
EQUITY COMPENSATION IN ASIA'S GROWTH HUBS: A COMPARATIVE ANALYSIS OF ESOPS IN INDIA AND SINGAPORE

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ABSTRACT

ESOPs have thus been described as “one of the strongest means to realign employee-shareholder interests to produce further innovation and startupism”. The paper critically compares the diverse regulatory approaches to ESOP structures in the two growing financial centres, India and Singapore, with regard to the contours within which employee equity is offered.

The approach in India is largely prescriptive in nature, relying on the Companies Act, 2013 and the Securities and Exchange Board of India Regulations. The Indian regime focuses on protecting shareholder interests, transparency and good governance, mandating disclosure and an employee remuneration committee which should consist of two thirds of independent directors. The resultant procedural obligations of compliance and tax implications upon exercise leads to a liquidity crisis.

On the other hand, Singapore has created a milieu providing tax efficiency and flexibility on all fours with the Companies Act, 1967 and the SGX Listing Manual, proving very appealing to investors and multinational companies alike. However, the sheer absence of employee protections, especially on the valuation and liquidity front, in private companies is a major concern.

Also, the problem of insufficient alignment between ESG considerations with ESOP schemes is discussed within the existing legal and policy frameworks. The paper concludes that each of the models on its own is inadequate in meeting the challenges posed by the increasing usage of ESOPs and proposes a strong hybrid of India's transparency and robust governance with the flexibility provided by Singapore that could be considered the model that would challenge any globally existing standard.

Keywords: ESOP, Corporate Governance, Companies Act, SEBI Regulations, SGX Listing Manual, Taxation of ESOPs

CHAPTER I: INTRODUCTION

Employee stock option plans-otherwise known as ESOPs-are a benefits plan that gives employees the option to purchase stock at a fixed price after a certain number of years have passed. ESOPs are an opportunity where an organization and its employees are given a concrete symbol of a collective future, tapping into one of human nature's deepest wishes for ownership, meaning, and belonging in a shared endeavour; the old transaction-driven employer-employee relationship is transmuted.

ESOPs are increasingly prevalent due to the growth of startup culture in India and Singapore. Start-up companies are considered risky in their early years; to attract and retain top talent, founders offer employees a share in the future they are helping to build. It is an option and not an obligation.

The concept of employee stock ownership plans is sometimes attributed to American economist Louis Kelso. In 1916, Sears Roebuck made the decision to use company stock as the primary source of funding for its pension plan, with the intention of encouraging employees to increase the company's profitability and value. Companies also reduce their agency costs by issuing ESOPs.

The theoretical foundation for this practice was given rigorous academic form by Jensen and Meckling in their article, which integrated elements from agency theory, property rights theory, and finance to develop a theory of the ownership structure of the firm.¹ Jensen and Meckling had argued that shareholder (principal) delegate the control right to managers (agent) in the public corporation gives rise a central agency problem in which the interests of the agent may diverge from the interests of the shareholders. The ESOPs were widely used as an solution which has aimed to align the interests of managers and shareholders. The argument was subsequently used widely in the study of ESOPs, as also done by Ding and Sun, when carrying out their empirical study of the ESOP market in Singapore.²

The comparative corporate governance literature has further illuminated the structural roots of

¹Michael C Jensen and William H Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure" (1976) 3 *Journal of Financial Economics* 305.

²David K Ding and Qian Sun, "Causes and Effects of Employee Stock Option Plans: Evidence from Singapore" (2001) 9 *Pacific-Basin Finance Journal* 563
<<https://www.sciencedirect.com/science/article/pii/S0927538X01000270>> accessed 20 August 2025.

this problem. Kraakman and others, in *The Anatomy of Corporate Law*, identify the principal-agent conflict as one of three foundational agency problems that corporate law across all jurisdictions is designed to address the other two being the opportunism of controlling shareholders vis-à-vis minority shareholders, and the opportunism of shareholders as a class vis-à-vis other corporate constituencies such as employees and creditors.³ Both the Indian and Singaporean ESOP regimes are, in essence, regulatory responses to these same three agency problems, though they weigh the respective solutions very differently. India's prescriptive framework prioritises the second and third problems protecting minority shareholders and employees while Singapore's principles-based approach gives primacy to managerial flexibility in addressing the first.⁴

Within Asia, India and Singapore have emerged as formidable powerhouses, acting as magnets for innovation, capital, and talent. Though vastly different in scale and structure, both nations have recognised that their most valuable resource is human capital, and that the most powerful means for harnessing it lies in equity compensation.

In India, Wipro was the first company to introduce ESOPs. However, in 1990, Infosys brought ESOPs into public discourse, creating a large number of ESOP rupee millionaires and billionaires when it launched its Initial Public Offering. ESOPs became particularly attractive as an exemption from tax at that time, as exercising the options and selling shares were not taxable. Although this tax exemption was subsequently removed, ESOPs continued to attract employees, as they enabled participation in the growth of their organisation without any upfront investment.⁵ In Singapore, Singapore Airlines first adopted ESOPs in 1975.

