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THE GREAT INDIAN IPO RUSH IN LIGHT OF THE 2025 SEBI ICDR REGULATIONS

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***Abstract**: The 2025 amendments to Regulation 56 of the SEBI ICDR Regulations significantly reshape startup compensation structures and governance norms. Earlier, only Employee Stock Options (ESOPs) could survive beyond the Draft Red Herring Prospectus (DRHP), while Stock Appreciation Rights (SARs) and other incentive schemes had to be terminated before listing. The new framework permits issuance of equity shares from SARs post-DRHP, provided they are granted exclusively to employees under recognized schemes and fully allotted before the Red Herring Prospectus (RHP). These SAR-linked shares also enjoy the same lock-in exemptions as ESOP conversions. For Indian startups, particularly in capital-intensive technology sectors with delayed profitability, this reform enhances flexibility while addressing governance challenges tied to founder dominance and external funding reliance. SEBI's clarification that pre-IPO ESOPs granted at least one year before the IPO may be exercised post-listing had raised governance concerns, as promoters already benefit from sweat equity and dual-class share structures. Additional ESOPs risk disproportionate enrichment. Cases like Paytm, WeWork, and Gokaldas Exports highlight risks of control concentration and ESOP misuse. Restricting SARs to employees with oversight mitigates these concerns, though ambiguities remain over unvested and cash-settled SARs post-DRHP, and their interaction with pre-IPO instruments like convertibles and placements.*

***Keywords:** Stock Appreciation Rights (SARs)**,** Employee Stock Options (ESOPs)**,** Corporate Governance**,** SEBI ICDR Regulations 2025**,** Dual-Class Shares (DCS).*

I. INTRODUCTION

The 2025 amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations[1] (hereinafter '*ICDR Regulations*') represent a transformative step in India's capital market framework, reflecting SEBI's intent to balance investors protection with issuer flexibility while aligning with global best practices. These reforms address long-standing ambiguities relating to Stock Appreciation Rights (SARs), promoter contributions, and Offer for Sale (OFS) mechanism, thereby providing greater certainty to IPO-bound companies and fostering innovation in equity-linked compensation structures[2]. By streamlining timelines, disclosure standards, and reporting formats across the IPO lifecycle, the amended framework enhances transparency and regulatory predictability. Drawing from the recommendations of the Expert Committee the revised regulatory framework aims to balance investor protection with issuer flexibility[3]. At the same time, the amendments are not without limitations. Persistent challenges such as the treatment of pre-IPO transactions, governance roles of non-promoter investors, and

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[1] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, F. No. SEBI/LAD-NRO/GN/2025/233, *Gazette of India*, Pt. III, § 4 (Mar. 8, 2025).

[2] Vaibhav Singh Tiwari & Yash Sharan, *Rights, Risks, and Reforms: Decoding SEBI's Game-Changing IPO Regulations*, Arbitration & Corporate L. Rev. – Blog, https://www.arbitrationcorporatelawreview.com/post/rights-risks-and-reforms-decoding-sebi-s-game-changing-ipo-regulations/

[3] SEBI ICDR Regulations: Key Features, Importance & Recent Updates, *The Legal School Blog* (last updated Mar. 3, 2025), https://thelegalschool.in/blog/sebi-icdr-regulations/

valuation risks in hybrid instruments underscore the need for further refinement. Against this backdrop, the central argument of this paper is that while the reforms mark an important leap towards modernizing India's IPO ecosystem, they remain transitional in nature. The essay therefore evaluates the amendments' impact on Indian startups, highlights interpretive gaps, and proposes measures to improve clarity, coherence, and convergence with international standards.

