations, 2018, play a pivotal role in governing the issuance process of IDRs. These regulations lay down eligibility conditions for foreign issuers, such as a minimum average market capitalization, profitability track record, and compliance with home country regulations. As per these regulations, foreign companies must issue a draft prospectus containing disclosures equivalent to Indian public offerings. SEBI scrutinizes these documents and ensures that necessary risk factors, financials, business models, and regulatory proceedings are disclosed to protect Indian investors. Furthermore, the pricing, allotment, lock-in periods, listing requirements, and responsibilities of merchant bankers are also covered under this

[12] Resource HUB, Listing documentation and process | Indian Stock Exchanges | Cross-Border Listings Guide | Baker McKenzie Resource Hub (last visited March 20, 2025).
[13] Lemon insights, The Companies Act, 2013: Key Facts & Insights (last visited March 20, 2025).
[14] Kanoongpt, Section 390: Offer Of India Depository Receipts | The Companies Act, 2013 (last visited March 20, 2025).

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regulatory framework. These regulations ensure a robust and transparent environment for the issuance of IDRs.

Foreign Exchange Management Act (FEMA), 1999:

Since IDR's involve cross-border capital flows, FEMA and the rules framed thereunder are integral to the IDR ecosystem. The Reserve Bank of India (RBI)[15], under FEMA, regulates capital account transactions, which include investments in IDRs by Indian residents. The FEMA (Transfer or Issue of Any Foreign Security) Regulations, 2004, stipulate conditions under which Indian residents may invest in IDRs. Although IDRs are rupee-denominated instruments traded in India, the underlying shares are held abroad, making foreign exchange controls relevant. RBI guidelines specify that IDRs are not freely convertible into underlying shares, thereby restricting the fungibility and transferability of IDRs, a limitation that has affected their popularity.

Depositories Act, 1996:

The Depositories Act, 1996, governs the functioning of depositories in India and plays a critical role in IDRs, which are issued in dematerialized form. This Act provides the legal foundation for the dematerialization, transfer, and settlement of securities, including IDRs. The domestic depository issuing IDRs must be registered under this Act and comply with its provisions. This ensures that IDRs are held securely in electronic form and traded efficiently on stock exchanges. The depositories (such as NSDL and CDSL) provide infrastructure for safekeeping, transfer, and corporate actions related to IDRs[16]. Investor protection is also ensured through regulatory oversight of depository participants and transparency in settlement mechanisms.

Income Tax Act, 1961 – Tax Implications:

The tax treatment of IDR is a significant determinant of its attractiveness to both issuers and investors. The Income Tax Act, 1961[17] provides specific provisions on the taxation of income arising from IDRs. Generally, dividends received on IDRs are taxable in the hands of the investors as per the applicable slab rates. Capital gains tax also applies when IDRs are sold on the secondary market, with distinctions between short-term and long-term capital gains based

[15] Law for everything, Foreign Exchange Management Act (Fema Act), 1999 (last visited March 20, 2025).
[16] StockGro, Indian Depository Receipts (IDR): Meaning, Full Form & Process (last visited March 20, 2025).
[17] RBI, Reserve Bank of India - Foreign Exchange Management Act Notification (last visited March 20, 2025).

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on the holding period. Importantly, there is ambiguity around the applicability of Double Taxation Avoidance Agreements (DTAAs)[18] in IDR transactions, particularly since the underlying asset is a foreign security. Such tax uncertainties deter investors and need further clarification through legislative amendments or CBDT circulars.

RBI Guidelines (If Any Applicable):

Though IDRs are primarily regulated by SEBI and the Ministry of Corporate Affairs, the Reserve Bank of India (RBI) plays a supplementary role in regulating aspects relating to capital movement and foreign investments. RBI's role is primarily executed through FEMA regulations and associated circulars. The central bank has issued guidelines specifying that Indian mutual funds and insurance companies can invest in IDRs, subject to ceilings prescribed under their respective sectoral caps for overseas investments. RBI also monitors remittances related to IDR transactions, including dividend payments and repatriation of proceeds. However, RBI's reluctance to permit the conversion of IDRs into underlying shares[19] without prior approval has restricted the appeal of IDRs among arbitrageurs and sophisticated investors.