India's startup ecosystem stands as the third largest in the world, with the Department for Promotion of Industry and Internal Trade (DPIIT) recognising over 159,000 startups as of early 2025.⁶ Employee Stock Option Plans, once a niche instrument, have become the cornerstone of talent strategy, transforming employees from wage earners into vested co-owners of the organisations they serve.

³Reinier Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, OUP 2017) 35-37.

⁴Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (n 3) 28-30.

⁵Atul Kumar, SG Walke and Mahavir M Shetiya, "Evaluation of ESOPs as a Reward Management Practice in the Indian IT Industry" *Zenodo* <<https://zenodo.org/record/6677068>> accessed 24 August 2025.

⁶Press Information Bureau, Government of India, "Nine Years of Startup India" (PIB, 16 January 2025) <<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2093125>> accessed 19 August 2025.

CHAPTER II: LEGAL AND REGULATORY FRAMEWORK

Indian and Singaporean ESOP regime designs embody each country's disparate legal inheritance and policy concerns. While the aims for ESOP design (to provide employee ownership) in both jurisdictions are shared, they differ in respect of governance rules, transparency requirements, and tax treatment. As Kraakman and others observes the "policy choices embedded in any body of corporate law are non-neutral; every design assumes particular views about the agency problem that should be tackled and about which stakeholder ought to be protected".⁷

Section 1: India

In India, the legal framework for ESOPs is primarily regulated by the Companies Act 2013, along with rules issued by the Securities and Exchange Board of India (SEBI). Section 2(37) of the Companies Act 2013 defines an employee stock option as an option granted to directors, officers, or employees of a company or its holding or subsidiary company, conferring the right to purchase shares at a future date at a predetermined price.⁸ The rules vary depending on whether the company is listed or unlisted.

1.1 Unlisted Companies

Section 62(1)(b) of the Companies Act 2013,⁹ read with Rule 12 of the Companies (Share Capital and Debentures) Rules 2014, provides that a company must pass a special resolution (requiring 75% shareholder approval) to offer ESOPs. The resolution must outline the aggregate number of options, identify the eligible employee categories, and specify the vesting period and exercise price. The rules mandate a minimum one-year vesting period between the grant and vesting of options, thereby promoting sustained employee retention.¹⁰ The pricing of options must be determined by a registered valuer to ensure fair market value, thereby protecting both employees and existing shareholders. Companies are required to maintain a formal Register of Employee Stock Options in the prescribed Form SH-6.¹¹

⁷ Reinier Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (n 3).

⁸ Companies Act 2013, s 2(37).

⁹ Companies Act 2013, s 62(1)(b).

¹⁰ Companies (Share Capital and Debentures) Rules 2014, r 12; Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021, reg 24

<https://www.sebi.gov.in/sebi_data/attachdocs/apr-2017/1492085873402.pdf> accessed 20 August 2025.

¹¹ Companies (Share Capital and Debentures) Rules 2014, r 12 read with Form SH-6.

1.2 Listed Companies

For listed companies, the framework is more stringent. Sections 54 and 62 of the Companies Act 2013,¹² read with Rules 8 and 12 of the Companies (Share Capital and Debentures) Rules 2014,¹³ and the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021,¹⁴ provide a comprehensive code for all forms of equity-based compensation. The key requirements are as follows:

(a) Compensation Committee:

Regulation 5 of SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021 makes it necessary for the company to have a compensation committee to administer ESOP scheme(s). The company has an option of vesting administration in a trust if the scheme(s) is effected through it. The committee must consist of at least three non-executive directors of whom not less than two-thirds shall be independent directors.¹⁵ It is the governance structure required to manage the manager shareholder agency problem which is raised by Jensen and Meckling.¹⁶

(b) Detailed Disclosures:

The statement in connection with the shareholder resolution required should include all the necessary details such as the reasons for introducing the scheme, the total number of options proposed to be allotted, the valuation method being adopted (fair value method will be compulsory), the period of vesting and the mechanism of arriving at the exercise price.

(c) Trust Route:

Companies may implement ESOPs either directly or through an irrevocable employee

¹²Companies Act 2013, ss 54 and 62.

¹³Companies (Share Capital and Debentures) Rules 2014, rr 8 and 12.

¹⁴Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021 <https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021_51889.html> accessed 20 August 2025.

¹⁵ *ibid*, reg 5; Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (last amended 10 July 2024), reg 19 <https://www.sebi.gov.in/legal/regulations/jul-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-july-10-2024_84817.html> accessed 24 August 2025.

¹⁶ Jensen and Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure (n 1).

welfare trust. The trust route provides flexibility but is subject to stringent SEBI oversight to prevent market abuse.

(d) Vesting and Lock-In:

A one-year minimum vesting period is required. The company may specify a lock-in period for shares issued upon exercise of an option.¹⁷

Section 2: Singapore

The approach to ESOP regulations taken by Singapore differs to that of India as it is more principles-based and less prescriptive due to the underlying common law framework and pro-business stance taken by Singapore. Companies Act 1967 covers ESOPs in Singapore and is applied to companies through common law principles of corporate law. This gives companies wide discretion in their ESOP structure.