II. MAPPING THE REGULATORY SHIFT

To better understand the implications of the 2025 amendments to Regulation 56 of the SEBI ICDR Regulations[4], particularly in the context of startup compensation structures and corporate governance, it is useful to undertake a clause-by-clause analysis. This approach will allow for a more nuanced examination of how the revised provisions affect the treatment of Stock Appreciation Rights (SARs), the flexibility available to issuers during the IPO process, and the broader impact on promoter entitlements and investor protection. By unpacking each aspect of the amendment in detail, we aim to critically assess its practical effectiveness, identify lingering ambiguities, and evaluate its alignment with global governance standards.

A. Treatment of Stock Appreciation Rights under the Amended ICDR Framework

Before the changes to the 2025 Regulations, Employee Stock Options (ESOPs) were the only employee stock option planning that could survive the filing of a Draft Red Herring Prospectus (DRHP)[5]. Stock Appreciation Rights (SARs) and other employee incentive instruments had to be terminated before a listing occurred. Issuers were unable to maintain flexibility in their compensation schemes when the IPO process was occurring. The 2025 amendment to Regulation 56 of the ICDR Regulations permits equity shares arising from SARs to be issued post-DRHP, provided they are granted exclusively to employees under a recognized scheme and disclosed in the offer document[6]. Such shares must be fully allotted before the filing of the Red Herring Prospectus (RHP)[7]. Lock-in exemptions available to ESOP-converted shares have been extended to SAR-linked equity shares, including those issued through bonus allotments.

An analysis of capital-intensive Indian tech startups shows the need to safeguard both founders and long-term shareholders, as their founder-driven governance, reliance on external funding, delayed profitability, and intangible assets make them more vulnerable to IPO-related concerns than traditional firms.[8]. Uncertainty had existed over whether promoters can exercise pre-IPO ESOPs post listing, and SEBI had clarified that it is possible if the ESOP has been granted at

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[4] Securities & Exchange Board of India, *Issue of Capital and Disclosure Requirements Regulations, 2018*, Reg. 56, as amended by *Issue of Capital and Disclosure Requirements (Amendment) Regulations, 2025*, Gazette of India, pt. III, sec. 4 (Mar. 8, 2025) (India).

[5] Cyril Amarchand Mangaldas, *Client Alert: IPOs Post the SEBI ICDR Amendments 2025* (Mar. 21, 2025), https://www.cyrilshroff.com/wp-content/uploads/2025/03/Client-Alert-SEBI-ICDR-Amendments.pdf

[6] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 56, *Gazette of India*, Pt. III, § 4 (Sept. 11, 2018).

[7] Amar Shardul, *SEBI ICDR Amendments, 2025: Key Takeaways for IPOs*, Amsshardul (Mar. 10, 2025), https://www.amsshardul.com/insight/sebi-icdr-amendments-2025-key-takeaways-for-ipos/.

[8] Post-IPO Challenges and Opportunities: A Guide for Startups, *Surana & Surana International Consultants — Blog*, https://ssinternational.in/post-ipo-challenges-and-opportunities-a-guide-for-startups/.

least one year before the IPO decision[9]. When viewed from a corporate governance perspective, it was quite problematic as promoters could already receive benefits in the form of sweat equity shares under Section 54 of the Companies Act[10]. They were also exercising strategic control through Dual Class Shares, which makes the grant of additional ESOP incentives both redundant and misaligned. Since such promoters are already provided with substantial economic and control-based advantages, any further issuance of ESOPs would result in an unfair dilution of minority investors' shareholding in the company.

