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**PROSPECTS OF ARBITRABILITY OF DISPUTE RELATED TO IDR,
ADR AND GDR: A COMPARATIVE ANALYSIS**

ABSTRACT

An American Depository Receipt is a negotiable security that represents securities of a company that trades in the United States financial markets. The first ADR was introduced by J.P Morgan in the year 1927 for the British retailer Selfridges. Depository receipt are negotiable securities that represent securities of companies that are foreign to the market on which the DR trades, thus enabling the investors to buy securities of foreign companies without suffering any risks of cross border or cross currency transactions. Unlike the domestic security, Depository Receipt is not even one century old. Previously, if investors wanted to buy shares in a foreign company, they would need to exchange their money into foreign currency and had to open a foreign brokerage account and then they were in a position to purchase shares through the brokerage account on a foreign stock exchange. The creation of depository receipts eliminated this entire complex process and did make it simpler and more convenient for the investors to invest in international companies. There are different types of Depository Receipts namely the American Depository Receipt(ADR), which is listed only on the American stock exchange and can be traded only in the United States. Then come the Global Depository Receipt or the GDR as it is widely known as and any depository receipt that did not originate

from a home country is called the GDR. Then comes the Indian Depository Receipt which is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository against the underlying equity shares of the issuing company to enable the foreign companies to raise funds.

In this paper we will be talking about the American Depository Receipt, the Global Depository Receipt and the Indian Depository Receipt and the different mechanisms associated with it and a brief insight to the laws governing the Indian Depository Receipt and its development.

Introduction:

American depository receipt was first introduced in the financial market during April 1927 after launching the ADR program by investment bank J.P Morgan for one of the UK'S provincial stores limited. In response to the law created, it was passed by the British and restricted the British companies to further register their shares in other countries without the British based transfer agent. It determined the U.K. shares to leave the homeland. ADR got listed on the New York Curb Exchange, which was the American Stock Exchange's precedent. Some of the ADR regulations changed in 1955, and S-12 was formed by the U.S. Securities and Exchange Commission, making it mandatory to register all depository receipt programs. This later got upgraded by F-6, although its principle remained the same. There was the introduction of many new regulatory frameworks in 1985, which led to three ADR programs. In 1990 there was an adoption of Rule 144A, which bought private depository receipts into the scene and was available only for qualified institutional buyers. It got famous in a short period and is still in effect. The primary purpose of constructing ADR was to fulfill American investors who could easily invest in Non-US companies. They gradually extended to various parts of different countries in GDR, EDR, and IDR after getting popular in the U.S.

Mechanism – D.R. Trade:

Depository receipts come under negotiable instruments, which consist of the underlying securities of companies lying outside the U.S. It allows U.S. investors to allow non-American companies in their stock trade by minimizing the settlement days and other inconveniences concerning international security trading. These receipts can also be represented as preferred stock and are considered the same as other U.S. securities. U.S. depository banks issue the D.R. after the shares are transferred to a U.S. local custodian bank. They can be freely traded in the U.S. after the certification with compliance to U.S. SEC regulations. The holders of depository receipts can also sell them to other U.S. investors or even non-U.S. investors after the

cancellation of underlying shares. If sold to a non-U.S. investor, the shares reserved with custodian banks are transferred again to the native market. They are sold to the broker, followed by the surrender of depository receipt certificates. This certificate marks the associated bank's responsibilities concerning the payment, dividend, and other rights. ADR and GDR are also used in cross-border trading, raising capital for mergers and acquisitions.

Demand for Depository Receipts:

There has been a rise in demand of 30-40% by investors for depository receipts. It is so because of the high interest of investors wanting to diversify their portfolios. It is a bliss for those investors who directly cannot invest outside the U.S. due to various reasons. Even with the person with capabilities to go with depository receipts, they find it more convenient and cost-effective.

Types of ADR's for the Investors-

The ADR has been categorized into many broad categories, namely-

◆ Sponsored ADR's

It is created by an agreement between the U.S. Company and its bank. A deal is made between the company and the bank. All expenses are handled by the company and its investors through depository receipt while offering the holders with their voting rights.