2.1 Private Companies

The law in Singapore is distinguished by a lack of a prescriptive code specifically regulating ESOPs. The Companies Act 1967 does not contain any statutory provisions which are unique or peculiar to ESOPs.¹⁸The major aspects of Singapore's framework are:

(a) Board and Shareholder Approval:

Although the Act does not set out a specific ESOP approval mechanism akin to India's, the issuance of new shares requires prior shareholder approval under section 161 of the Companies Act 1967.¹⁹ Both board and shareholder resolutions are therefore needed to establish an ESOP and approve the pool of shares for exercise.²⁰ The specific requirements are often determined by the company's constitution and any existing shareholders' agreement. The importance of strict procedural compliance with constitution requirements for share issuance including for ESOP purposes was recently

¹⁷Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021 (n 14), regs 24-25.

¹⁸ Companies Act 1967 (Singapore) <<https://sso.agc.gov.sg/Act/CoA1967>> accessed 21 August 2025.

¹⁹Companies Act 1967 (Singapore), s 161.

²⁰Eqvista, "ESOP (Employee Stock Ownership Plan) in Singapore" <<https://eqvista.com/esop/employee-stock-ownership-plan-singapore/>> accessed 21 August 2025.

underscored by the Singapore courts.²¹

(b) Structuring Flexibility

Private companies in Singapore enjoy a high degree of freedom. There are no statutory restrictions on who may participate, and plans may be extended to non-employees such as non-executive directors, consultants, and advisors. There are no statutory caps on the size of the ESOP pool, and no mandated rules on exercise pricing, which may be set at a nominal value to maximise the potential benefit for employees.²²

(c) 50-Shareholder Limit Exemption

The Companies Act 1967 limits a company to 50 shareholders if it is to be considered a private limited company. This count does not include employees of the company who have become shareholders via an ESOP, thus allowing for the broad offering of equity throughout the employees of a company without them quickly escalating into public company regulations.²³

(e) Absence of Mandatory Vesting Periods

Unlike in India there is no prescribed minimum vesting period or cliff in Singaporean law; it is up to the company's discretion how the vesting schedule will look like. However, the current market trend has established a four-year vesting schedule with a one-year cliff, in line with the Silicon Valley and Indian trends.²⁴

2.2 Listed Companies

For listed companies, SGX-ST Listing Manual has stipulated rules for listed companies. In the Listing Manual Part VIII deals with share option schemes and that share option schemes need shareholder approval if an employee share option scheme (ESOP) is to be implemented. These

²¹See also the Singapore High Court's reasoning in *Nanyang Commercial Management Pte Ltd v Matex International Ltd* [2025] SGHC 190, where the court confirmed that a general shareholder mandate for share issuances requires further board sanction to be validly exercised, reaffirming that the process of approving new share issuances including those for ESOP purposes must strictly comply with the company's constitution.

²²28 Falcon Law Corporation, "Employee Share Option Plans (ESOP): Incentivising Employers and Employees and Aligning Their Interests" <<https://www.28falconlaw.com/knowledges/employee-share-option-plan-esop-esos-singapore/>> accessed 21 August 2025.

²³Triangle Legal, "How to Create an ESOP: Legal Guide by Corporate Lawyers" <<https://www.trianglelegal.com.sg/insights/esop-employee-share-options-plan-singapore>> accessed 22 August 2025.

²⁴ibid.

most important rules have been outlined as below:

(a) Shareholder Approval Rules and Abstention Rules

The shareholder approval is needed to implement the ESOP scheme. Where the resolution concerned employees' options will involve controlling shareholder's option scheme and/or substantial issue of share option for parent company employees. The Listing Manual stipulates that independent shareholders must approve this resolution. All connected persons, including controllers must not vote for such resolution.²⁵

(b) Limits on Scheme Size

The aggregate shares reserved for issuance under all of a company's share schemes are limited to 15% of the company's total issued shares, excluding treasury shares and holdings in subsidiaries.²⁶

(c) Participation Restrictions

The benefit has been spread among more employees with the sub-limits that the total proportion to controlling shareholders and their relatives will be restricted to 25% of the reserve pool and no controlling shareholder or his relative may receive more than 10%.²⁷

(d) Pricing Rules

The discount price for the Scheme would be capped at 20% with a separate shareholder approval required.²⁸

(e) Vesting period

Any options issued at discount may be exercised no earlier than 2 years after the grant of the options; options issued at market price or at a premium may be exercised no earlier than 1 year after the grant of options.

²⁵Singapore Exchange (SGX) Listing Manual, Part VIII Share Option Schemes or Share Schemes <<https://rulebook.sgx.com/rulebook/part-viii-share-option-schemes-or-share-schemes-0>> accessed 22 August 2025.

²⁶SGX Listing Manual, r 845 <<https://rulebook.sgx.com/rulebook/845>> accessed 22 August 2025.

²⁷ibid.

²⁸ibid.

The transition from private to public company status brings about different levels of regulatory shift in different jurisdictions. The transition is more substantial in Singapore; a private company there already has one of the most relaxed ESOP frameworks in the world but once it lists on SGX it is bound by specific and detailed restrictions on scheme size, vesting and employee participation. In India, the transition is not as drastic as under the Companies Act, 2013, an unlisted company already has significant requirements to adhere to including mandatory vesting cliffs, restriction on promoter and detailed shareholder approval requirements; even with SEBI's additional requirement for a secretarial audit there is still an overarching similarity in approach between the private and public companies, that of prescription and monitoring.