It becomes pertinent at this juncture also to analyze cases such as that of Paytm wherein the founder despite having superior voting shares was provided with additional stock options post-IPO incentive[11]. Similar corporate governance concerns had arisen in the case of WeWork, where Adam Neumann's stock-based incentives ultimately enabled him to exercise excessive control through the use of dual-class share structures.[12] SoftBank was later forced to restructure WeWork's Ownership Model to ensure better governance. Similar was the case with Gokaldas Exports, wherein there was allotment of ESOPs to the top executives, which was severely criticized by International Investor Advisory Services, stating that ESOPs should only remain as employee incentives, and not become a disproportionate tool to further enrich senior leadership.[13] By restricting the grant of SARs exclusively to employees and placing them under regulatory oversight, the amendment effectively addresses concerns similar to those previously associated with ESOPs. However, the treatment of cash-settled SARs post-DRHP remains unclear. Unlike ESOPs, SARs must be exercised prior to the RHP, creating uncertainty regarding unvested SARs and their alignment with IPO timelines.[14] The determination of SAR-linked equity issuance alongside other events, such as convertible instruments or pre-IPO placements, also warrants further regulatory clarity.[15]

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[9] Securities & Exchange Board of India (SEBI), *Consultation Paper on Certain Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and SEBI (Share-Based Employee Benefits & Sweat Equity) Regulations, 2021*, Mar. 20, 2025. Simran Godhania, *SEBI's Move to Allow Promoters to Retain ESOPs Post-IPO: A Critical Analysis*, IndiaCorpLaw (Apr. 21, 2025), https://indiacorplaw.in/2025/04/21/sebis-move-to-allow-promoters-to-retain-esops-post-ipo-a-critical-analysis/

[10] The Companies Act, § 54, No. 18, Acts of Parliament, 2013 (India).

[11] Shreejith R & Payaswini Upadhyay, *Paytm's ESOP Scheme: Stock Options to Founders Under SEBI Scanner*, Resolut Partners (Oct. 15, 2024), https://resolutpartners.com/research/paytm-s-esop-scheme-stock-options-to-founders-under-sebi-scanner/

[12] Jena McGregor, *Adam Neumann's Billion-Dollar Exit Package from WeWork Is a Lesson in Giving Founders Too Much Control*, Wash. Post (Oct. 24, 2019), https://www.washingtonpost.com/business/2019/10/24/adam-neumanns-billion-dollar-exit-package-wework-is-lesson-giving-founders-too-much-control/

[13] Rajesh Mascarenhas, *Shareholders of Gokaldas Exports Vote Against ESOP Resolutions*, Econ. Times (Jan. 22, 2025), https://economictimes.indiatimes.com/markets/stocks/news/shareholders-of-gokaldas-exports-vote-against-esop-resolutions/articleshow/117471284.cms/

[14] *Amendment to Make Companies with Outstanding Stock Appreciation Rights IPO Eligible: A Few Steps Closer, but Not There Yet*, Lexology (Apr. 18, 2024), https://www.lexology.com/library/detail.aspx?g=6eb4a875-0341-446d-bdef-b1cde89f3d68/

[15] *Supra* at 2.

B. Offer for Sale Restrictions under Regulation 8A

Regulation 8A[16] of the SEBI ICDR Regulations imposes limits on shareholder participation in an OFS where the issuer does not satisfy the financial eligibility criteria prescribed under Regulation 6(1)[17]. In such cases, covered by Regulation 6(2)[18]shareholders holding more than 20% of the fully diluted pre-IPO share capital may offer up to 50% of their holding, while those holding less than 20% are restricted to 10 %. These thresholds are to be computed on a fully diluted basis. The 2025 amendment introduces an explanatory note to Regulation 8A to clarify that the prescribed limits apply not only to shares offered in the IPO but also to any secondary transfers affected prior to the offering.[19] The thresholds are now expressly tied to the DRHP filing date, ensuring consistent treatment of pre-IPO disposals and public offers while addressing past interpretive gaps in OFS structuring.

