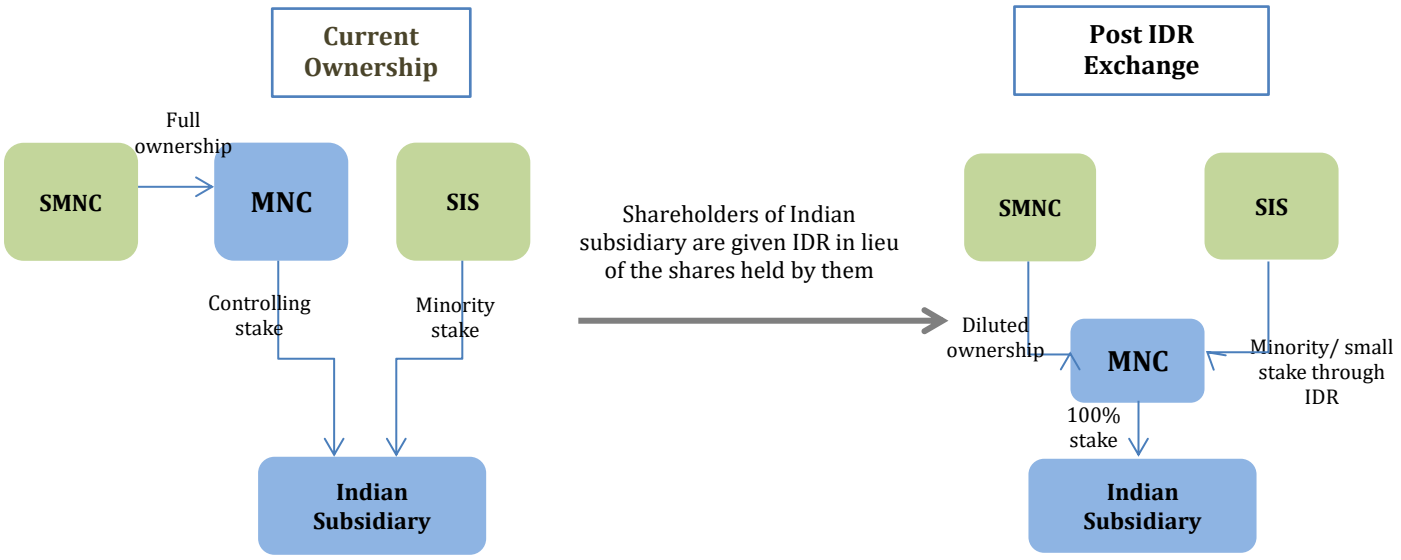
Indian Depository Receipts:
A framework for delisting

This is a discussion paper, prepared by IiAS to obtain market feedback on the proposed policy framework for delisting.

POLICY PROPOSAL

To provide an easy window for multinational companies (MNCs) to delist, whereby, instead of cash, Indian Depository Receipts (IDR) of the parent company may be issued to buy out the stake of public shareholders of the listed Indian entity (refer figure below). This note highlights the pros and cons of such a framework in greater detail.

IDR EXCHANGE



SIS – Shareholders of Indian subsidiary
SMNC – Shareholders of MNC parent

RATIONALE

While global giants like Nike, Unilever, Nestle, Sony and Toyota, have all set up operational bases in the emerging markets, the mode of entry chosen by them have varied across geographies. The Indian equity market is unique in as much as a large number of MNCs are listed on its stock exchanges: there are more than 100 MNCs listed on the Bombay Stock Exchange (BSE), whose combined market cap adds up to around 10% of the total market cap of all BSE listed companies.

For many of the MNCs, the decision to get listed was driven by regulatory compulsions – especially the introduction of the Foreign Exchange Regulation Act (FERA) in 1973, which capped foreign ownership at 40%. Following this, some companies like Coca Cola, Shell Petroleum and IBM preferred to exit the Indian market, while others like Colgate and Unilever (then Hindustan Lever Limited) diluted their ownership in their Indian subsidiaries and remained in the country.