Recent Amendments and Reforms:

Several amendments have been introduced over the years to encourage foreign companies to consider IDRs as a viable mode of accessing Indian capital markets. For example, SEBI eased disclosure norms by allowing abridged financial statements under certain conditions. Regulatory relaxations were also introduced in terms of minimum public shareholding and lock-in requirements to make the issuance process smoother. However, despite such efforts, the practical adoption of IDRs has remained limited, prompting policymakers to re-evaluate the regulatory framework. The simplification of procedural requirements and greater clarity on tax and repatriation rules are frequently cited as necessary reforms to revive the IDR mechanism.

Summary of Key Legal Provisions and Compliance Requirements:

To summarize, the issuance and management of IDRs involve a complex interplay of several laws and regulatory frameworks:

[18] Tax2win, Dividend Tax: Tax on Dividend Income & Dividend Tax Rate for FY 2023-24 - Tax2win (last visited March 20, 2025).
[19] RBIDOCS, APDIR5220709.pdf (last visited March 20, 2025).

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- **Companies Act, 2013**: Establishes legal recognition and procedural obligations for foreign companies.
- **SEBI (ICDR) Regulations, 2018**[20]: Provides the comprehensive regulatory framework for issuance, disclosure, and listing of IDRs.
- **FEMA and RBI Guidelines**: Govern capital flows, investment limits, and fungibility aspects.
- **Depositories Act, 1996**: Ensures dematerialization and efficient trading of IDRs.
- **Income Tax Act, 1961**: Determines taxation of returns from IDRs and capital gains.
- **Stock Exchange Listing Norms**: Require compliance with listing and trading rules of Indian exchanges like NSE or BSE.

Collectively, these legal instruments are designed to protect investor interests, ensure corporate accountability, and provide a standardized process for foreign issuers. Nonetheless, the overlapping compliance obligations and lack of practical clarity have led to limited enthusiasm for IDRs. A harmonized, investor-friendly legal regime, along with fiscal incentives and broader market reforms, is essential to unlocking the potential of IDRs in India.

Eligibility Criteria and Process for Issuing Indian Depository Receipts (IDRs):

The issuance of Indian Depository Receipts (IDRs) is subject to a stringent eligibility framework designed to ensure that only well-established and financially sound foreign companies can tap into Indian capital markets. The Securities and Exchange Board of India (SEBI), in collaboration with the Ministry of Corporate Affairs and the Reserve Bank of India (RBI)[21], has laid down clear guidelines regarding the qualifications a foreign company must meet to issue IDRs, the roles of market intermediaries, the process of application and allotment, as well as the trading and post-issue norms. This legal and procedural rigor is intended to safeguard the interests of Indian investors and maintain market integrity.

Criteria for Foreign Companies to Issue IDRs in India:

A foreign company seeking to raise capital through IDRs in India must fulfill specific eligibility conditions as laid out primarily in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. Firstly, the foreign company must be listed in its home country and must

[20] Putrevu, *Supra Note 8*, at 2174.
[21] Latest Laws, Companies (Registration of Foreign Companies) Rules, 2014 (last visited March 20, 2025).

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have a good track record of compliance with its own domestic regulatory requirements. The issuing company should have been in existence and operational for at least three years preceding the issue. Additionally, it must have a track record of profitability or a net worth that satisfies SEBI's prescribed minimum thresholds, such as having an average pre-tax profit of not less than INR 15 crore during the preceding three financial years.

The company must also not be prohibited by any regulatory authority in its home country from issuing securities and should not have been debarred from accessing capital markets by any regulatory body, including SEBI. Furthermore, IDRs can only be issued if the company's securities are fully paid up and rank pari passu with existing securities. The entity must also appoint a SEBI-registered merchant banker and a domestic depository[22] to assist with the issue process and comply with Indian disclosure and filing norms.

Role of SEBI and Stock Exchanges:

SEBI acts as the principal regulatory[23] authority overseeing the entire process of IDR issuance. It is responsible for granting final approval based on the adequacy of disclosures, eligibility of the issuer, compliance with the regulatory framework, and safeguarding investor interest. The draft prospectus or offer document submitted to SEBI must contain information analogous to what is required for an initial public offering (IPO)[24] by an Indian company. SEBI may also seek clarifications, mandate additional disclosures, or impose conditions on the issuance.