◆ Un-sponsored ADR's

U.S. banks also implement un-sponsored ADRs, but it doesn't need a non-American company. This makes various banks to un-sponsored ADRs for the one single company. American banks implement these without requesting a non-American company. They trade over the count because of the non-involvement of the company's participation. And doesn't give voting rights to their shareholders.

They are further categorized into three categories, i.e.-

Type I ADR: They establish their presence in the American market without permitting the raise of funds.

Type II ADR: They are not used for raising funds but provides higher visibility during trading.

Type III ADR: They are one of a kind as the issuing companies get an allowance to raise funds and float an IPO on the American stock exchange.

Global Depository Receipts (GDR's):

Global depository receipts are very much familiar to ADRs. Still, they are listed outside the U.S. exchange, which is a great way to help the issuer raise funds from different markets. It gives allowance to the foreign forms for trade exchange outside their country of origin. The shares are upheld by a foreign bank, which, in return, provides the depository with receipts to the company in the exchange of shares.

How are GDR's created?

GDR has quite a similar process to ADR. Here also, the company has to approach the banks for various countries to build an agreement. In return, the companies look over all the costs regarding trading in multiple countries and markets. The banks look upon all the transactions made between investors and GDRs of the company.

Trading Mechanism of GDRs

These acts negotiable certificates that represent different amounts of shares according to the company's needs and objectives. GDRs which are traded in Euros is called a European Depository Receipts or ADRs.

There are two categories of GDRs for investors, I.e.

1. Rule 144A GDRs

They work under Rule 144 A of SEC while allowing non-U.S. and U.S. companies to trade and raise their capital in the U.S. market. They are the cheapest alternative method that can be used to raise money.

2. Regulations GDRs

These GDRs consist of non-American companies to help to raise funds in European markets. They are traded on the London or Luxembourg Stock Exchange only and are commonly called Reg S GDRs. The non- U.S. investors are only allowed to change, and both the Reg S and Rule 144A GDRs can be issued by a company subjecting to different laws.

Rights and obligations of Issuer, Participant and Beneficial owner under the Depository Act, 1996

Under section 17 of the Depository Act the right and duties of the depository, participants and the issuers. The securities are controlled by the depository which shall be prescribed by the

regulations. A depository is a corporate body registered under Companies Act, 2013 shall be granted with certificate of registration by section 12 (1A) SEBI Act 1992.

Mechanism of Depository-

A depository is a person or an entity which receives deposits. A depository held securities like shares, debentures, government securities, units. of investors in digital format. A depository also commence transaction in securities as a part of services. He acts as an agent or a trustee of the securities of the investors.

Therefore, a depository facilitates through holding up of securities in the digital format and enable transaction in the book entry by the Depository Participants, who is the agent of the depository. SEBI recognizes financial institution, banks, brokers and custodian as a part of Depository Participant. The investor (beneficial owner) has to open a demat account through a registered DP for dematerialization of holding and transferring up of securities.

Rights and Duties of Depositories:

There are certain rights of depositors while performing the work of deposits of the investors.

- **Right to get certificate:** A registered depository has to enter into an agreement with other investors for the dematerialization of securities. Depository has the right to obtain certificate of execution of business from Securities Exchange Board of India.
- **Right to become a registered Owner:** Under section 10(1)(2) of the depository Act 1996, after dematerialization of share a depository shall be registered owner in the register of company for the effective transfer of ownership of security behalf of the owner. The depository as a registered entity shall not possess any voting right or any other right over the securities held by him.
- **Power to make rules or byelaws:** A depository has the right of consistently framing of rules or byelaws with the provisions of Depository Act and the regulations.

Duties of Depository:

- **To register name of Investor as Beneficial owner in its record:** It is the primary duty of every depository is to register the name of the investor as the beneficial owner in the records on the receipt of the information of the investor.

- **To furnish information and records (Section 13):** Before the commencing the business of the dematerialization of securities by the depository, there should have an adequate system for reviewing evaluating and monitoring to safeguard from manipulation of records and transactions for which a certificate is required from SEBI. There are certain liabilities of depositories to indemnify loss in certain cases under section 16 of the Depository Act, 1996.