C. Clarifications on Minimum Promoter Contribution and Lock-in Requirements

The 2025 amendment to Regulation 15 of the SEBI ICDR Regulations clarifies that the price per share, used to determine the eligibility of securities for minimum promoter contribution, must account for all corporate actions undertaken in the year preceding the DRHP filing[20]. Shares subscribed at a price higher than the IPO price during the latest capital raising round prior to filing are rendered ineligible for this purpose. Further, where the primary object of the IPO is capital expenditure, the minimum promoter contribution is subject to a lock-in period of three years from the date of allotment, as opposed to the standard 18-month lock-in applicable in other cases. Any promoter shareholding in excess of the minimum requirement is additionally subject to a six-month lock-in. Notably, the repayment of loans availed for such expenditure also falls within this scope.[21]

These revisions are intended to prevent misuse of issue proceeds for indirect financing of capital expenditure without appropriate regulatory scrutiny. However, the absence of a carve-out for completed projects financed through loans leaves limited flexibility, despite potential merit in differential treatment. The primary rationale behind introducing such lock-in requirements was to ensure that promoters demonstrate sustained commitment to the company and are not allowed to exit immediately after receiving the IPO proceeds. When it comes to startups, traditional ownership structures of the Indian companies are being replaced by institutional investors such as Private Equity firms, Alternative Investment Funds, etc., who would stay invested in the company for a considerable period of time before the company goes public. The organisational

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[16] Securities & Exchange Board of India (SEBI), *Issue of Capital and Disclosure Requirements Regulations*, Reg. 8A (as amended in 2024), Gazette of India, Extraordinary, Part III, Sec. 4 (Mar. 5, 2024).

[17] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 6(1), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India).

[18] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 6(2), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India).

[19] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 8A, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar 8, 2025 (India).

[20] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 15, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

[21] *Supra* at 2.

structure of such companies also consists of a mature business environment propelled by professionals with expertise, which remains unrelated to the promoter group. This has led to a situation wherein the equity investors are ready to be termed as promoters for the company going public;hence, the proposed amendments would not only be of benefit to the investors who remain non-promoters but also to the promoters in the company which goes public.

On analyzing the data of companies which had undergone listing from the period 2007 to 2015, it would highlight that the promoters have not materially sold their shares even after the there has been expiry of the lock-in period.[22] The aggregate promoter shareholding in the top 500 listed companies declined significantly to approximately 50% by 2018, while institutional investor ownership in the same set of companies rose from 25% to 34% during that period. This trend indicates a shifting ownership pattern in India's capital markets, suggesting that the traditional rationale of ensuring promoter 'skin in the game' is gradually losing its relevance.[23]

D. Voluntary Pro Forma Financials and Compliance Officer Eligibility

Pro forma financial statements are typically required in IPO filings when material acquisitions or divestments occur after the most recently disclosed financial period. These must be prepared in accordance with the ICAI's guidance note and certified by a statutory auditor or a peer-reviewed chartered accountant. While mandatory in material cases, the SEBI ICDR Regulations permit issuers to voluntarily provide such financials, even if the transactions fall below prescribed materiality thresholds.[24] The 2025 amendments clarify that voluntary pro forma financials may also be included for transactions completed prior to the last reported period in the DRHP or RHP[25]. In instances where the acquired or divested business is not a standalone entity, combined or carved-out financials must be prepared in line with applicable assurance standards.[26] Questions remain about the adequacy of historical audit reports and whether additional auditor certification is required for such financial disclosures. Further, where multiple acquisitions or divestments have occurred, a combined set of pro forma financials is required.[27] However, the regulations do not specify whether this applies only to material transactions, raising ambiguity around the scope of voluntary disclosures in such cases.

Though the 2025 amendment permitting voluntary pro forma disclosures is a welcome move, it presents challenges for startups that frequently engage in small-scale acquisitions as part of their rapid expansion strategy. Startups often grow by acquiring niche assets, technologies, or teams that individually may not meet the materiality threshold for mandatory disclosure but, when

[22] Nishith Desai Associates, *SEBI Relaxation on Lock-In Requirements Cheers Private Equity Investors*, News Details (Aug. 25, 2021), https://nishithdesai.com/NewsDetails/4804/

[23] Organisation for Economic Co-operation and Development (OECD), *Ownership Structure of Listed Companies in India* (2020),https://www.oecd.org/corporate/ownership-structure-listed-companies-india.pdf

[24] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 34(3), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India) (as amended).