Stock exchanges such as the Bombay Stock Exchange (BSE) or the National Stock Exchange (NSE) also play a vital role. IDRs can only be listed and traded on recognized Indian exchanges. The exchanges ensure compliance with listing norms, conduct due diligence, and monitor post-issue obligations such as disclosures and corporate actions. Additionally, exchanges provide a platform for investors to trade IDRs, thereby facilitating liquidity in the secondary market.

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Due Diligence and Disclosure Norms:

The due diligence process is critical in an IDR issuance and is carried out by the lead merchant banker and legal advisors. This involves verifying the accuracy of the issuer's financial statements, ensuring compliance with home country laws, assessing litigation risks, and

[22] Resource, *Supra Note 12*, at 2177.
[23] NEXT IAS, Securities and Exchange Board of India (SEBI) (last visited March 20, 2025).
[24] CS Aditya Joshi, Process And Compliances for Initial Public Offering (IPO), Tax Guru (March 20, 2025, 8:10 P.M), Process And Compliances for Initial Public Offering (IPO).

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examining corporate governance practices. The issuer must provide disclosures regarding its business operations, risk factors, financial results, management structure, and any material legal proceedings.

The offer document, known as the prospectus, must be filed with SEBI and be made available to investors. This prospectus must also disclose the rights of IDR holders, such as dividend entitlements, redemption or buyback provisions (if applicable), and any voting rights, which are typically restricted or conditional. Furthermore, the issuer must commit to regular disclosures post-listing, including quarterly financials and reports on material events, much like an Indian listed entity.

Application and Allotment Procedure:

Once SEBI grants its approval and the prospectus is finalized, the issuance enters the application phase. IDRs are typically issued through a public offering to Indian investors. Investors can apply through stockbrokers using the ASBA[25] (Application Supported by Blocked Amount) mechanism, wherein funds are blocked in their bank accounts until allotment is finalized.

Allotment is made based on the demand received, and oversubscription may lead to proportionate allotment. The IDRs are credited in dematerialized form to the investor's depository account. The entire allotment process must adhere to the timelines and norms specified by SEBI and the stock exchanges to ensure transparency and investor confidence. Refunds, if applicable, must be processed within the prescribed period.

Listing and Trading Norms:

Post allotment, the IDRs are listed on Indian stock exchanges[26], where they can be freely traded like equity shares. However, IDRs are non-convertible by default, meaning investors cannot exchange them for the underlying foreign shares unless specifically permitted under RBI and SEBI regulations. This limits the arbitrage opportunities and secondary market appeal compared to other global depository instruments like ADRs and GDRs.

Issuers must comply with continuous listing requirements, which include regular financial disclosures, adherence to corporate governance norms, and timely reporting of material

[25] Fedral Bank, ASBA - Application Supported by Blocked Amount | ASBA Registration (last visited March 20, 2025).

[26] Credence, Indian Depository Receipt (IDR) | Definition And Benefits (last visited March 20, 2025).

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developments. The trading of IDRs is subject to the rules of the respective stock exchange and SEBI's regulations on insider trading and fraudulent trade practices.

Repatriation and Fungibility Issues:

One of the major challenges in IDR investment has been the restriction on repatriation and fungibility. While the IDRs are denominated in Indian Rupees and traded in India, the underlying securities are foreign assets. Indian investors cannot freely convert their IDR's into underlying shares[27] or sell those shares in foreign jurisdictions without prior regulatory approval. This restriction on fungibility curbs the flexibility of IDRs and makes them less attractive to sophisticated investors who may seek cross-border arbitrage or portfolio rebalancing.

Similarly, dividend income received from the underlying foreign company is subject to currency conversion, foreign tax withholding (if any), and Indian taxation laws, which complicate repatriation for the investors. These limitations have been significant deterrents to wider market participation and need to be addressed through coordinated regulatory reforms.