It is the duty of every depository to maintain a book of records of beneficial owners in the manner prescribed under Companies Act, 1956. If any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner. Where the loss due to the negligence of the participant is indemnified by the depository, the depository shall have the right to recover the same from such participant. Every depository is obliged to provide all co-operation to the investors as it is necessary for the effective, prompt and accurate clearance and settling transaction of securities and conduct of business.

Beneficial Owner

Under Section 2(1) (a) of depository Act 1996, a Beneficial Owner is a person name is recorded in the depository.

Rights of Beneficial Owner

- **Rights to get benefits of securities:** Under section 10(3) states that every beneficial owner has the right to enjoy all the rights and benefits of the securities held by the depository.
 - **Right to get remat or to get certificate in respect of any security:** under section 14 states the right of the owner to go for remat with respect to any security. If an owner seeks out of depository shall has to inform the depository entity accordingly.
 - **Right of Beneficial owner to get indemnify or recover loss in certain cases:** the beneficial owner has the right to recover the losses over the depository if there is any kind of negligence. The depository has to indemnify such beneficial owners.
 - **Right of Beneficial Owner to consider member of company:** under section 6 of the said act, every person subscribing to the securities offered by the issuer shall have the offer either to accept the security certificate or hold with the depository.

➤ **Right to choose -Options to receive security certificate or hold securities with depository (Section 8)**

Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

To facilitate the **beneficial owner of shares**, on whose behalf the depository holds the shares, to be recognized as members, Section 41(3) of the Companies Act, provides that every person holding equity share capital of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

In *Prabir Kumar Misra v. Ramani Ramaswamy* it was held that after the Depositories Act, 1996, such depositors who are holding equity share capital of the company and whose name is entered as beneficial owner are also deemed to be members of the company, thus making them members under the Act.

In the case of *Northern Projects Ltd. v. Blue Coast Hotels and Resorts Ltd.* it was contended that only persons holding equity shares can be members of the Company in terms of Section 41(3) of the Act. This was rejected by Court and it was stated that Sub-section (3) of Section 41 is therefore only in addition to Section 41(1) and Section 41(2) and not in derogation or substitution of the first two subsections. The word 'shareholder' and 'member' is used in the same connotation under the Act and the Section covers the third category of equity shareholders who are neither subscribers as contemplated by Sub-section (1) nor whose names are entered in the register of members as contemplated under Sub-section (2) of Section 41.

Obligations of beneficial owner

- **Obligations in respect to securities (Section 10(3)):** The beneficial owner shall be subjected to all the liabilities in respect of his securities held by a depository.
- **Obligations of beneficial owner to intimate depository, issuer:** Beneficial owner shall intimate the depository. The depository shall, on receipt of intimation, make appropriate entries in its records and shall inform the issuer. Every issuer shall, within 30 days of the receipt of intimation from the depository and on fulfilment of prescribed

conditions and on payment of prescribed fees, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

➤ **Obligations of beneficial owner to intimate about pledge of securities (Section 12):**

Every beneficial owner shall give intimation to the depository about pledge or hypothecation of securities and such depository shall thereupon make entries in its records accordingly.

Responsibility and Liabilities of Depository Receipts

The responsibilities involved in depository receipts in the global context and Indian context are discussed here. The depository receipts are issued out of India and is treated as negotiable security. Depository receipt on behalf of an Indian company. The origin of Indian Depository Receipts (IDR) is obtained from the theory of GDR and ADR. The ADR is referred to the DRs which are listed and traded in the US market where the GDRs are listed and traded elsewhere. The Indian Depository receipts were introduced in the Companies Act, 2013¹ after the amendment proposed by the Joshi Committee². This financial instrument is in the form of transferable securities listed on Indian stock exchange as depository receipts. The Indian Depository Receipts is defined as “a financial instrument in form of depository receipt that is generated by Indian depository in India against the primary equity shares of a company incorporated outside India.”³. This instrument helps the company to raise its capital. The Ministry of Corporate Affairs, RBI and SEBI are the legal frameworks that regulate IDRs. The IDR permits more availability of liquid markets. The funds in IDR are comparatively lower in cost and terms. It also reduces the risk of the hostile takeover of companies. The IDR has increased the global demand of the company shares and it also leads to exploitation of shares in the international market. It protects wealth through investment diversification. It creates entitlements to foreign equity by providing the opportunity to foreign companies to generate funds from the stock market. The foreign companies are benefited through issuing IDR as they can mobilize funds from the stock market in India. The concept of IDR has sanctioned various local investors to access foreign companies and raise funds. The IDRs are traded into Indian Capital market after the foreign companies issue equity shares in their home country and offer