[25] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, A(B)(11)(ii) (as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025) (India).

[26] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, item B(11), as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

[27] *Ibid.*

aggregated, can have a significant impact on their financial structure or operations. The current regulatory framework does not specify whether such cumulative transactions must be disclosed or how they should be presented in the offer documents. This ambiguity creates uncertainty during IPO preparation, as startups may be unsure whether to invest time and resources in preparing pro forma financials for acquisitions that, while individually minor, collectively alter the company's risk profile or earning potential.[28] Moreover, since many of these acquisitions involve non-standalone units or assets without separate financial statements, preparing accurate disclosures becomes operationally difficult. The absence of defined thresholds or presentation standards increases the risk of inconsistent compliance and potential regulatory scrutiny. In effect, while the provision for voluntary pro forma disclosures aims to improve transparency, the lack of clarity on how to handle multiple small transactions could lead to IPO delays, audit complexities, or post-filing queries, particularly for high-growth startups. Furthermore, startups do not maintain separate books for each of their units of verticals, thereby making it a time-consuming and tedious process. The IPO timelines may be delayed, and there are possibilities for audit qualification risks.

E. Additional Disclosures and Reporting Obligations

The 2025 amendments introduce enhanced disclosure requirements concerning the shareholding of promoters, the promoter group, and the top ten shareholders. Issuers are now required to disclose pre-issue shareholding, post-issue shareholding based on the price band as of the pre-issue advertisement, and post-issue shareholding at the time of allotment, all within the prospectus.[29] Further, the regulations mandate the disclosure of material agreements involving promoters, promoter group entities, directors, key managerial personnel, and employees, whether acting individually or jointly with the issuer or third parties. Such agreements must be disclosed where they directly, indirectly, or potentially impact the control or management of the issuer, or impose restrictions or liabilities upon it.[30] This includes any amendments, terminations, or rescissions of such agreements, regardless of whether the issuer is a direct party. To align with the SEBI LODR Regulations, two clarifications have been provided. First, agreements entered into in the ordinary course of business are exempt from disclosure unless they materially affect the management or control of the issuer.[31] Second, 'directly or indirectly' includes obligations on parties designed to influence the conduct of the listed entity. These refinements aim to ensure transparency while preventing over-disclosure of routine contractual arrangements.[32]

F. Disclosure of Legal and Regulatory Proceedings

The 2025 amendments align the materiality thresholds for civil litigation disclosures in IPO offer documents with those prescribed under the SEBI LODR Regulations. Issuers are now required to disclose such proceedings if they exceed the lower of: (a) 2% of turnover based on the latest

[28] Sahara India Real Estate Corp. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603 (India).
[29] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, Part A, B(10)(E), as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).
[30] *Key Disclosure Rule Challenged: Why It Matters for Listed Companies*, Fox Mandal (July 16, 2025), https://www.foxmandal.in/key-disclosure-rule-challenged-why-it-matters-for-listed-companies/
[31] *Supra* note at 4.
[32] *Ibid*

annual restated consolidated financial statements; (b) 20% of net worth, except where net worth is negative; (c) 5 % of the average absolute value of profit or loss after tax over the last three financial years; or (d) a materiality threshold defined by the issuer's board and disclosed in the offer document.[33]

In addition, the amendments mandate the disclosure of criminal proceedings, including those initiated by regulatory and statutory authorities, such as tax-related actions, against key managerial personnel and senior management. This ensures consistency in disclosure obligations applicable pre- and post-listing.[34] Industry standards issued under the aegis of stock exchanges further guide issuers on evaluating the impact of pending litigation. These standards recommend focusing on the expected financial impact on turnover or profit and loss, specifically, using a 2% turnover threshold or 5% of average post-tax profit or loss, rather than net worth. This industry practice may assist issuers in making consistent and investor-relevant materiality assessments.[35]