Example: Standard Chartered IDR Issue in 2010 – Success and Challenges:

The only notable instance of IDR issuance in India so far has been that of Standard Chartered PLC in 2010. This landmark transaction involved the issuance of 240 million IDRs[28], raising approximately INR 2,500 crore (around USD 500 million). The issuance was managed by top-tier merchant banks and was fully subscribed, marking a significant milestone in the evolution of cross-border capital flows in India.

However, despite its initial success, the Standard Chartered IDR faced several post-issuance challenges. The limited trading volumes, lack of investor understanding, and regulatory restrictions on conversion hampered its performance in the secondary market. Moreover, uncertainties surrounding tax treatment and compliance costs further discouraged similar issuances by other foreign companies. The lack of follow-up IDR issuances since then underscores the systemic issues that need to be addressed to revive this mechanism.

Comparative Analysis: IDRs and Other Instruments:

[27] Lexygen, lexygen.law/post/sebi-ruling-on-idr-conversion-one-step-forward-two-steps-back (last visited March 20, 2025).
[28] *Id at 2183.*

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Indian Depository Receipts (IDRs) are part of a broader global mechanism that allows investors to gain exposure to foreign companies without directly investing in their shares. However, the IDR structure is unique to India and presents distinctive features that differentiate it from other financial instruments such as American Depository Receipts (ADRs), Global Depository Receipts (GDRs), Foreign Currency Convertible Bonds (FCCBs), External Commercial Borrowings (ECBs), and even traditional equity shares. A comparative understanding of these instruments is crucial to assess the role and potential of IDRs in India's capital market framework.

IDRs vs ADRs and GDRs:

IDRs are structurally similar to ADRs and GDRs, which are commonly used by Indian companies to raise capital abroad. While ADRs are traded on U.S. exchanges and GDRs on European or other international exchanges, IDRs allow foreign companies to raise capital in India. The key difference lies in the regulatory regime: IDRs are governed by Indian laws, such as SEBI regulations, whereas ADRs and GDRs fall under U.S. SEC or other jurisdictional rules. Additionally, ADRs and GDRs often offer fungibility, allowing investors to convert receipts into underlying shares, while IDRs lack such straightforward conversion mechanisms, limiting investor flexibility.[29]

IDRs vs Equity Shares:

Unlike equity shares, IDRs do not grant voting rights or direct ownership of the underlying company. They represent beneficial interest, allowing investors to earn dividends but not participate in corporate governance. Equity shareholders in India can vote, receive dividends, and have a claim on residual assets in case of liquidation. IDRs, on the other hand, are structured financial instruments representing ownership of foreign equity held in trust by a domestic depository. This lack of control and representation makes IDRs less attractive for long-term or strategic investors compared to equity.

IDRs vs FCCBs and ECBs:

Foreign Currency Convertible Bonds (FCCBs) and External Commercial Borrowings (ECBs) are debt instruments through which Indian companies raise capital from abroad. Unlike IDRs,

[29] Corporate Law Reporter, Indian Depository Receipts - Corporate Law Reporter (last visited March 20, 2025).

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which are equity-like instruments for investing in foreign companies within India, FCCBs and ECBs involve borrowing by Indian entities from overseas investors.[30] FCCBs can be converted into equity shares, offering investors an upside if the issuer performs well, while ECBs must be repaid with interest. IDRs, by contrast, are non-debt instruments and do not carry an obligation of repayment or interest but are subject to dividend payout if declared by the foreign company.

Case Studies from Other Jurisdictions:

The United States and European Union[31] have long adopted depository receipts as instruments for global investment and capital access. ADRs in the U.S. are commonly issued by non-American companies such as Alibaba, Toyota, and Infosys to tap into the vast U.S. investor base. These receipts are highly liquid, offer regulatory clarity, and enjoy wide investor participation due to investor protection norms and well-established conversion mechanisms. Similarly, Europe has seen successful GDR issuances from companies based in emerging markets, offering lessons on structuring, disclosure, and post-issue management that India can adapt to improve its IDR framework.