CHAPTER III: FINANCIAL AND POLICY CONTEXT

The financial rationale and the policy regime governing ESOPs in India and Singapore are largely in conformity with the economic imperatives driving the national agenda in both countries, which are to encourage innovation, draw in investments, and nurture a knowledge-based economy. The inherent motivation of aligning employee and shareholder goals behind ESOPs is consistent in both countries; however the contextual factors specific to each of these nations have given shape to specific arrangements and uses.

Section 1: Financial Reasoning

The primary financial rationale behind ESOPs, particularly in start-ups, is to conserve cash flow. Companies in asset-heavy industries generally reinvest capital in growth and expansion, and providing substantial cash salaries can be a financial strain. By providing ownership in the success of the company, they can still compete against larger MNCs for skilled talent, particularly in high-demand sectors like software, fintech, e-commerce and pharmaceuticals where the talent pool is hot in both India and Singapore.

This boom in Indian startups has made ESOPs an integral part of remuneration as venture capital funding into startups has soared. Market practices are quickly moving on with firms utilizing ESOPs for talent acquisition, retention, as well as for incentive. 'ESOP buy back' is another well-established market practice in which a firm, generally upon the conclusion of another funding round, allows its employees to sell their vested options to the company and

encash it before an eventual sale or public listing.²⁹ A broad group of ESOP policy experts regularly argues for more simplicity in the ESOP tax environment for the employees, specifically at the exercise of options where employees may not have the necessary liquid cash to pay an immediate tax liability.³⁰

In Singapore, the financial landscape is shaped by its role as a global finance hub and its appeal to multinational corporations and venture capital. The government's proactive efforts to foster an ease-of-doing-business environment have attracted many companies to establish their regional headquarters in Singapore, leading to ESOP adoption by local startups such as Grab, as well as by international companies.³¹

Singapore's policy prioritises simplicity and tax competitiveness. The Equity Remuneration Incentive Scheme (ERIS) was a clear example of a policy designed to make equity compensation more financially rewarding for employees.³² By granting tax exemptions on ESOP gains, the government actively supported the wider adoption of equity compensation schemes.³³ However, this scheme has been phased out and no longer applies to gains realised after 31 December 2023.³⁴

Section 2: Policy Rationale and Corporate Governance

Corporate governance is a central theme in the ESOP discourse in both countries, with each prioritising different elements of the three agency problems described by Kraakman and others.³⁵

In India, following corporate governance scandals, the regulatory framework under SEBI

²⁹Mohini Varshenya, "The ESOP Buyback Boom in India (FY 2024-25) - Transforming the Startup Ecosystem Through Employee Wealth Creation" (ESOP Guardian, 17 April 2025) <<https://esopguardian.com/the-esop-buyback-boom-in-india-fy-2024-25-transforming-the-startup-ecosystem-through-employee-wealth-creation/>> accessed 23 August 2025.

³⁰AKM Global, "Why Is ESOP Taxation Unfair to the Employees and Needs to Be Reviewed" (AKM Global, 2024) <<https://www.akmglobal.com/new-and-articles/19/20/939/why-is-esop-taxation-unfair-to-the-employees-and-needs-to-be-reviewed/>> accessed 23 August 2025.

³¹Trica Equity Team, "The Right Strategy to Roll Out ESOPs in Singapore" (Trica Equity Blog, 30 June 2021) <<https://trica.co/equity/blog/us/strategy-to-roll-out-esops-in-singapore/>> accessed 23 August 2025.

³²Inland Revenue Authority of Singapore, *e-Tax Guide on Employee Stock Option and Share Ownership Plans* (IRAS, 26 April 2013) <https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguides_iit_iris_2013-04-26.pdf?sfvrsn=7e93d70a_11> accessed 23 August 2025.

³³*ibid.*

³⁴Inland Revenue Authority of Singapore, "Individual Tax Filing: Getting It Right" (Singapore Chartered Tax Professionals, 26 January 2024) <<https://sctp.org.sg/Tax-Articles>> accessed 13 September 2025.

³⁵Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (n 3) 35-37.

strongly prioritises fairness and transparent operations. The requirement for a compensation committee dominated by independent directors, detailed shareholder disclosure, and fair value accounting is intended to prevent misuse of ESOPs, including the risk of awarding excessive options to senior executives at the cost of minority shareholders. The J.R. Varma Committee Report emphasised voluntary adoption of fair value accounting as a condition for favourable ESOP treatment.³⁶ Listed companies must disclose ESOP implementation details in annual reports.

The seriousness with which SEBI enforces these governance requirements is illustrated by its 2025 settlement with One97 Communications Ltd (Paytm) and its founder Vijay Shekhar Sharma.³⁷ SEBI determined that the grant of 21 million ESOPs to Sharma violated the SBEB Regulations because he held a controlling stake at the material time. As part of the settlement, Sharma surrendered the ESOPs and accepted a three-year ban from receiving fresh ESOPs from any listed company. This case is a landmark enforcement action that underscores the importance of the promoter-eligibility restrictions in the Indian framework.