G. Reporting of Pre-IPO Transactions

The 2025 amendments introduce a mandatory reporting requirement for all securities transactions undertaken by promoters and the promoter group between the filing of the DRHP and the closure of the issue. Such transactions must be reported to the stock exchanges within 24 hours. Similarly, any proposed pre-IPO placement disclosed in the draft offer document must also be reported within 24 hours of execution.[36] These requirements are aligned with the July 2023 advisory issued by the Association of Investment Bankers of India, which mandates disclosure of pre-IPO placements or share transactions aggregating to 1% or more of the issuer's paid-up equity capital.[37] While the amendments do not expressly mandate public dissemination, the Expert Committee has recommended that details of such transactions be made accessible to public investors through the stock exchange websites. This is intended to enhance transparency and ensure parity of information between institutional and retail participants.[38] However, the scope of these disclosures remains ambiguous. It is unclear whether the requirement applies exclusively to primary pre-IPO placements explicitly disclosed in the offer document or whether it extends to other forms of secondary transactions by shareholders under the broader interpretation of Regulation 8A.[39] Further clarification from SEBI may be required to ensure

[33] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, Part A, § Reg. 12, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

[34] *Ibid*

[35] *Ibid*

[36] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Regs. 54, 95 & 150, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

[37] Ass'n of Investment Bankers of India, *Consultation Paper on Certain Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018*, (n.d.), http://aibi.org.in/DISCUSSION_PAPERS/Consultation_Paper_on_certainAmendments_to_SEBI%28ICDR%29Regulations_2018.pdf

[38] *Expert Committee for Facilitating Ease of Doing Business and Harmonization of ICDR and LODR Regulations*, MMJC Insights (July 13, 2024), https://www.mmjc.in/expert-committee-for-facilitating-ease-of-doing-business-and-harmonization-of-icdr-and-lodr-regulations/

[39] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 8A, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

consistent compliance practices.

III. GLOBAL REGULATORY BENCHMARKS FOR STRENGTHENING INDIA'S IPO FRAMEWORK: LESSONS FROM THE U.S. EQUITY AND DISCLOSURE REGIME

A. Structured Valuation of SARs: Lessons from Section 409A of the U.S. Code

Though the SAR scheme is provided only to employees, the chance for mismanagement of powers has been reduced. The amendment is still unclear with respect to unvested SARs and cash-settled SARs. An inspiration that can be taken in this regard is from Section 409A of the U.S. Internal Revenue Code[40] which provides a structured framework for determining the Fair market Value (FMV) of equity-based compensation, particularly stock options and SARs. It distinguishes between public and private companies and prescribes specific methods and safe harbours for valuation to ensure regulatory and tax compliance. Where the underlying stock is publicly traded, FMV may be established using any reasonable method that reflects actual market transactions.[41] For companies whose shares are not publicly traded, FMV must be determined using the application of a reasonable valuation method, with such valuation taking into account all relevant facts and circumstances as of the valuation date.[42] Factors typically considered include the company's asset base, projected future cash flows, and recent arm's-length transactions.[43] Further, these valuations are not considered reasonable if they are older than 12 months or fail to incorporate material information that would affect the company's value.

To provide certainty and reduce compliance risk, Section 409A recognises three valuation safe harbors as presumptively reasonable:

1. *Independent valuation* – conducted within 12 months of the grant date, aligned with employee stock ownership plan standards.
2. *Illiquid startup valuation* – based on a good-faith, written valuation report by a qualified individual for closely held startups.
3. *Binding formula* – a pricing formula that is consistently used in legally binding contracts like buy-sell agreements or third-party transfers.[44]

The structured process that exists within this framework would help in standardising the procedure that needs to be followed while determining the amount that needs to be fixed for cash-settled SARs and how much of a right would get transferred in case of an unvested SAR.[45]