Lessons India Can Learn from International Practices:

India can enhance its IDR regime by adopting global best practices[32]. For instance, the fungibility of ADRs and GDRs should be mirrored in IDRs to allow two-way conversions, thereby attracting more sophisticated investors. Regulatory simplification, especially with regard to taxation and repatriation of proceeds, is also essential to increase participation. Additionally, investor education campaigns and improved market-making mechanisms can enhance liquidity in IDR trading. By harmonizing its IDR norms with global standards, India can encourage more foreign companies to list in its markets and provide domestic investors with broader exposure to global equity.

Comparative Summary Table: IDRs vs Other Financial Instruments

[30] *Id at 2184.*
[31] Georgia Wood and James Andrew Lewis, The CLOUD Act and Transatlantic Trust, CSIS (March 20, 2025, 8:10 P.M), The CLOUD Act and Transatlantic Trust.
[32] Sakshi Jain, SEBI's Role in Regulating the Indian Capital Market, Tax guru (March 20, 2025, 8:10 P.M), https://taxguru.in/sebi/sebis-role-regulating-indian-capital-market.html.

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Feature	IDRs	ADRs/GDRs	Equity Shares	FCCBs	ECBs
Issuer	Foreign company	Indian/foreign company	Indian company	Indian company	Indian company
Investor Base	Indian investors	Foreign investors	Indian investors	Foreign investors	Foreign investors
Market	Indian stock exchanges	U.S./Europe stock exchanges	Indian stock exchanges	International debt market	International debt market
Regulator	SEBI, RBI	SEC (U.S.), EU regulators	SEBI	RBI, SEBI	RBI
Ownership Rights	No direct voting rights	Limited or no voting rights	Full voting and ownership rights	Convertible to equity, limited rights	No ownership rights
Fungibility	Limited	Generally allowed	Not applicable	After conversion	Not applicable
Currency	INR	USD, EUR, etc.	INR	USD or other foreign currency	USD or other foreign currency
Risk Type	Equity-like	Equity-like	Pure equity	Debt with equity option	Debt
Dividend / Interest	Dividend (if declared by issuer)	Dividend (if declared)	Dividend (as per company policy)	Fixed interest or convertible dividend	Fixed interest
Redemption	No redemption unless structured so	Generally convertible	Not redeemable	Redeemable or convertible	Redeemable

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Listing Requirements	Indian listing norms	U.S./EU norms	Indian norms	Subject to ECB policy	Subject to ECB policy

Challenges and Practical Issues in IDR Regime:

Despite the theoretical appeal and regulatory framework supporting Indian Depository Receipts (IDRs)[33], their practical implementation in India has encountered several significant challenges. While IDR was envisioned as a means to enable Indian investors to participate in the global capital market by investing in foreign companies without breaching exchange control norms, the reality has been far less successful. The lack of sustained interest from foreign companies[34], minimal investor enthusiasm, and multiple regulatory and operational hurdles have rendered IDRs an underutilized instrument in the Indian financial ecosystem.

Low Adoption and Lack of Interest Among Foreign Companies:

Since their introduction, the uptake of IDRs has been remarkably low, with Standard Chartered Bank's 2010 issuance remaining the sole major example. The absence of subsequent issuances highlights the reluctance of foreign companies to enter the Indian capital market through this route. Several factors contribute to this disinterest[35], including India's regulatory complexities, limited market size compared to developed economies, and concerns over post-issue compliance. Foreign companies often find it more attractive to list on larger, more liquid international exchanges, where there is greater visibility and participation from institutional investors. Consequently, the IDR regime has failed to gain the momentum initially envisioned by policymakers.

Regulatory Complexity and High Compliance Cost:

A major deterrent to IDR issuances is the multi-layered and often cumbersome regulatory compliance framework. Issuers must adhere to several Indian statutes, including the Companies Act, SEBI regulations, the Foreign Exchange Management Act (FEMA), the Depositories Act, and taxation laws. Each of these comes with its own procedural requirements, disclosure

[33] Prepp, Indian Depository Receipt (IDR) - Indian Economy Notes (last visited March 20, 2025).
[34] Faster Capital, Depositary Receipts: Depositary Receipts: The Dual Listing Passport for Global Markets - FasterCapital (last visited March 20, 2025).
[35] Ricago, Blog | Regulatory compliance services | Regulatory compliance in India (last visited March 20, 2025).

