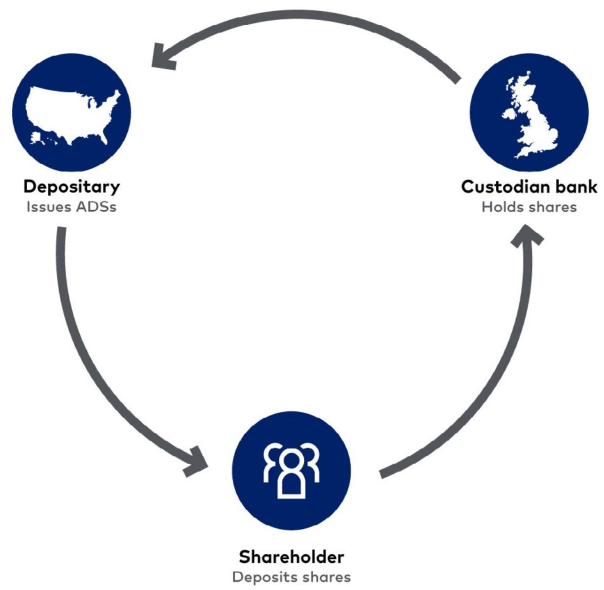
Cooley

What Is an American Depositary Share (ADS)?

An ADS represents the right to receive a certain number of underlying shares issued by a non-US company.

How does it work?

- The issuer or shareholder deposits underlying ordinary shares with a custodian bank.
- The custodian bank holds the shares in custody.
- The depositary will then issue ADSs to the shareholder (or to the investment bank, in the case of a public offering).
- The ADSs can be converted back to shares (unless they are restricted). A restricted ADS is the equivalent of stock with a legend indicating a transfer restriction.
- Shareholders typically work with the depositary directly. Company instructions and consent may be required for certain actions.



Why ADSs?

- ADSs are very common for non-US companies and allow US investors to hold foreign stock.
- There may be tax or legal benefits to using ADSs. Allowing the underlying shares to remain in the issuer's country with the custodian bank eliminates cross-border custody safe-keeping charges. ADSs are new US dollar-denominated securities that represent the underlying shares of the issuer that are in deposit – they are separate from the underlying shares and have their own CUSIP number.
- In dual-listed companies, ADSs can help distinguish from other exchange listings.
- ADSs are priced in US dollars (USD), and dividends (if any) are paid in USD.
- ADSs trade, clear and settle per home market (US) practice.
- ADSs allow for "global offerings." They're sold to US investors, then shares are sold to non-US investors.
- The issuer may receive a percentage of fees generated from ADS holders, depending on the terms of the ADR program.

American Depositary Receipts (ADRs)

Although frequently used interchangeably, the terms "ADR" and "ADS" have a technical distinction:

- ADSs refer to the actual security of the issuer held by the depositary or its custodian.
- ADRs refer to the certificate issued by the depositary that evidences an ownership interest in the underlying ADSs.

Benefits of ADRs to the issuer

- Access capital outside home market
- Broaden and diversify shareholder base globally
- Increase local share price due to global demand
- Enlarge market for shares, potentially increasing liquidity
- Facilitate M&A activity through use as acquisition currency
- Receive percent of fees generated from ADR holders

Benefits of ADRs to the investor

- Facilitate geographic diversification
- Allow for trading, clearing and settling per home market practice
- Quoted in USD, and dividends (if any) are paid in USD
- Permit investment by certain institutional investors that are not otherwise permitted to invest outside their local market
- Eliminate cross-border custody safe-keeping charges

Three levels of ADR programs

Level 1 ADR	Level 2 ADR	Level 3 ADR
• May be unsponsored, but can **only** be quoted on the over-the counter market • May **not** be used to raise capital • Required form: Form F-6 • Exemption under Rule 12g3-2(b)	• Listed on major US exchanges • May **not** be used to raise capital • Required forms: Form F-6 and Form 20-F for the underlying class of securities • Partial reconciliation for financials	• Listed on major US exchanges • May be used to raise capital • Required forms: Form F-6 and a Registration Statement on Form F-1, F-3 or F-4 (as applicable) • Full GAAP (generally accepted accounting principles) reconciliation for financials