Write to us
Institutional Investor Advisory Services
15th Floor, West Wing, PJ Tower
Dalal Street, Mumbai -400 001
Email: solutions@iias.in
www.iias.in

The regulatory framework changed after the 1990s with the liberization of FDI caps. But even as the Indian economy opened up, the global regulatory regime started to tighten. Given the complexity of regulations and increased cost of compliance across various jurisdictions, MNCs now generally prefer to be listed only in their home markets. This reluctance to remain listed in India will only increase with the new Companies Act 2013, which not only requires a larger set of disclosures and approvals, but also raises the risk of litigation through class action suits.

However, delisting from the Indian market is not easy. The delisting norms in India are stringent and expensive. In addition, MNCs are perceived to be effective agents of growth and change - they are expected to bring in healthy competition, enhance production technology and improve corporate governance standards. As a result, regulators (and investors) want MNCs to remain listed and participate in the growth and development of equity markets.

This listing on the Indian bourse leads to the conflict of interest between shareholders of the parent company and the shareholders of the Indian subsidiary with regards to related party transactions. This has been amply demonstrated in a few recent examples – i) the decision of companies like HUL, Nestle, Maruti Suzuki, Akzo Nobel to hike royalty rates even as profitability declined, ii) the restructuring scheme of Ambuja whereby cash is transferred directly to the parent and iii) other issues like the lower valuation accorded to a division of the Indian subsidiary as part of the global restructuring plans in Clariant Chemicals.

Given their controlling stake, the parent company has generally been able to push its agenda on its Indian subsidiary.

Our IDR exchange proposal will help MNCs deal with the conflicts of interest and 'delist' while meeting the regulator's competing objective of fostering an equity culture in the Indian markets, with Indian investors owning shares in MNC's.

A list of a few MNCs which can delist by availing this option is provided in the table below. A few observations from this data are noteworthy:

i. The free float market cap of the Indian subsidiary (FF MCAP) is the price at which the MNC can delist (assuming no premium is paid on the current market price). In most cases, this is a small fraction of the market cap of the parent company.
ii. The P/E multiples of Indian subsidiaries are higher than that of their parent companies. Hence, even though the size of the listed Indian entity is relatively small, delisting by the parent company using the cash on their balance sheet will be expensive.
iii. However, if an IDR swap is used for delisting, the resultant dilution will be minimal (barring a few exceptions). This is beneficial for the shareholders of the foreign parent as there will be no cash flow impact of such a move.

Sample Delisting candidates

Company	Home Country	Promoter Holding (%)	Market cap of parent entity (Rs.bn)	Market Cap of Indian entity (Rs.bn)	Free Float MCAP of Indian Entity (Rs.bn)	PE of Parent	PE of Subsidiary	Dilution on free float exchange
Nestle	Switzerland	62.8	13535.7	486.9	181.3	18.7	44.7	3.5%
Maruti Suzuki	Japan	56.2	806.4	427.1	187.0	16.3	16.4	34.6%
HUL	Netherlands	52.5	6567.8	1322.8	628.6	17.2	38.0	16.8%
3M India	USA	75.0	5018.4	34.4	8.6	18.7	71.5	0.7%
ABB	Switzerland	75.0	3309.8	116.4	29.1	19.1	96.0	3.4%
Timken India	USA	75.0	354.2	10.7	2.7	18.7	21.7	2.9%
Colgate	USA	51.0	3377.0	174.4	85.4	24.8	30.8	4.9%
Oracle Financial	USA	75.0	9489.5	263.5	65.9	14.3	26.7	2.7%
Thomas Cook	UK	75.0	212.0	14.1	3.5	-	30.0	6.2%
Novartis	Switzerland	75.0	11450.5	12.4	3.1	19.9	11.6	0.1%

INDIAN DEPOSITORY RECEIPT (IDR)

An Indian Depository Receipt (IDR) is an instrument which can be used by foreign companies to access the Indian securities market to raise funds. These are denominated in Indian Rupees in the form of a depository receipt created by a custodian against the underlying equity of the issuing company.