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obligations, and penalties for non-compliance. This fragmented regulatory structure not only increases the cost of issuance but also deters foreign companies unfamiliar with Indian legal systems. For many companies, the benefit of raising capital in India does not outweigh the effort and expenditure required to comply with this complex regime.

Taxation Hurdles and Repatriation Issues:

Another major barrier to the success of IDRs is the unclear and often burdensome tax treatment applicable to IDR holders and foreign issuers. Dividend income received by Indian investors is subject to taxation in India, and depending on the country of the issuer, it may also be taxed at the source. This dual taxation reduces the effective returns for investors. Further, capital gains arising from the sale of IDRs are also subject to Indian tax laws, which may differ significantly from international norms, making the instrument less attractive.[36]

The repatriation of proceeds adds another layer of complexity. Since IDR's are denominated in Indian rupees but are backed by foreign equity, repatriating dividends or proceeds from buybacks or redemption to the foreign issuer may involve foreign exchange approvals, taxation compliance, and procedural delays. This creates friction in capital flow and reduces the appeal of IDRs for foreign companies that operate with greater flexibility in other jurisdictions.

Investor Awareness and Liquidity Problems:

Indian investors, particularly retail participants, have limited awareness of IDRs and how they function. Unlike equity shares of Indian companies, which are familiar and widely traded, IDRs represent foreign ownership interests and come with a set of unique characteristics that are not well understood by most investors. The lack of understanding leads to low participation, which in turn affects liquidity on stock exchanges.

Liquidity is a key determinant of investor confidence. The Standard Chartered IDRs, for example, saw extremely low trading volumes post-listing, making it difficult for investors to enter or exit their positions at a fair price. This illiquidity discourages investment and contributes to a vicious cycle of limited demand and low market activity. Institutional investors, too, are hesitant to invest in instruments that lack adequate trading volumes and price discovery mechanisms.

[36] Resource, *Supra Note. 12,* at 2177.

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Limited Fungibility and Lack of Conversion Provisions:

One of the most critical shortcomings[37] of the IDR framework is the absence of clear provisions for fungibility and conversion. Fungibility allows depository receipts to be converted into the underlying equity shares and vice versa, which is common in the case of ADRs and GDRs. However, in India, IDRs are non-fungible by default and can only be converted into the underlying equity shares with prior approval from regulators like SEBI and RBI. This restriction hampers investor flexibility and discourages sophisticated investors who seek arbitrage opportunities and dynamic portfolio allocation.

Moreover, without the ability to convert IDRs into the underlying shares, investors cannot benefit from opportunities in the foreign issuer's home market. They are limited to whatever returns are realized within the Indian market, thereby missing out on full exposure to the foreign company's value. This limited fungibility restricts the international appeal of the instrument and places Indian investors at a relative disadvantage compared to their global counterparts.

Role of Intermediaries and Their Responsibilities:

Intermediaries such as domestic depositories, merchant bankers, legal advisors, and custodians play a pivotal role in the IDR issuance and post-issuance processes. However, a lack of clarity[38] in the division of responsibilities and insufficient accountability mechanisms have led to operational inefficiencies. The domestic depository, for instance, is tasked with holding the underlying foreign shares and issuing IDRs in India. Any lapse in managing this dual obligation can affect the interests of investors and lead to reputational risks for the market.

Moreover, due diligence by merchant bankers and legal advisors must be comprehensive and robust, especially given that the issuer is a foreign company subject to a different regulatory regime. Any shortcomings in this process can result in poor disclosures, investor grievances, and even regulatory action. There is also a need for stronger oversight mechanisms to ensure intermediaries perform their functions with due care and responsibility.

Judicial and Regulatory Developments:

[37] Times of India, It's India's moment in history, well poised to become developed nation by 2047: ITC chief Puri - The Times of India (last visited March 20, 2025).

[38] Galaxiez, The impact of unclear responsibilities and expectations on people and work - Galaxiez (last visited March 20, 2025).