¹ Section 390, Companies Act, 2013

² Press note, Joshi Committee, http://www.mca.gov.in/Ministry/pdf/press_release/press_joshi.html

³ Rule 3(i)(d), Companies (Issue of Indian Depository Receipts) Rules 2004

the shares to the foreign custodians with help of IDRs which later gets approved by the custodian through Indian depository at odds with foreign shares.

The globalization of the Indian capital market has helped the Indian companies to raise capitals through issue and listing of depository receipts in the foreign market. Sometimes the responsibilities on depository receipts are conflicting in nature due to the difference in-laws of the different countries the parties are residing. It also arises a conflict of dual liabilities among the legal systems. This issue is very common in the US system as the public cause of actions prosecuted to the court by three agencies whereas the private cause of action is delated by the investors and parties or legal entity⁴. In public matters, the power of SEC is superior to the Financial Industry Regulatory Authority, Department of Justice and Investors to protect the public interest on security issues. SEC has also powered report fraudulent acts by the company and enforce criminal liability in form of fine imprisonment or demise on the company. There are other merciful measures taken by the SEC to take criminal action against the company such as a deferred prosecution agreement. In the case of a domestic company, the SEC has the immunity to exempt the company from the criminal responsibility where has it cannot exercise this immunity in case of foreign private issues from federal criminal laws⁵. Apart from this, in US law, there are anti-bribery provisions and accounting provisions under the Foreign Corruption Practice Act (FCPA) mentions about the liability of criminal and civil penalties for violations. It is difficult to execute any punishment under the provision as many countries don't recognize the demise of the company as a punishment. Imprisonment of personal of a company is also not possible as any government will not agree to give any third country. Another civil and monetary liability is also tough on treaties and judgements in civil and commercial matters. The investors prefer US court judgments as it is globally recognized and has signed a favorable treaty on enforcement of judgment with many counties. The Indian laws do have various penal provisions under the Companies Act, 2013⁶ to punish the officer or person who makes defaults shall be liable to pay the fine that may be double the amount of the IDR issue that may be extended up to rupees five thousand per day.

⁴ Stephen J. Choi, A.C. Pritchard, "Securities Regulation: cases and analysis", 2012, Third edition pg.744

⁵ Michael A. Perino, "American Corporate Reform Abroad: SarbanesOxley and the Foreign Private Issuer"

⁶ Section 450, Companies Act, 2013

DEPOSITORY RECEIPT EFFECT'S ON ISSUING COMPANY AND ITS COUNTRY LEGISLATION

The past few decades have seen the internationalization of many companies through the listing of international trade unions and rapid market freedoms that have led to the massive integration of global security markets. There are two types of listings namely direct listings and indirect listings. Indirect listings are completely different as it is an exchange system for the issuance of the Last Receipt. So now it comes to the Purpose of the research paper that is the result of the Acquisition Receipt in issuing the company and the law of their country. Defining a Deposit Receipt can be referred to as a type of negotiated financial security sold on local stock but stands for security in general in the form of equity usually issued by a publicly-traded foreign company. The laws of two or more countries often meet in the Depository receipt and at the same time, the most important question that arises here is which state law will govern. In this relationship, it can be agreed that natural law is no longer abandoned. Having a legitimate legal environment always leads to development and if the legal environment of that country is well constructed and used then the national framework will be strong in this regard. Powerful. The economic reason is that the issuing company needs to increase revenue or gain visibility in the host country which is the investor country and therefore they are willing to relinquish their rights to the superpowers to achieve the specified objectives. And these types of practices are widely followed in all developing lands.

Examples of countries with its rules on the center of acceptance of deposit.