DELISTING WITH IDR

As mentioned earlier, while many MNCs are listed in India because of events in the past, very few may like to remain listed. Going private will allow flexibility in RPT payments to the parent and permit the management to focus on managing growth without having to worry about issues related to compliance and minority investor protection.

Our IDR exchange proposal for delisting offers will help meet the following objectives:

1. Reduce cost of delisting

As mentioned earlier, the extant delisting process in India is extremely prohibitive in terms of the costs involved. The regulatory framework for delisting requires a special resolution to be passed, in which going forward the votes cast by public shareholders in favour of the proposal should amount to at least two times the number of votes cast by public shareholders against it. In addition, a delisting will only be considered successful if the post-offer shareholding of the promoter reaches the higher of:

a. 90% of the total issued capital
b. the aggregate percentage of pre offer promoter shareholding and 50% of the offer size

Since the final offer price is discovered using a reverse book building process, it leads to speculation by investors looking to make a quick buck. In some cases, these shareholders with vested interests may hold a company to ransom and demand an unfair price. Therefore, delisting in India usually take place at a significant premium to market value.

Recent Delisting Offers

Company	Delisting Price (Rs.)	Date of fixing delisting price	Market Price 6 months prior to delisting
Alfa Laval	4000.0	Mar 2012	1695.1
Patni Computers	520.0	Apr 2012	288.9
UTV Software	1100.0	Feb 2012	959.2
Rayban Sun Optics	140.0	Jul 2008	87.0

Source: Market sources

To put this in perspective, some MNCs (which are currently listed) will need more than their accumulated profits of the last 5 years in order to delist successfully even at current market prices.

Cost of Delisting

Company	Home Country	Promoter Holding (%)	Cost of delisting at CMP (Rs.bn)	5 year total net profits (Rs.bn)
3M India	USA	75.0	8.6	3.7
ABB	Switzerland	75.0	29.1	12.9
Timken India	USA	75.0	2.7	2.6
Oracle Financial	USA	75.0	65.9	44.4
Thomas Cook	UK	75.0	3.5	2.0
Novartis	Switzerland	75.0	3.1	6.4

Source: BSE

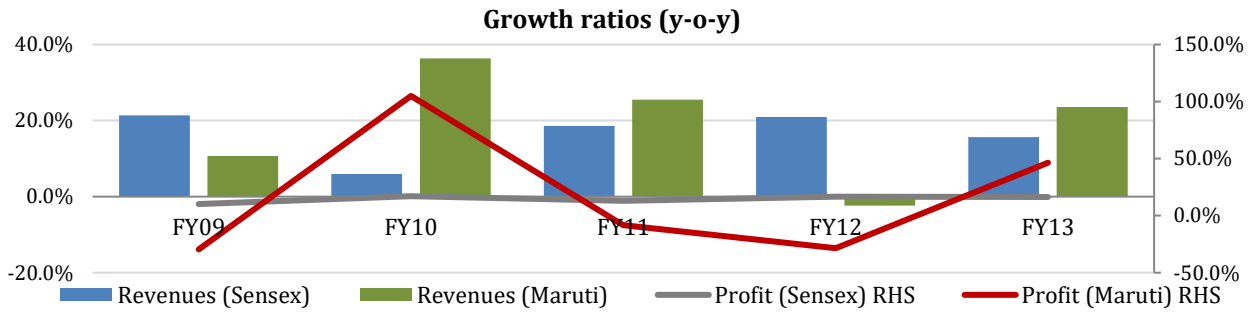
Our proposal for an IDR swap for delisting removes this deterrent. While it will result in dilution for shareholders in the parent company, they will benefit from the reduced cash outgo. Further, by allowing IDRs to be issued in lieu of existing equity shares, even cash-starved MNCs can delist from India without having to raise additional capital.