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The regulatory landscape surrounding Indian Depository Receipts (IDRs)[39] has evolved gradually since their inception. While there has been limited judicial scrutiny of IDRs specifically, regulatory authorities such as the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), and the Ministry of Corporate Affairs (MCA) have issued clarifications, notifications, and reforms that have had a significant impact on the operational framework of IDRs in India. These interventions reflect both the attempts to streamline the IDR process and the regulatory caution that accompanies any cross-border financial instrument.

Landmark Cases Involving IDRs:

There have been very few cases before Indian courts dealing directly with IDRs, largely due to their limited use. However, one indirectly relevant area where judicial interpretation has emerged relates to the broader issues of foreign investment, investor rights under depository mechanisms, and taxation of cross-border financial instruments. In cases dealing with ADRs and GDRs, courts have clarified the nature of beneficial ownership, taxability, and obligations of intermediaries—principles that are equally applicable to IDRs. For instance, the Supreme Court's views on beneficial interest and indirect ownership in the context of double taxation treaties have helped shape the understanding of similar rights under IDRs, although the legal jurisprudence specific to IDRs is still in a nascent stage.

SEBI Circulars and Clarifications:

SEBI has played[40] a central role in establishing the procedural and disclosure framework for IDRs through various circulars and regulatory guidelines. Notably, the **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**—which were later consolidated into the **SEBI ICDR Regulations, 2018**—outlined detailed eligibility criteria, due diligence responsibilities, and investor protection norms for IDR issuances.

SEBI's circulars have aimed to resolve ambiguities around pricing, listing obligations, and continuous disclosure requirements. For example, in its clarification following the 2010 Standard Chartered IDR issue[41], SEBI addressed concerns related to the lock-in period for promoters, post-issue reporting, and shareholder grievance redressal mechanisms. These

[39] Prepp, Indian Depository Receipt (IDR) - Indian Economy Notes (last visited March 20, 2025).
[40] Sakshi, *Supra Note 32*, at 2185.
[41] Lexygen, *Supra Note 27*, at 2183.

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circulars have filled regulatory gaps and ensured consistency in how IDRs are treated vis-à-vis other capital market instruments.

However, SEBI has also taken a cautious approach, evident in its restriction on the fungibility of IDRs. Initially, fungibility was completely prohibited, though SEBI later allowed limited two-way fungibility in consultation with RBI under strict conditions. This shows that while regulators are willing to adapt, their approach remains conservative, particularly due to concerns over foreign exchange outflows and monitoring challenges.

Policy Changes and Stakeholder Feedback:

Over the years, various policy-level suggestions and consultative processes have been initiated to improve the attractiveness of IDRs. Committees under the Ministry of Finance and SEBI have examined the IDR framework and submitted reports emphasizing the need to simplify procedures, reduce tax burdens, and align IDR regulations with international practices.

Stakeholder feedback from merchant bankers, depositories, and foreign companies has consistently highlighted the procedural bottlenecks and the lack of post-issue clarity as major deterrents[42]. In response, SEBI and RBI have occasionally relaxed some conditions—for instance, by streamlining repatriation rules and easing disclosure norms. However, the overall pace of reform has remained slow, primarily due to IDRs' low market penetration and limited policy urgency.

Role of Judiciary in Interpreting IDR-Related Disputes:

Although there is no substantial body of case law dealing directly with IDR's, the judiciary's interpretative stance on broader capital market issues provides a framework for how IDR disputes might be handled in the future. Courts in India have traditionally upheld investor protection as a key principle in securities law, which suggests that any misrepresentation or failure to comply with IDR-related disclosure obligations would attract strict judicial scrutiny. Moreover, Indian courts have recognized the doctrine of economic substance over legal form in cases involving foreign instruments, which may apply to IDRs as well. This approach ensures that courts look beyond the technical structure to assess the actual intent and impact of a transaction—a principle particularly relevant to cross-border instruments like IDRs where the issuer, asset, and investor may span multiple jurisdictions.

[42] Law, *Supra Note 15*, at 2178.

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Regulatory Reforms: Past and Future:

While initial IDR regulations were overly cautious, later reforms attempted to make the regime more practical. For instance, the 2014 amendment to the Companies Act[43] removed the restriction that allowed only a single class of securities to be issued via IDRs, thus offering more flexibility to issuers. Similarly, RBI has gradually allowed limited fungibility subject to specified limits, reflecting a shift toward a more liberal framework.

