

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XVII

REGISTERED VALUERS

Definition

17.1 'Registered Valuer' means a person registered as a Valuer under Chapter XVII of the Act.

Registration as Valuers.

17.2 (1) For the purposes of sub-section (1) of section 247, the Central Government or any authority, institution or agency, as may be notified by the Central Government, shall maintain a register to be called as the Register of Valuers in which there shall be registered the names, address and other details of the persons registered as valuers in pursuance of section 247.

(2) The following persons shall be eligible to apply for being registered as a valuer:

(a) a chartered accountant, company secretary or cost accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognise by an order;

Provided that such foreign qualification acquired by Indian citizen.

(b) a Merchant Banker registered with the Securities and Exchange Board of India, and who has in his employment person(s) having qualifications prescribed under (a) above to carry out valuation by such qualified persons;

(c) member of the Institute of Engineers and who is in whole-time practice;

(d) member of the Institute of Architects and who is in whole-time practice;

(e) A person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time.

Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have not less than five years continuous experience after acquiring membership of respective institutions.

Provided further that in the case of merchant banker the valuation report shall be signed by the qualified person.

Provided also that persons referred to in (a) and (b) shall be in respect of requirement for a "financial valuation" and the persons referred to in (c) and (d) shall be in respect of requirement for a "technical valuation" and a person or a firm or Limited Liability Partnership or merchant banker possessing both the qualifications may act in dual capacity.

Explanation: For the purposes of this rule, a person shall be deemed “to be in whole-time practice”, when individually or in partnership or in limited liability partnership or in merchant banker with other persons in practice who are members of other professional bodies, he, in consideration of remuneration received or to be received:

- (i) engages himself in the practice of valuation; or
 - (ii) offers to perform or performs services involving valuation of any assets with the object of arriving at financial value of the asset being valued; or
 - (iii) renders professional services or assistance in or about matters of principle or detail relating to valuation.
- (3) An application for registration as valuer shall be made in Form No. 17.1 by individuals and firms and Form No. 17.2 by others, along with the fee as provided in Annexure ‘B’.

Furnishing of Particulars in certain cases.

17.3 Where any person who is registered as a valuer under section 247 or who has made an application for registration as a valuer under that section is, at any time thereafter,—

- (a) sentenced to a term of imprisonment for any offence; or
- (b) found guilty of misconduct in his professional capacity by any association or institute or other body of which he is a member or with which he is registered;

he shall immediately after such conviction or finding, intimate the particulars thereof to the Central Government, institution or agency with which he is registered as a valuer and cease to act as valuer unless permitted by the Central Government, institute or agency with which he is registered as a valuer unless the order imposing penalty/sentence at rule 17.3 (a) and (b) has been stayed by competent authority.

Provided that in case valuer found guilty of professional misconduct or otherwise by the Institute which he is a member or by National Financial Reporting Authority or where the SEBI removed the registration of the merchant banker, such valuer shall cease to be the valuer automatically and their name shall be removed from the register of valuer unless such order has been stayed by the Competent Authority.

Provided further that any ongoing assignment of such valuer, who has ceased to be a valuer, shall be assigned to other valuer from the panel maintained by Central Government or any authority or institution to complete the assignment, if no stay is granted on such appeal, if any.

Removal and restoration of names of valuers from register.

17.4 (1) The Central Government or any authority, institution or agency, may remove by order the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit,—

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government or any authority, institution or agency, renders his name unfit to be kept in the register.

(2) The Central Government or any authority, institution or agency, may on application and on sufficient cause being shown and on being satisfied, restore in the register the name of any person removed there from.

(3) Without prejudice to the provisions of sub-rule (1) and (2), the Central Government or any authority, institution or agency, may review the performance of any registered valuer and order removal of the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make, that his performance is such that his name should not remain on the register of valuers.

(4) The Central Government or any authority, institution or agency may appoint one or more competent persons as enquiry officer(s) for conducting an enquiry under sub-rule (3) of this rule.

(5) (i) The officer(s) conducting an enquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while make an enquiry, in respect of the following matters, namely:

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit

(d) Issuing commissions for the examination of witnesses or documents;

(e) Requisitioning under the provisions of Section 123 or 124 of the Indian Evidence Act 1872, any public record or document or copy of such record or document from any office.

(ii) The officer(s) may also call upon such experts from the field of law, economics, business, finance, accountancy, international trade, management, technology or such other discipline as he deems necessary to assist him in conducting the enquiry.