2. Solve the problem of abusive RPTs

There has been a growing trend of abusive RPTs entered into by MNCs listed in India. Such RPTs tend to repatriate cash flows to the parent, thereby benefitting the controlling shareholder at the cost of other minority investors.

For example, Maruti Suzuki pays royalty to Suzuki Motor Corporation, Japan. In FY13, the company paid Rs.24.5 bn as royalty, which was more than the net profits for the year and almost four times the amount paid in FY09 (Rs.6.8 bn). In fact, the company accounts for 25.4% and 45.8% of Suzuki's consolidated net sales and PAT respectively.

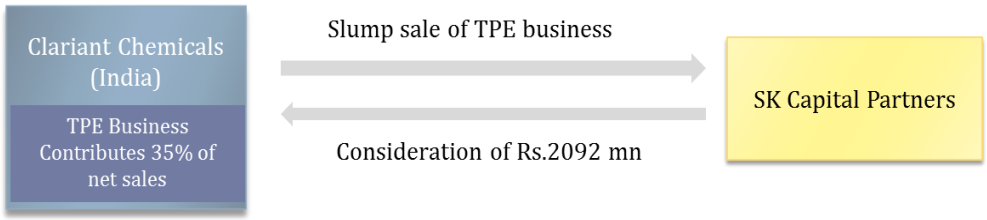
The impact of these RPTs on Maruti's performance has been significant. While the margins of Sensex companies improved to 13.3% in FY13 from 11.8% in FY09, Maruti's margins declined from 5.0% to 4.8% during the same period.



Source: CMIE, IiAS research

It may be noted here that this is not an isolated case. As pointed out in of our earlier reports, such royalty payments for most MNCs have grown disproportionately as compared to their profits in the last five years.

In another example, Clariant Chemicals (India) Ltd. ('CCIL') recently proposed to sell its textile chemicals, paper specialties and emulsions ("TPE business") to US based SK Capital Partners following Clariant's move to exit from these businesses globally.



Particulars (Rs mn)	Clariant [a]	CCIL [b]	CCIL [c]	CCIL [d]	CCIL [e]
Net sales	84689	3749	3749	3749	3749
EBITDA	4068	546	513	375	300
EBITDA Margin (%)	4.8	14.6	13.7	10.0	8.0
Actual consideration	28765	2091	2091	2091	2091
EBITDA Multiple (x)	7.07	3.83	4.07	5.58	6.97
Consideration at 7.07x EBITDA	-	3860	3626	2651	2121

[a] Includes financials of 'performance chemicals' and 'textile chemicals' business.
Assumed that the margin of domestic TPE business is [b] same across all businesses. [c] same of Atul Ltd (peer group). [d] lower than both the peers at 10%. [e] at 8.0%

However, there was a huge disparity between the valuations of the parent company and the Indian subsidiary based on limited disclosures. It can be seen from the table above that the consideration paid to Indian business is relatively lower than the considerations for the global businesses.

In both the above examples, minority shareholders in the Indian subsidiaries believe they have been treated unfairly. This is against the basic market principle of equitable treatment for all shareholders.

A solution to prevent such cases would be to allow the Indian subsidiary to delist and provide all shareholders an equivalent amount of IDRs of the parent company. This will ensure that all shareholders are treated at par and they reap similar benefits from such RPTs.

3. Taxation Benefits

Any profit from delisting is currently subject to capital gains tax for a minority investor (except for cases when the delisting takes place after one year of the purchase of the equity shares). However, if the shareholders receive IDRs instead of cash, they will be exempted from paying any tax even after their acceptance of the offer. In addition, there are no specific tax provisions under the IT Act with respect to redemption of IDRs into underlying equity shares in the future.