For example, the People's Republic of China after having the opportunity to issue a Depository receipt has accepted laws that directly affect the export companies' law as the law adopted by the issuer's place of entry as added by the issuer's country laws must not violate the rights of shareholders or holders of Depository.⁷

⁷ The rules governing the listing of shares in the Stock Exchange of Hong Kong limited Equity Securities, Chapter 19B.16, <http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_19b.pdf> accessed June 14, 2013, at pmb1

Laws Governing IDR Laws In India

In the context of the Indian IDR issuance, laws were introduced by the Government of India in 2004. In addition, SEBI has issued guidelines that eligible companies residing outside India are permitted to issue an IDR through the Depot Home in terms of Circular No. SEBI / CFD / DIL / DIP and Issue of Capital provisions and Disclosure Requirements. Regulations 2009 which replaced the SEBI Disclosure and Guidelines Protection Guidelines, 2000 DIP Guidelines. Also the Circular and the ICDR Regulations, 2009 allow those persons residing in India and outside India to purchase, manage, transfer, and redeem IDR. Non-Indian citizen companies that are eligible to issue an IDR with a Domestic Depository receipt are subject to compliance with the Companies Acquisition By-Laws Act, 2004 and subsequent amendments thereto and ICDR Regulations, 2009.⁸ IDR issuance rules only apply to those companies listed in India and the issuing company must have a reputation in India with a profit margin. So the rules are out.

Countries Accepting the Law of Other Countries

In most cases, Own country law enforcement does not always apply to the investor's country as provided that the investor's country has its interests and it is reasonable to note that corporate expulsion law affects the law of the host country. It is also worth noting that the first results are stronger than the second for example in some cases where the company knows that their country's law, regulatory agencies, and courts will not work well enough for its development and therefore chose other powers such as US or UK authority. always in development or the will, for example to exclude companies to meet the negative effects most often mentioned as a result of "cultural diversity" as an important example of this would be Brazil. This is a country that has used ADR extensively and has been subject to much US law. Communication between US law and Brazilian companies has strongly influenced Brazilian law. For example, the most important requirement of a foreign company in ADR is US law that a company must accept or be placed under a law that protects the rights of small shareholders. And the company that issues Level II and Level III ADR comply with those kinds of requirements. Now from the development of Brazilian law, we see that "Corporation Law and the Securities Commission

⁸ corporate law reporter.com

Law amended to strengthen the rights of minority shareholders, corporate transparency and law enforcement and enforcement powers of the Brazilian Securities Commission (CVM)".⁹ Apart from the progressive government that has manifested itself on the São Paulo Stock Exchange. It has also begun to require companies to align their administrative structure with the city's by-laws and standards.

Another important example of the effect of investor law on corporate governance is taking place between Lebanon and Switzerland. As in this project Sannine Zenith Lebanon wanted to raise \$ 1.2 billion through GDR in Switzerland. According to the deposit agreement, the Swiss Bank EFG in Switzerland was required to issue a GDR and in the event of a dispute between them, Swiss law will apply to the Swiss court. Although there was a problem when the case arose after the release of the GDR and the parties strongly opposed each other. Because of the company that issued the money, Sannine Zenith Lebanon owned a lot of property and that is why part of Lebanon argued that it was a special power and the case should be heard in a Lebanese court. In this regard as a result of the Depository agreement, it was clearly stated that the law and the court should be the law and the court of Switzerland. Considering that the law and the court of the investor's country contain an important point in the Depository receipt crux so this legal dispute should be resolved in favor of the Swiss component based on how to protect investors. As a result of this case, the Swiss won the case. This case represents a clear picture of how the Deposit receipt affects the country's laws of the issuing company. Although there was a special authority the power of the GDR to change such forms of law or cause the government or the court to violate that law by adding more interpretations such as the treaty freedom, which is so important in international law, and so on.¹⁰

With all of the above examples cited in the study, it is clear to conclude that Sometimes companies want to comply with the requirements of the home law of investors but the law of the issuing country does not allow such decisions are made directly as they are accepted in the investor country.