Employee rights to vested ESOPs have also received judicial protection through the National Company Law Tribunal. In *Employee v Mastek Ltd*, the NCLT held that once an option has vested under the terms of the ESOP scheme, the company may not arbitrarily deny the employee the right to exercise it reinforcing that vested ESOP rights constitute a cognisable contractual entitlement. The complexity and instability of India's ESOP tax framework is starkly illustrated by three 2025 High Court rulings involving employees of Flipkart Internet Private Limited who held unexercised ESOPs issued by its Singapore parent, Flipkart Private Limited. When the PhonePe demerger caused a fall in ESOP value and Flipkart Singapore paid a one-time voluntary compensation of USD 43.67 per option, three employees sought nil tax deduction certificates under section 197 of the Income Tax Act 1961 and received three entirely different answers. In *Sanjay Baweja v ITO*, the Delhi High Court held that since the options

³⁶Justice RS Lodha Committee (DCA), *Report of the Committee on Sweat Equity, ESOPs and Preferential Allotments* (Ministry of Corporate Affairs, 2003)

<https://www.jrvarma.in/reports/Sweat_ESOP_Pref_Allot_report_DCA.htm> accessed 6 September 2025.

³⁷SEBI, Settlement Order in the matter of *One 97 Communications Ltd and Vijay Shekhar Sharma* (May 2025) https://www.sebi.gov.in/enforcement/orders/may-2025/settlement-order-in-the-matter-of-one97-communications-limited_93857.html; see also SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021 (n 12), reg 9A (inserted with effect from 8 September 2025), which introduced a one-year cooling-off period for promoters reclassifying as non-promoters prior to an IPO. The Paytm settlement in which Sharma surrendered 21 million ESOPs worth approximately INR 1,800 crore and accepted a three-year ban from receiving fresh ESOPs from any listed company illustrates the real-world consequences of non-compliance with promoter eligibility restrictions under the SBEB Regulations.

were unexercised the perquisite under section 17(2)(vi) had not triggered, and the voluntary payment was not taxable. A similar decision was given by the Karnataka High Court in *Manjeet Singh Chawla v DCIT*. The court held the sum to be a capital receipt and hence not eligible to tax. The Madras High Court however has a diametrically opposite opinion in *Nishithkumar Mehta v DCIT*. The court was of the opinion that, mere employment nexus would be adequate to tax the payment as perquisite even though the same is unexercised. In conclusion three judicial pronouncements arising from a single ESOP plan, a corporate event and essentially identical facts, reveal a precariousness within Indian ESOP taxation policy which has serious litigation exposure for employees of Indian subsidiaries of Singaporean companies.³⁸

Singapore's principles-based governance code supports clear and formal processes to be developed for compensation policies. Not as mandatory as India's rules, it is assumed that the board will consider the best interests of the company and shareholders, and that the market and institutional investors will drive the oversight. This duty on the part of the directors (section 157(1) of the Companies Act 1967 to act honestly and in the best interests of the company) acts as the governance backstop and any ESOPs granted primarily for the board's benefit, and at the cost of the company, would violate this duty.³⁹

Section 3: ESG (Environmental, Social, and Governance) Considerations

The consideration of ESG has begun to permeate global equity compensation schemes and now companies are toying with linking vesting of ESOPs and other long-term incentives on achievement of specific ESG goals-an example is requiring vesting of stock options only if the Company has achieved emissions reduction targets which corresponds to global climate targets. It raises a basic legal design issue as to how much of Indian and Singaporean ESOP regulation does, and does not, tolerate this trend.

³⁸Komal Dani, 'Three employees, one ESOP plan, three tax outcomes: A tale of divergent judicial interpretations' (12 August 2025) <https://trilegal.com/knowledge_repository/trilegal-update-three-employees-one-esop-plan-three-tax-outcomes-a-tale-of-divergent-judicial-interpretations/> accessed 4 September 2025; *Manjeet Singh Chawla v. DCIT of TDS* (Writ Petition No. 20212 of 2023 (T-IT)); *Sanjay Baweja v. DCIT* [2025] 474 ITR 376 (Delhi); *Nishithkumar Mukeshkumar Mehta v. DCIT* [2025] 475 ITR 614 (Madras)

³⁹*Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] SGCA 10. The Court of Appeal held that the duty of a director under s 157(1) of the Companies Act 1967 to act honestly and in the best interests of the company is not static; where the company is in financial difficulty, the interests of creditors gain increasing salience. Though decided in a solvency context, the principle is directly relevant to the governance risk in ESOP-issuing private companies: a board that designs an ESOP scheme for the disproportionate benefit of its founders, rather than in the genuine interests of the company, risks breaching the same fiduciary duty.

The academic literature is cautious on this point. Bebchuk and Tallarita argue that linking executive compensation to ESG or stakeholder targets may be illusory unless the targets are precise, independently verified, and carry genuine financial consequences for non-delivery.⁴⁰ On this analysis, the value of ESG-linked ESOP vesting depends almost entirely on the quality of the disclosure and accountability framework that surrounds it and this is precisely where the Indian and Singaporean frameworks diverge.