[40] 26 U.S.C. § 409A (2022).
[41] Treas. Reg. § 1.409A-1(b)(5)(iv)(A) (as amended in 2016).
[42] Treas. Reg. § 1.409A-1(b)(5)(iv)(B)(1).
[43] Technical Guide on Valuation (Revised 2018 ed.), *Institute of Chartered Accountants of India*, https://kb.icai.org/pdfs/50944clcgc40588.pdf
[44] Team Qapita, *A Comprehensive 409A Safe Harbor Guide*, Qapita Blog (Apr. 2, 2024), https://www.qapita.com/blog/409a-safe-harbor-guide/
[45] Stock Appreciation Right (SAR), *Corporate Finance Institute,* https://corporatefinanceinstitute.com/resources /career/stock-appreciation-right-sar/

B. Minimum Promoter Contribution: A Comparative Context

Unlike India, the U.S. Securities and Exchange Commission (SEC) does not impose statutory lock-in requirements or a minimum promoter contribution on initial public offerings (IPOs). Rather, underwriting agreements are used to contractually impose the requirements, which are commonly referred to as lock-ups in practice.[46] They usually apply to principal shareholders (usually more than 10%), majority shareholders (more than 50%), and many shareholders who own more than 5% of the business. This is in contrast to India, which is still developing its capital market and has regulatory protection and stability for investors that still needs to be developed, the U.S. market is distinguished by its institutions, sophisticated investors, and use of disclosure-based regulations and private contracts that allay issues with disinvestment risk at early stages of investments.[47] The modifications are conditions of relaxation of lock-in (reduction of lock-in for use of certain post-issue requirements), which maintain a minimum mechanism for investor protection, even though SEBI's requirement for minimum promoter contribution and lock-in is a regulation meant to be a reasonable approach given India's situation. This strategy aims to address and strike a balance between the demands of a local developing market and the requirement to conform to international market standards.[48]

C. Standardising Voluntary Pro Forma Disclosures: Regulatory Insights from U.S. SEC Rules 3-05 and 11-01

India's current approach to voluntary pro forma financial disclosures in IPO offer documents permits issuers to include financials for acquisitions or divestments that are below the materiality thresholds, or where the transaction has occurred prior to the latest disclosed period.[49] However, the absence of detailed standards regarding eligibility, presentation format, and aggregation thresholds results in inconsistency and potential confusion for investors, particularly in the context of multiple non-material acquisitions or businesses acquired without distinct legal or accounting separation.[50]

In contrast, the U.S. SEC provides a structured and risk-weighted approach under Rule 3-05[51] and Rule 11-01[52] of Regulation S-X. These rules govern when and how registrants are required to provide historical financial statements and pro forma financial information for acquired or disposed businesses. Specifically:

[46] Steven B. Bochner & Shawn J. Lindquist, *Securities Regulation*, *Insights Magazine* (July 2004), https://www.wsgr.com/a/web/10/bochner0704.pdf

[47] Dr. Biswadev Dash, *Capital Market Law – Indian v. U.S. CA*, LinkedIn (Oct. 17, 2023), https://www.linkedin.com/pulse/capital-market-law-indian-vrs-us-ca-dr-biswadev-dash/

[48] S*upra* at 20.

[49] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) § Regulations, 2025, Sched. VI, Part A, 10(F) (India), Gazette Statutory Regs., Mar. 8, 2025.

[50] Amendments to Financial Disclosures About Acquired and Disposed Businesses, Securities Act Release No. 10786, Exchange Act Release No. 88,438, 85 Fed. Reg. 54,902 (Sept. 2, 2020), https://www.sec.gov/rules/final/2020/33-10786.pdf

[51] 17 C.F.R., § 210.3-05, (2024).

[52] 17 C.F.R., § 210.11-01, (2024).