4. Promote equity culture

In recent years, there has been a relentless push from the market regulators – especially the Securities and Exchange Board of India (SEBI) – to foster an equity culture in the Indian markets. Their presence provides depth to the markets and gives investors a choice to invest in a part of some of the largest and well governed companies across the world. Instead of delisting and exiting through cash, it will be better for investors to swap local shares for IDRs – whereby they can continue to participate in the long-term growth of the company. It will also help meet the regulatory objective of developing the Indian equity markets.

FEATURES OF IDR

1. Regulatory Framework

The regulatory framework for issuance of IDRs in India are primarily governed by Chapter X of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 made pursuant to section 605A of the Companies Act, 1956 and Companies (Issue of Indian Depository Receipts) Rules, 2004. Any IDR issue also comes under the ambit of RBI through its circular RBI/2009-10/106 dated 22 July 2009 and the Foreign Exchange Management Act (FEMA). For cases where the IDR is being issued by a financial/banking company having presence in India, either through a branch or subsidiary, the approval of RBI should be obtained prior to the issuance.

2. Entities Involved

i. Issuer

Foreign companies are eligible to issue IDRs in India. Some of the preconditions include:

- The company should have a pre-issue paid-up capital and free reserves of at least $50 mn and a minimum average market capitalization (during the last three years) in its parent country of at least $100 mn.
- The company should have a continuous trading record on a stock exchange in its parent country for at least three immediately preceding years.
- The company should have a track record of distributable profits for at least three out of immediately preceding five years.
- The foreign company must be listed in its home country and should not have been prohibited to issue securities by any regulator.
- The company should have a good track record with respect to compliance with securities market regulations.

Most MNCs currently listed in India would fulfil these preconditions.

ii. Overseas Custodian Bank (OCB)

The OCB is a banking company which is established in a foreign country, but has operations in India. They hold the equity shares of issuing company, on behalf of the Domestic Depository, against which IDRs are proposed to be issued.

iii. Domestic Depository/Custodian

They are the custodian of securities registered with SEBI and authorised by the issuing company to issue IDR. They act as a trustee on behalf of the IDR Holders and their rights and obligations are specified in the 'deposit agreement'.

iv. Merchant Banker/ Investment banker

They are registered with SEBI and are responsible for due diligence before the IDR issue. They are also responsible for filing the draft prospectus for the issuance with SEBI.

v. R&T Agent

They provide services to the issuer, the Domestic Depository and the IDR holders in India. These services include registration and transfer of IDRs in India, record keeping, coordinating corporate actions and handling investor grievances.

vi. IDR Holders

Any person, resident in India, can purchase and hold IDRs. Foreign Institutional Investors (FIIs) may also invest, purchase, hold and transfer IDRs, subject to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

Apart from this, there are several other investment criteria:

- Minimum application amount in an IDR issue shall be Rs.20,000.
- Investments by Indian companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws.
- In every issue of IDR
    - At least 50% of the IDRs issued shall be subscribed to by QIBs
    - The balance 50% shall be available for subscription by non-institutional

3. Fungibility

IDRs can be converted into the underlying equity shares only after the expiry of one year from the date of the issue of the IDR, subject to the compliance of the related provisions of Foreign Exchange Management Act and Regulations. However only partial two-way fungibility – upto the extent of 25% of the original IDRs issued – is permitted in any financial year.

The issuer may provide fungibility on a continuous basis in any one or both of the following methods:

- providing the underlying equity shares to the IDR holders
- selling the underlying equity shares in the foreign market (where the issuing company is listed) and providing the sale proceeds to the IDR holders

The option chosen by the issuer will be disclosed in the offer document and cannot be modified without prior approval of SEBI. A fungibility window of atleast seven days have to be provided in every quarter. The total number of IDRs that are available for fungibility should be fixed and disclosed before the opening of the window. Of this, 20% has to be reserved for retail investors. In case the demand for fungibility exceeds these limits, the redemptions will be made on a proportionate basis.