In India, the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 mandate that all listed companies publish a Business Responsibility and Sustainability Report.⁴¹ These reports require disclosure of how ESOP schemes support social objectives such as gender equality and employee welfare, and include quantitative metrics showing progress against ESG-linked conditions audited by external agencies. Institutional investors are increasingly utilising proxy votes and stewardship codes for ESOP frameworks that reflect social and environmental commitments. Rating agencies such as CRISIL provide ESG scores across three pillars environmental (greenhouse gas emissions, energy use, waste and water management, green products), social (employee and worker relations, stakeholder management, community impact), and corporate governance (board composition, management track record, shareholder relations, and disclosure practices).⁴² This creates a framework in which ESG-linked ESOP vesting can, in principle, be meaningfully verified.

In Singapore, the governance infrastructure for ESG-linked equity compensation is less developed for private companies. Singapore-listed companies are subject to SGX sustainability reporting requirements, and the Singapore Corporate Governance Code's emphasis on linking remuneration to long-term company performance provides a conceptual basis for ESG-linked vesting. However unlike India's BRSR regime, there is no mandated requirement for SGX listed companies to report whether any executive management ESOPs are linked to ESG targets. This is a gap in the architecture of the SGX framework in that the pliability for using the ESOP mechanism to incentivize ESG performance is not paired by disclosure that would

⁴⁰See generally Lucian A Bebchuk and Roberto Tallarita, "The Illusory Promise of Stakeholder Governance" (2020) 106 *Cornell Law Review* 91, who critically examine whether linking executive compensation to stakeholder outcomes (including ESG targets) produces genuine accountability. For the Indian regulatory context, see SEBI Circular No SEBI/HO/CFD/CMD1/CIR/P/2019/13 (22 January 2019) on Business Responsibility Reporting.

⁴¹Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 (n 13), reg 34 read with Schedule V.

⁴²CRISIL, *CRISIL ESG Methodology* (CRISIL, 2022) <https://www.crisil.com/content/dam/crisil/our-businesses/india_research/sustainability-yearbook-2022/methodology/crisil-esg-methodology.pdf> accessed 24 August 2025.

enable a third-party investor to believe the ESOPs were truly tied to ESG.⁴³

The use of ESOPs to drive ESG milestones is a powerful example of how financial instruments can be utilised to achieve wider social objectives, transcending purely financial benchmarks. However, as Bebchuk and Tallarita caution, the instrumental value of such linkage depends on the quality of the legal framework that gives it teeth. On this measure, India's prescriptive disclosure regime for all its compliance burden provides a more credible foundation for ESG-linked equity compensation than Singapore's principles-based approach.⁴⁴

CHAPTER IV: CRITICAL ANALYSIS

Although India and Singapore have developed frameworks for ESOPs, a closer examination reveals several challenges, legal uncertainties, and implementation issues that affect their effectiveness. A comparative approach proves especially valuable because it allows the advantages of one system to illuminate the weaknesses in the other, and because, as Kraakman and others observe, the three agency problems that ESOP regulation must address admit of no universal solution each jurisdiction must calibrate its regulatory response to its own institutional context.⁴⁵

Section 1: Drawbacks of the Indian Framework

1.1. Tax Liability at the Point of Exercise

The tax on ESOPs comes in two stages: It is considered a perquisite under section 17(2)(vi) of the Income Tax Act, 1961, liable for income tax upon exercise, and a capital gain upon sale of shares. At the point of exercise, it results in a liquidity problem for employees who are liable for income tax on gains that are merely 'notional' (i.e., excess of FMV over exercise price) without having received the cash. This problem is exacerbated for employees of unlisted companies as shares in these companies are often illiquid. This "dry tax" situation will be detrimental to employees as they may be forced to sell their ESOP shares as soon as they

⁴³Singapore Exchange, *SGX Listing Rules, Practice Note 7.6 (Sustainability Reporting)* <<https://rulebook.sgx.com>> accessed 22 August 2025; Monetary Authority of Singapore, *Singapore Corporate Governance Code 2018 (revised 2023)*, Provision 8.1 (linking remuneration to long-term value creation) <<https://www.mas.gov.sg/regulation/codes/code-of-corporate-governance>> accessed 22 August 2025.

⁴⁴ Bebchuk and Tallarita (n 35) 94-99.

⁴⁵ Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (n 3) 29-31.

become liquid, in order to avoid paying the taxes.⁴⁶

1.2. Regulatory Complexity and Rigidity

The highly prescriptive nature of the Companies Act, 2013 and SEBI Regulations and varied treatment of listed versus unlisted entities put great compliance burdens. For nascent startups, fulfilling the requirements of a special resolution and drawing of elaborate explanatory statements with valuations by registered valuers tends to be costly and time consuming. This inflexibility may lead smaller companies to opt for phantom stock arrangements as opposed to ESOPs which provide less security to the employees.