Appeal

17.5 A registered valuer aggrieved by an order passed under rule 17.4 (1) (a) or 17.4 (3) may prefer an appeal in accordance with the procedure laid down in the respective Acts, regulations or bye-laws governing the respective professional. An appeal against the order of the Central Government shall be preferred to the Tribunal.

Methods of valuation.

17.6. For the purposes of clause (c) of sub-section (2) of section 247,

(i) Before adoption of the methods of valuation as detailed below, the registered valuer shall decide the approach to valuation based upon the purpose of valuation:

- (a) Asset approach;
- (b) Income approach;
- (c) Market approach.

(ii) The valuer shall consider the following points while undertaking valuation:

- (a) Nature of the business and the History of the Enterprise from its inception;
- (b) Economic outlook in general and outlook of the specific industry in particular;
- (c) Book value of the stock and the financial condition of the business;
- (d) Earning capacity of the company;
- (e) Dividend –paying capacity of the company;
- (f) Goodwill or other intangible value;
- (g) Sales of the stock and the size of the block of stock to be valued;
- (h) Market prices of stock of corporations engaged in the same or a similar line of business;
- (i) Contingent liabilities or substantial legal issues, within India or abroad, impacting the business;
- (j) Nature of instrument proposed to be issued, and nature of transaction contemplated by the parties.

(iii) A registered valuer shall make a valuation of any asset as on valuation date, in accordance with any one or more of the following methods:

(a) Net asset value method representing the value of the business with reference to the asset base of the entity and the attached liabilities on the valuation date (represents the value of an entity's assets less the value of its liabilities);

(b) Market Price method: Under this method the current price at which the subject of valuation is bought or sold in the market between unrelated third parties is taken into account;

(c) Yield method / Profit Earning Capacity Value (PECV): Under this method the value is calculated by capitalizing the average of the after tax profits for the preceding three years (or such other period. Provided adequate justification is available for choosing another period) at capitalisation rates specified in the report

(d) Discounted Cash Flow Method (DCF): This method expresses the present value of the business as a function of its future cash earnings capacity. This methodology works on the premise that the value of a business is measured in terms of future cash flow streams, discounted to the present time at an appropriate discount rate. The value of the firm is arrived at by estimating the Free Cash Flows (FCF) to Firm and discounting the same with Weighted Average cost of capital (WACC). In case FCF to equity or FCF to debt is used, the appropriate denominator (required return to equity or debt, as the case may be) shall be used.

(e) Comparable Companies Multiples Methodology (CCM): This Method uses the valuation ratios of a publicly traded company and applies that ratio to the company being valued (after applying appropriate discount or premium, as the context may require). The valuation ratio typically expresses the valuation as a function of a measure of financial performance or book value (e.g. total revenue/revenue from operations, EBITDA, EBIT, EPS, operating cash flows, book value or other suitable parameter, with reasons being recorded for choosing each relevant parameter). Multiples used, if not derived from financial statements, can also be based on certain business performance parameters, provided that such valuation is deemed to be more appropriate than valuation based on financial parameters, in the facts of the case (for instance, price/subscriber for an internet portal)

(f) Comparable Transaction Multiples Method (CTM) which entails valuation on the basis of similar transactions among unrelated parties in the peer group companies.

(g) Price of Recent Investment method (PORI) which entails valuation on the basis of recent investment received in the company from an independent investor.

(h) Sum of the parts valuation (SOTP) – where each part of the business is valued according to method(s) appropriate to that business, and the results are summed up to obtain total value of the business

(i) Liquidation value - if the value is being calculated in a liquidation scenario

(j) Weighted Average Method – Under this method the weights are assigned to the values calculated under different valuation approaches.

(k) Any other method accepted or notified by the Reserve Bank of India, Securities and Exchange Board or Income Tax Authorities.

(l) Any other method(s) that the valuer may deem fit to adopt in the given circumstances of the case, provided that adequate justification for use of such method(s) (and not any of the methods above) must be included in the report.

(iv) A registered valuer shall make a valuation of any asset as on valuation date, in accordance with the applicable standards, if any, as may be stipulated for this purpose.

Explanation: For the purposes of this rule, ‘valuation date’ means the date on which the estimate of value is applicable. It may be different from the date of the valuation report or the date on which the investigations were undertaken or completed.

Contents of Valuation Report.

17.7 The report of valuation by a registered valuer shall be as near to and shall contain such information as set out in Form No. 17.3.