The following guidelines shall be followed on redemption of IDRs:

- Listed Indian companies and mutual funds registered with SEBI may either sell or continue to hold the underlying shares after redemption.
- Other persons resident in India (excluding listed companies and mutual funds), including individuals, are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.

SEBI might need to relax the above rules to accommodate for an IDR swap. Such regulatory changes are discussed in the section 'IiAS Proposal' below.

RIGHTS OF IDR HOLDERS

The rights of IDR holders tend to be similar to those of equity holders. These rights are usually specified in the deposit agreement and can broadly be clubbed as under:

i. Voting Rights
ii. Participation in corporate actions and distributions
iii. Grievance Redressal

1. Voting Rights

IDR holders have voting rights and are entitled to vote on resolutions of the company. If they wish to attend shareholder meetings, they can instruct the depository to appoint them (- IDR holders) as proxy in respect of the underlying shares. At this stage it is not clear whether the depository can appoint each IDR holder as a proxy.

The company will provide notice of all shareholder meetings to the depository. Upon receiving such notice, the depository will send a notice to IDR holders (at least 10 days before the date of the meeting) stating: (i) all the relevant information which is required to take a voting decision, (ii) the date by which voting instructions must be received from IDR holders, and (iii) the manner in which such instructions may be given to the depository.

The depository will not vote unless specifically instructed by an IDR holder. In such cases, the votes will be counted as an abstention.

2. Participation in corporate actions and distributions

For all corporate actions (including rights/bonus issues, the payment of dividends and other distributions), companies are expected to treat IDR holders on an equitable basis vis-à-vis other shareholders in the home country of the issuing company.

3. Grievance Redressal

IDR holders can enforce any provision(s) of the agreement with the depository by executing a Deed Poll. The Deed Poll and the agreement are generally governed by foreign law and IDR holders may refer such dispute to arbitration in India in accordance with the Arbitration and Conciliation Act. Notices in this regard can be sent by IDR holders to the compliance officer appointed by the issuing company.

RISKS IN DELISTING THROUGH IDR

While this delisting route provides certain benefits to all stakeholders, it must be noted that there are several risks which may crop up during implementation.

First, as mentioned earlier, one of the major objectives of delisting is to reduce compliance costs and public scrutiny. While a cash payout helps the company to exit completely, an IDR swap will still require companies to disclose timely information and protect the interests of IDR holders. Hence, a balance needs to be achieved in order to ensure that companies avail this option.

Second, equity investments always carry an element of risk. The same is true for IDRs, which is essentially an equity instrument created on the back of underlying shares. Hence, while a cash-based delisting may provide a complete exit option to the minority shareholders, an IDR swap will continue to saddle the investor with equity risks. Further, some of the risk factors applicable to an IDR holder are, to some extent, different from those of an equity shareholder.

Any delisting achieved through an equity-IDR swap is likely to bring in the following risks for existing minority shareholders.

1. Regulatory Risks

i. Limitation of certain corporate actions

In some cases, the benefits of certain corporate actions, which are available to shareholders in the home country of the company, may be in conflict with Indian laws. This may make it difficult for the company and/or the depository to make equitable distributions to the IDR holders.

Even though the depository will generally attempt sell the underlying equity shares and distribute the proceeds to IDR holders in such cases, there is no assurance as to the value that the depository would receive through the sale.

For example in case of a rights issue, IDR holders should be aware that there are certain timetable implications which can make undertaking a rights issue simultaneously in the home country and India, virtually impossible.

A case in point is that Standard Chartered, in its draft prospectus filed with SEBI, had clearly mentioned that "*Whilst the time period between the date of*

announcement and the date of allotment is 10 Business Days in a rights issue in the UK, the existing guidelines on rights issues in India require that the rights issue be kept open for a substantially longer period. In light of the existing differences in the timeline followed for a rights issue in the UK and in India, it would be difficult for the Company to undertake the rights issue simultaneously in the UK and in India. A rights issue to the same class of shareholder may not be able to operate on two different time lines as this would give rise to trading and fungibility issues as well as questions in the home market on equality of treatment of shareholders, where shareholders in certain jurisdictions are given a longer time frame within which to accept."