Indian Depository Receipts

A custodian of securities (registered with SEBI) creating instruments against issuing companies having any underlying equity shares, denominated in Indian Rupees, which in turn

⁹ Henrique Silva Gordo Lang, Pinheiro Neto Advogados, "Overview of the latest corporate governance changes",

¹⁰ International deposit receipts in Lebanon on financial and legal aspects 2004
<<https://scholarworks.aub.edu.lb/handle/10938/6737>> accessed January 12, 2013, pmbl

promotes the raising of funds from the Indian Security Markets by foreign companies are termed as Indian Depository Receipts.¹¹

IDRs are securities which are transferable in nature and the listing of these securities are done in the form of depository receipts.¹²

SEBI Framework for issuance of DR– 2019¹³

Eligible Issue

Issuance of permissible securities for the purpose of issuing DRs can only be permitted to Listed Indian Companies. It is obligatory for these listed/recorded companies to remain consistent with SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

Matters to be evaluated by the issuers while issuing DRs:

Pricing: Pricing: Different valuing equations have been recommended by SEBI for essential issuance of DRs Dependent on offerings like QIP and Public contributions.

If there should arise an occurrence of auxiliary exchanges (by residents and non-residents), lending DRs at the same time could be a suitable decision at choosing costs plainly.

In case of secondary transfers (by residents and non-residents), issuing DRs simultaneously could be an appropriate choice for deciding prices clearly.

Fungibility: An appropriate procedure needs to be formulated by listed companies in order to make fungibility operational under the DR Framework.

Moreover, the evaluation of pricing implications is compulsory under the framework.

Approvals from SEBI/Indian Stock Exchanges¹⁴

1. An intermediary is responsible for filing of the Initial Offering Document along with the SEBI and the Indian Stock Exchange.

¹¹www.vinodkothari.com

¹²<http://www.legalservicesindia.com/>

¹³ SEBI framework for issuing IDRs (corporate.cyrilamarchandblogs.com)

¹⁴ SEBI framework for issuing IDRs (www.mondaq.com)

2. Simultaneous issuance of DRs – Issuance of Drs must take place only after the Indian Stock Exchange along with Indian Offerings has approved for final trading.
3. Filing of Public Disclosures- Shall take place within 24 hours from the date on which it was disclosed to the relevant International Exchange.

Foreign Holding Limits¹⁵

It is the duty of the listed company to prevent the foreign holding limits from exceeding under the RBI Regulations.

American Depository Receipts¹⁶

Creation of instruments or certificates in the form of depository receipts by the Overseas Depository Banks outside India are termed as American Depository Receipts. These instruments are issued to non-resident investors by the overseas Depository Bankers against the ordinary shares issued.

There are 2 types of ADRs:

Sponsored ADRs: The proposal for issuing ADRs are made by the foreign company itself by an agreement between the issuing foreign company and overseas depository bank.

Unsponsored ADRs: There is no agreement between the company and the custodian and depository banks. A third party issuer sponsors these ADRs.

Pricing and Returns of ADR's

1. In relation to underlying securities, the Trading of ADR's takes place at a premium or discount.
2. Creation of arbitrage opportunity does not take place.
3. The Unpredictable nature of the factors affecting Return OF ADR give rise to fluctuation in prices.

¹⁵SEBI framework for issuing IDRs (www.mondaq.com)

¹⁶Refer to Issue of foreign currency convertible bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 – Regulation 2(d)

4. Effective market segmentation are indicated by ADRs as they enjoy a considerable premium over their underlying stocks.
5. Premiums on other ADRs from India are also affected to a smaller extent by the US Market Indices.

Indian Companies issuing shares under ADR Mechanism¹⁷

1. Indian Companies face lesser risk while raising funds from international markets under the ADR Mechanism.
2. **Regulation 3¹⁸** – The power to grant permission to the issuing company for issuing ordinary shares for equity through GDRs or Foreign Currency Convertible Bonds for the purpose of raising foreign funds vests with various government bodies like Ministry of Finance, Government of India and The Department of Economic Affairs.
3. In companies accountable for issuance of ADRs, Issuing ordinary shares shall be taken to be as Foreign Direct Investments under the DR Mechanism.
4. Under DR Mechanism, the total value of foreign investments exceeding 51% of the amount of capital furnished and subscribed by the issuing company shall not be acceptable.