However, for IDRs to gain traction, more substantive reforms are required. These include allowing full fungibility, removing tax asymmetries, and simplifying the procedural framework. A cohesive, integrated policy backed by consistent judicial and regulatory support can reinvigorate the IDR regime and restore investor and issuer confidence.

Suggestions and Way Forward:

To unlock the full potential of Indian Depository Receipts (IDRs) and position India as a global financial hub, several targeted reforms are necessary. First and foremost, the legal and regulatory framework needs simplification. The current IDR structure involves overlapping compliances under multiple laws—streamlining these into a unified framework would reduce compliance burdens and increase issuer interest. Regulatory coordination between SEBI, RBI, and the Ministry of Finance is essential to create a single-window system for IDR issuance.

Harmonization with global depository receipt regimes is also crucial. India can learn from successful models like ADRs in the U.S. and DRs in Europe[44], which provide more flexible conversion rules, better investor rights, and efficient taxation frameworks. Introducing full fungibility of IDRs, allowing investors to convert them into the underlying foreign shares and vice versa, would greatly enhance their attractiveness.

Simplifying tax norms is another critical step. Clear, investor-friendly policies on capital gains, dividend taxation, and repatriation can eliminate uncertainty and promote participation. The government could consider tax incentives or double taxation relief mechanisms to encourage investment through IDRs.

Enhancing investor protection is equally important. SEBI should introduce tailored disclosure norms, robust grievance redressal mechanisms, and better corporate governance requirements

[43] CS, *Supra Note 24*, at 2181.
[44] Next, *Supra Note 23*, at 2181.

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for IDR issuers. Investor education initiatives will also play a key role in raising awareness[45] and confidence, especially among retail investors.

To promote IDRs as a viable investment option, regulators can incentivize high-quality foreign companies to list via IDRs and offer fast-track processing for blue-chip issuers. Stock exchanges should work to improve the liquidity and visibility of IDRs through market-making mechanisms and promotional efforts.

Ultimately, the way forward lies in integrating IDRs into the broader policy of capital market globalization. With the right regulatory support and structural reforms, IDRs can emerge as a strong bridge between Indian investors and global equity opportunities.

CONCLUSION:

Indian Depository Receipts (IDRs) were introduced with the intent to offer Indian investors a window into global equity markets while enabling foreign companies to access Indian capital. However, despite a sound conceptual foundation and a well-intentioned legal framework, IDRs have not achieved the success originally envisioned. With only one major issuance (Standard Chartered in 2010), the IDR regime remains largely underutilized. This limited traction highlights several critical issues—ranging from regulatory complexity and taxation hurdles to lack of fungibility and investor awareness.

The preceding analysis shows that while the legal infrastructure for IDRs is robust, its practical implementation faces several bottlenecks. The Companies Act, SEBI regulations, FEMA, Depositories Act, Income Tax Act, and RBI guidelines collectively create a labyrinth of compliance obligations that deter foreign issuers. Further, challenges like limited market depth, low liquidity, and unclear tax implications for both investors and issuers continue to impede growth.

Nonetheless, the IDR mechanism still holds significant potential. It represents an innovative channel for financial globalization and offers an alternative route for Indian investors to diversify their portfolios with international exposure. With India emerging as a major financial hub, the timing is right for policymakers to revisit and reform the IDR framework.

To revitalize this instrument, comprehensive legal and regulatory reforms are essential—ones that focus on simplification, global harmonization, better investor protection, and more flexible

[45] Building, Building Blocks for Industry Driven Investor Education Initiatives - EFAMA Report on Investor Education (last visited March 20, 2025).

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conversion mechanisms. Strengthening market infrastructure, enhancing investor education, and incentivizing foreign issuers will also be key.

In conclusion, while the journey of IDR in India has so far been modest, the potential for future growth remains considerable. With coordinated policy action and stakeholder participation, IDRs can become a powerful vehicle for integrating Indian capital markets with the global financial ecosystem, thereby reinforcing India's position in the international investment landscape.

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