Another example is in relation to a scrip dividend alternative (as opposed to cash dividend) – which is not generally observed in the Indian markets. A scrip dividend could be considered as a further issue of IDRs by the company. Generally, such further issue of IDRs would require permission from the stock exchanges and may require registration of a new prospectus in India.

ii. Information asymmetry

While the shareholders of the company in the foreign country receive all notices directly from the company, IDR holders receive such correspondence only from the depository (which is generally at least ten days before the date of the meeting). This additional procedural step might sometimes limit the ability of IDR holders to submit their voting instructions to the depository in a timely manner.

iii. Limitation of precedents

Till date, there has only been one instance of a foreign company issuing IDRs in India (Standard Chartered). Hence the efficacy and efficiency of IDRs as an instrument is still untested. While SEBI has issued guidelines in this regard, it is still uncertain as to how Indian regulators will interpret and apply the legal framework. In addition, as already mentioned before, certain aspects of issuance, rights, trading, exchange and cancellation of the instrument are still unclear.

iv. Fractional Entitlements

In many cases, multiple IDRs may represent one share of the foreign company. In these situations, IDR holders holding fractional number of shares may not be entitled to participate in corporate actions, such as rights issues and share distributions which are determined by holdings of whole numbers of shares.

2. Legal Risks

Under the Deed Poll, IDR holders will have the right to submit any disputes to arbitration in India in accordance with the Arbitration and Conciliation Act. However, as the company will be incorporated in a foreign country and most/all of its directors will reside outside India, IDR holders will have to file for enforcement of the arbitral award in the foreign country. This additional step increases the cost of enforcement and it may be difficult for IDR holders to enforce any judgment or arbitral award obtained in India against the company in its parent jurisdiction.

In addition, both the Deposit Agreement (which sets out the terms and conditions relating to the IDRs), and the Deed Poll (pursuant to which IDR holders can address their grievances against the company) will be governed by the foreign law. Hence, the arbitration panel or court may require expert knowledge on foreign law matters to be presented to it before taking any decision.

3. Exchange Rate Risks

i. Fluctuations in exchange rate

IDRs are quoted in Indian Rupees on the exchanges while the underlying equity shares are represented in the foreign currency. IDR holders will therefore be exposed to fluctuations in exchange rates. This may affect the price of IDRs as well as the value of proceeds from a share sale pursuant to IDR redemption.

ii. Dividend and other cash distribution

Generally, prior to any dividend distribution, the depository will convert the amount received from the foreign company into Indian Rupees. However, it is under no obligation to convert (if there are practical problems in such conversion) and it will not be liable to pay any interest for any delay in conversion. In such cases, the depository may distribute the dividend in the relevant foreign currency. If exchange rates fluctuate during this period, IDR holders may be impacted adversely as they will be receiving the benefits in the foreign currency.

4. Liquidity Risk

The concept of IDRs is still in its nascent stages in India and hence these instruments do not have a significant trading market. In addition, unlike equity shares, there are no market makers for IDRs. If an active market for the IDRs fails to develop or the liquidity is not sustained, the trading price of the IDRs could fall.

This has been observed in the case of Standard Chartered IDRs, which have historically traded at a 15-25% discount to its share price.

5. Difference in tax treatment

The Income Tax Act is silent on most of the taxation aspects of IDRs. And in some cases, IDRs are taxed differently from ordinary listed shares. This uncertainty raises the taxation risk for IDR holders.

i. Taxation of dividends

Dividends declared by an Indian company are subject to a dividend distribution tax payable by the company. These dividends are then exempt from taxation in the hands of the shareholder under section 10(34) of the Income-tax Act.