'(i) Abbreviated financials may be permitted for acquired businesses that were not legally or operationally distinct entities at the time of acquisition, where preparing full historical financials is impracticable.

(ii) Pro forma financials may be presented using only relevant historical data and Transaction Accounting Adjustments, excluding management estimates or forward-looking assumptions.

(iii) For individually insignificant acquisitions (typically under 20% significance), registrants are required to disclose aggregate pro forma effects only if the combined impact is materially significant. Pro forma information used to measure significance must be based strictly on completed transactions and may not factor in proceeds from an offering or hypothetical structuring assumptions.'[53]

From the U.S. regulatory framework, India can adopt codified thresholds for acquisitions, allow abbreviated financials for complex assets, restrict unaudited inputs with auditor assurance, and clearly distinguish forward-looking from historical data. These measures would ensure consistent disclosures, enhance comparability, and boost investor confidence while remaining practical for issuers. Adopting a rule-based framework along the lines of SEC Rule 3-05[54] would allow Indian issuers and their advisors to assess and present the significance of business combinations more consistently, while ensuring that pro forma disclosures meaningfully inform investor decision-making.

D. Persisting Challenges In India's Capital Market Regulatory Framework

While the 2025 amendments represent a significant step toward streamlining India's IPO and disclosure regime, several structural and interpretive challenges remain unaddressed. First, the inclusion of non-individual investors in fulfilling up to 10% of the minimum promoter contribution (MPC) seeks to align Indian practice with global norms and address promoter dilution in startups and high-growth firms. However, the potential influence of such investors, who may not participate in day-to-day operations, raises concerns regarding shifts in control, governance complexity, and possible misalignment with promoter vision, particularly in strategic decisions. Second, the permissibility of convertible cumulative preference shares (CCPS) as part of the MPC introduces valuation risks. Where conversion terms are fixed in the DRHP but implemented after material changes in company performance, the conversion price may no longer reflect fair value, potentially disadvantaging promoters. Third, ambiguity remains regarding the disclosure obligations for pre-IPO transactions. While the Expert Committee has advocated for post-transaction publication of key details through stock exchanges, it is unclear whether such requirements apply solely to primary placements disclosed in the offer document or also extend to secondary transactions. The interplay with Regulation 8A further complicates interpretive certainty. Together, these issues indicate that while recent reforms have improved procedural efficiency, further regulatory clarification is necessary to ensure consistency, transparency, and governance balance in capital formation.

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[53] *Amendments to Financial Disclosures about Acquired and Disposed Businesses*, Securities Act Release No. 33-10786, Exchange Act Release No. 34-88914, Investment Company Act Release No. IC-33872, 85 Fed. Reg. 54002 (Aug. 31, 2020) (to be codified at 17 C.F.R. pts. 210, 230, 239, 240, 249, 270, and 274).
[54] 17 C.F.R., § 210.3-05, (2024).

IV. CONCLUSION

The 2025 amendments to the SEBI (ICDR) Regulations mark a significant modernization of India’s capital market framework, particularly for IPO-bound startups and high-growth firms. Key reforms include liberalized treatment of Stock Appreciation Rights (SARs), adjustments to Offer for Sale (OFS) limits, changes in minimum promoter contribution (MPC) rules, and enhanced disclosure standards. These measures aim to provide flexibility in equity-linked compensation, strengthen pre-IPO governance, and align disclosure practices with global benchmarks, balancing investor protection with issuer autonomy. However, interpretive uncertainties persist, notably around cash-settled and unvested SARs, pre-IPO disclosures under Regulation 8A, and MPC obligations involving non-individual entities. Risks also arise from including hybrid instruments like CCPS in promoter contributions without valuation safeguards. Comparative insights from U.S. frameworks, such as Section 409A SAR valuation and SEC disclosure norms, show the need for codified safe harbours. Overall, the reforms are promising but transitional, requiring clearer rules and stakeholder engagement to enhance India’s IPO ecosystem.