Global Depository Receipts

Financial instruments issued by a foreign bank which represent securities of a foreign company listed in any countries' stock market other than the US is termed as Global Depository Receipts.¹⁹

Pricing

The price of the shares held by the GDR and the demand and supply of a particular GDR determine the price of a GDR.

¹⁷ ADR Mechanism (<https://researchersclub.wordpress.com/>)

¹⁸ Please refer to- Issue of foreign currency convertible bonds and ordinary shares (through depository receipt mechanism) Scheme 1993

¹⁹ Please refer to- FEMA Notification no. 20 (Regulation 4 of Schedule I)

Issuance of GDRs²⁰

Approvals of the Board of Directors, shareholders and financial institutions are a must before issuing of GDRs. Appointment of Lead Managers, Co-manager, Overseas Depository Banks are made as intermediaries during the creation of GDR of the company.

Indian companies issue its equity shares (in rupees) to the depository banks located in foreign countries.

Thereafter, the depository banks issue the GDRs against the equity shares of the Indian companies to the foreign Investors in foreign currencies.

The depository banks are responsible for administering GDRs to the corporate issuer.

The custodian bank located in the country of the issuer is responsible for holding the shares of the company that underlie the GDR and safely keeping the shares of the GDR.²¹

*After the amendment of the Companies (Issue of Global Depository Receipts) Rules, 2014, the Indian companies are allowed to list Global Depository Receipts Gujarat International Finance Tec-City.*²²

This amendment has hence paved another way for the companies to raise funds.

The remission of proceeds from a GDR Issue can take place in an International Financial Service Centre Banking Unit (IBU).

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The custodian bank located in the country of the issuer is responsible for holding the shares of the company that underlie the GDR and safely keeping the shares of the GDR.

Conclusion:

Quoting the great Chinese philosopher, Lao Tse Tung, “Even a march of civilization starts with a single step”. The utility of Depository Receipts as an instrument for raising the capital is

²⁰<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj9yvOsiLnsAhUbdCsKHRXeCl0QFjALegQIHRAC&url=https%3A%2F%2Fcorpbiz.io%2Flearning%2Fglobal-store-receipt%2F&usg=AOvVaw3zOmRENfwjI1BEJsZtjgw6>

²¹DRs Scheme of RBI and Advanced issues (<https://blog.ipleaders.in/depository-receipt-scheme-of-rbi>)

²²<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj8uOWuirmsAhVywTgGHfZHBVQQFjALegQIARAC&url=https%3A%2F%2Fwww.thehindubusinessline.com%2Fmarkets%2Fgovernment-allows-indian-companies-to-list-global-depository-receipts-at-ifsc%2Farticle30834823.ece&usg=AOvVaw0Dp9tYW8uJYKUopcWHLauw>

acknowledged across the entire globe and has been extensively used by the companies to raise their capitals in overseas jurisdiction. It can be said that the use of GDR enables the individuals to have a proper access to the capital markets of various foreign companies without any arising concerns be it regarding currency, language or tax laws. Instead the issuance of GDR's increases the liquidity of the firms. Companies that issue GDR benefit by gaining access to potential investors. This further helps the companies in emerging markets and further increasing the prospect of the company to grow. Coming to IDR's the issue is just a baby step towards a new era of Indian capital market the picture which is a bit hazy. Several Indian Companies have tapped overseas pool of capital by listing ADR's/ GDR's of their companies on overseas stock exchange. With the introduction of the IDR regime, not only there is an additional avenue for foreign companies to raise capital in India but also paves a two way street for the Indian investors to invest in global corporations in smooth manner. Keeping in mind the recent amendments it can be said that the Indian Government and the regulatory authorities have been taking progressive steps to facilitate issue of IDR's by doing away with several stringent requirements. The IDR framework is as of now at a nascent stage and clarity is required on several issues. Talking from an investors point of view, appropriate guidelines are necessary in respect of the extent of SEBI's intervention for protecting the interest of investors in the event of a merger of the Issuing Company with another company. But what is clear at this point is the fact that for India to be an Economic superpower it will certainly have to integrate with the world of today. An IDR issue is just an example of the confidence shown by the world in our economy. For full faith to be proved we need many of such IDRs.