However, this exemption is not applicable for IDR holders. Dividends paid to resident IDR holders will not be subject to deduction of tax at source but it will be taxable in India. Dividends paid to non-resident IDR holders will be taxable in India, if it is received in India or deemed to be received by IDR holders in India.

ii. Capital Gains Tax

As of now, there are no specific provisions in the Income-Tax Act with respect to taxation of capital gains on sale of IDRs. Accordingly, due to lack of specific exemptions, capital gains on transfer of IDRs listed on the exchanges shall be considered as accruing or arising in India and shall be taxable in India. The applicable rate of tax on capital gains will depend on the category of the taxpayer, tax residence status and the nature of capital gains.

iii. Redemption Tax

Conversion of IDRs into shares may be considered as a taxable transfer at a later date – even though currently, there are no specific provisions in the Income Tax Act in this regard.

6. Issues related to Corporate Governance

The issuing company will generally comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed. They are not required by law to follow the Indian corporate governance norms laid down in clause 49 of the Listing Agreement.

IIAS PROPOSAL

In order to mitigate the some of the aforementioned risks and to implement the proposals made in this note, several policy changes will have to be initiated by SEBI and/or RBI:

1. Separate treatment for IDR issuance pursuant to delisting

As per the extant regulations, any foreign company looking to make an IDR issue in India will have to file a prospectus with SEBI through a registered merchant banker. While a detailed prospectus is necessary for prospective investors to analyse the IDR offers, it makes the entire process expensive and time consuming. SEBI should consider launching a separate window for IDR issuances made pursuant to delisting of equity shares. This window must provide for:

- An abridged prospectus containing only the relevant and basic details of the parent company (this can be detailed later)
- A shorter clearance window

2. Removal of eligibility requirements

As mentioned earlier, the current eligibility criteria for investments in IDRs include restrictions like minimum investments and different holding limits for various classes of investors. To streamline the delisting process, these requirements need to be removed and every existing minority shareholder in the company should be allowed to participate in the IDR swap and allotted IDRs based on their pre-delisting shareholding in the company.

3. Reduction of information asymmetry

The information asymmetry between equity shareholders and IDR holders needs to be reduced. This can be achieved by ensuring that all communication from the company is made available at the same time to all

stakeholders. This will facilitate greater trust among investors and ensure more equitable participation from their side.

4. Improvement in corporate governance framework

IDR issuers need not adhere to the corporate governance requirements laid down for listed companies. This is a potential source of risk, especially when the current Grievance Redressal mechanism available for IDR holders is too technical and requires knowledge of foreign law. This may lead to apprehensions in the mind of minority shareholders and prevent them from swapping their shares for IDRs.

Arrangements will need to be put in place to ensure that the interests of IDR holders are protected. While there is already a provision for a compliance officer to be appointed, we believe the existing mechanism might be extended till such time as investors get comfortable with IDRs.

5. Change taxation structure for IDR

The policy needs to provide for uniform tax treatment for equity shares and IDRs. While dividends can continue to be taxed at the hands of the individual for the time being, the tax on capital gains and redemptions must be removed. This will enhance the returns for IDR holders and push them to swap their shares for IDRs.

6. Allow full fungibility for IDRs

Instead of partial redemption of upto 25% (in any financial year) of the IDRs issued, SEBI should consider allowing full fungibility for IDRs issued pursuant to delisting. This will negate the liquidity risk by providing all IDR holders an exit opportunity in case the IDRs are not tradable at market prices.

Further, the ability of Indian residents to hold underlying shares after redemption is limited. They are required to sell these within a period of 30 days from the date of conversion – this is too short a timeframe and needs to be amended.

7. Removal of remittance cap

Under the extant RBI guidelines, an individual is permitted to remit only up to $200,000 per financial year to undertake any capital account/current account transactions including investment in foreign securities. Furthermore, a company incorporated in India can invest only up to 50% of its net worth by way of overseas portfolio investments per financial year. These limits impose several restrictions on the entire redemption process and hence, should be reviewed.

Disclaimer