1.3. Valuation Gaps

Determining the “fair market value” of shares for unlisted entities remains a continuing problem. Valuations are prepared by a registered valuer but due to inconsistency in the methods used disputes can arise with the revenue authority.

1.4. Limited Liquidity Avenues

Employees holding ESOPs in unlisted companies are ordinarily reliant on future liquidity events such as funding rounds, an IPO, or an acquisition to monetise their vested options. ESOP buyback provides some relief, but such programmes are at the discretion of the company and are not guaranteed. The absence of a structured secondary market for shares of unlisted companies means that the value of such ESOPs is effectively notional for an extended period.

Section 2: Drawbacks of the Singaporean Framework

2.1. Inadequate Protective Framework for Employees in Private Companies

Singapore’s principles-based framework may benefit companies, but it fails to provide statutory protections such as mandatory disclosure standards and governance rules of the kind available under the Indian model. The absence of a mandatory minimum vesting period means that employees may not fully understand the terms and circumstances of their ESOP, and may face dilution of their interest without being fully informed. The sole statutory backstop for employees in private companies is the director’s duty under section 157(1) of the Companies

⁴⁶Income Tax Act 1961 (India), s 17(2)(vi); AKM Global (n 27).

Act 1967 to act in the best interests of the company.⁴⁷ As the Singapore Court of Appeal confirmed in *Foo Kian Beng v OP3 International Pte Ltd*,⁴⁸ this duty is dynamic and takes account of the wider interests of the stakeholders in situations of financial distress, but does not, in the absence of specific ESOP legislation, afford the employees protection against badly designed equity schemes which technically lie within the board's power.

2.2. Complexity in Establishing an ESOP

Establishment of an ESOP is still a time-consuming process, which typically involves hiring the services of legal and financial consultants to comply with Singapore legislation. Most companies encounter considerable start-up expenses, and a large proportion of them would employ external parties in developing and installing ESOPs.

2.3. Potential for Abuse

The flexible nature of the Singaporean framework creates a risk of abuse. Without independent supervision or mandatory valuation requirements for private companies, founders and key managerial personnel may design ESOP schemes that disproportionately benefit themselves. As the Companies Act 1967 does not contain specific ESOP provisions but only general director duties,⁴⁹ governance is highly reliant on the conscience of the board of directors and the vigilance of shareholders. In contrast to India, where the SEBI settlement in the Paytm case demonstrated the regulator's willingness to impose substantial consequences for eligibility violations,⁵⁰ Singapore has no equivalent enforcement mechanism for private company ESOP schemes.

Comparative Evaluation

India's rule-driven approach to regulations offers more certainty and transparency than in many other parts of the world, especially for public companies. SEBI has strengthened its rules over time, in response to the increasing and ever-changing issues surrounding corporate governance. But this rigid approach introduces a massive compliance and tax burden on a startup attempting

⁴⁷Companies Act 1967 (Singapore), s157 (duties of directors)

<<https://sso.agc.gov.sg/Act/CoA1967?ProvIds=pr157>> accessed 25 August 2025.

⁴⁸ *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] SGCA 10 (n 39)

⁴⁹ Companies Act 1967 (Singapore)

⁵⁰ SEBI, Settlement Order in the matter of *One 97 Communications Ltd and Vijay Shekhar Sharma* (May 2025) (n 37)

to attract talented employees by issuing ESOPs.

The Singapore approach offers an advantage by providing more simplicity and flexibility than the Indian framework; the flexibility allows companies to mold ESOPs to their specific needs and stage of development. Tax benefits like the ERIS highlighted government encouragement of stock options as a means to attract and retain talent. However, the flexibility that is offered, sacrifices protection for employees. The lack of strong corporate governance can lead to unfair practices.

Through the lens of the Kraakman framework, both the jurisdictions have favored a different set of agency problems. The Indian government is investing in regulatory infrastructure to handle minority-shareholder conflicts and manager-employee conflicts, at the cost of flexibility; on the contrary the Singaporean government relies on market forces and board responsibility to control manager-shareholder agency problem, sacrificing statutory employees. There is no system that is perfect, maybe a mix of the two countries is the optimal arrangement.⁵¹

CHAPTER V: SUGGESTIONS AND REFORM PROPOSALS

Section 1: Reforms for India

1.1. Rationalise the Tax Regime

The most pressing reform needed in India is to address the “dry tax” burden at the time of exercise.⁵²

(a) Shift the Point of Taxation

The taxable event for the perquisite tax should be shifted from the time of exercise to the time of actual sale of the shares. This would align the tax liability with the actual cash inflow for the employee, thereby eliminating the liquidity problem. This approach is already adopted in many developed jurisdictions, including the United States for certain categories of stock options.

⁵¹ Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (n 5) 35-37; Jensen and Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure” (n 1).

⁵²Income Tax Department (India), *Taxation of Employee Stock Option Plan (ESOP)* (Income Tax Department) <<https://incometaxindia.gov.in/Tutorials/50.Taxation-of-ESOPs.pdf>> accessed 2 September 2025.

(b) Expand and Simplify Tax Deferral

As an interim measure, the existing scheme for deferring tax payments for startups should be expanded to cover a broader range of companies beyond those recognised by DPIIT. The process for availing this deferral should be simplified and made automatic.⁵³

1.2. Simplified ESOP Framework for Start-ups

The government should introduce a “safe harbour” ESOP scheme for Micro, Small, and Medium Enterprises (MSMEs) and early-stage start-ups. This could involve:

- (a) a standardised template for an ESOP plan with pre-approved, simplified terms;
- (b) exemption from the requirement of a valuation by a registered valuer for grants up to a certain threshold, allowing companies to use a formula-based approach based on the last funding round’s valuation; and
- (c) allowing scheme approval through ordinary resolution rather than special resolution.

1.3. Facilitate Liquidity for Unlisted Shares

To address the problem of illiquidity, the government and regulatory bodies should explore mechanisms to create a regulated secondary market for shares of unlisted companies. This could take the form of a specialised platform where employees may sell their vested shares to accredited investors, providing a much-needed exit route and making ESOPs a more attractive proposition.

Section 2: Reforms for Singapore

2.1. Statutory Protection of ESOPs in Private Companies

The Companies Act 1967 provides no specific clauses related to ESOP for private company employees, which results in employee dilution and a clear lack of clarity in certain conditions. By establishing a mandatory minimum level of disclosure on specific conditions, the vesting

⁵³NASSCOM, *Suggestions for Pre-Budget Memorandum 2023-24* (NASSCOM, 6 December 2022) <<https://community.nasscom.in/sites/default/files/blog/attachments/20221206-prebudgetmemorandumnasscomsubm.pdf>> accessed 12 September 2025.

duration, the effect of employee dilution, and the exit strategy, it is hoped that founders and key management officials would not be able to exploit ESOP and that the employees would be better informed.

2.2. Regulated Secondary Market for Shares of Private Companies

SGX could also consider setting up a controlled secondary trading platform for institutional investors to acquire vested ESOPs. This platform would provide employees with an exit event allowing them to encash their ESOPs through a regulated market, as opposed to an ESOP buyback or IPO.

2.3. Simplified ESOP Model for Start-ups

MAS (The Monetary Authority of Singapore) and ACRA (the Accounting and Corporate Regulatory Authority) should come up with a standardized template for startups which would include pre-approved standard terms and conditions related to taxation of equity compensation, exit and liquidity events and vesting schedule. This will decrease legal and advisory fees of establishing an ESOP scheme.

2.4. Statutory Disclosure Obligation for ESG-Linked ESOPs

In accordance with the UN SGDs, regulators should require that companies that are listed on the SGX to be obliged to report whether the ESOP plans for the main managerial person(s) are associated with the ESG goals of the company. A provision to such effect would resolve the structural disconnect explained in Chapter III, namely, the adaptability of the Singapore framework allows for the ESG-linked ESOP scheme to be designed, but it lacks the assurance which outside investors and more specifically CSR and impact investors may need without the mandatory disclosure requirements.⁵⁴

Such reforms would make Indian regime tax-efficient and employees having ESOPs would not suffer from liquidity issues. In line, Singaporean regime would be transparent and safety oriented to private employees.

⁵⁴United Nations Development Programme, “Impact Investing” (UNDP) <<https://www.undp.org/policy-centre/istanbul/impact-investing-0>> accessed 4 September 2025.

CONCLUSION

This paper has compared India and Singapore's ESOP regimes and highlights the central role that legal and regulatory provisions play in the domain of equity compensation. It also highlights that both regimes are premised on the realization that talent globally is the most crucial resource and the best way to obtain talented employees is through the provision of equity compensation and both frameworks, built on the agency-cost framework of Jensen and Meckling and Kraakman and other's comparative corporate law approach, can best be described as regulatory responses to a shared set of agency problems-in varying degrees.

India has adopted a more controlled and prescriptive approach relying heavily on minority shareholder protections, stringent governance and disclosures as seen by SEBI's enforcement action against Paytm, and differing High Court opinions on tax implications of ESOPs in the Flipkart 2025 cases, Singapore has a much less stringent approach to unlisted private companies, minimizing procedural complexity, relying on the general duty of directors as enshrined in the Singapore High Court case of *Foo Kian Beng v OP3 International Pte Ltd*,⁵⁵ without any specific statutory ESOP-specific safeguards as in the Indian context.

Clearly, from the comparison, the lacunas within both systems are apparent. The problem with the Indian system is its procedural rigidity making it impractical for start-ups, whereas Singaporean companies, in private limited settings leave it to the board's conscience for employee ESOPs by lack of specific statutory protection. It is the combination of the transparency and governance aspect of the Indian regime with the flexibility and tax efficiency aspect of the Singaporean one, which would be the ideal scheme. The ESG element strengthens this argument, Indian mandated disclosures providing a credible platform for ESG linked equity compensation, while Singaporean flexibility providing space for design.

Given increased talent competition and a global free flow of capital, it is legal and regulatory provisions of the ESOP regime that will increasingly shape where innovation ecosystems thrive and both India and Singapore should aim to develop a mechanism that can facilitate easier, practical and efficient use of equity compensation to both align interests, reward innovators, and to eventually build globally competitive companies.

⁵⁵ *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* (n 39)