HANDBOOK ON BEST PRACTICES FOR REGISTERED VALUERS

ICAI Registered Valuers Organisation
and
Valuation Standards Board
The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

Handbook on
Best Practices for Registered Valuers

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The Institute of Chartered Accountants of India
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New Delhi

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Message from Chairperson, ICAI RVO

Indian economy is witnessing a proliferation of professions. One such profession which has developed and has experienced a rapid growth is in the field of "Valuation".

The profession of Registered Valuers (RVs) has evolved considerably in a short span of 4 years with more than 4,000 RVs registered with the Insolvency and Bankruptcy Board of India (IBBI) as on 30th June 2021, out of which almost 1600 RVs registered under the Securities or Financial Assets Class.

Need of a special class of professional to undertake the task of Valuation has been emphasised due to the uniqueness involved in the nature of every Valuation assignment.

A profession, eventually, is only as good as its members. Hence, the Valuer Members need to be an amalgam of the qualities such as independent, impartial, fit and proper, competent, duly qualified and experienced to undertake a valuation assignment.

This is also crucial as the outcome and processes involved while undertaking valuation hold pivotal stand in the entire decision making as the outcome relies heavily on it and as such it impacts the stakeholders and society at large.

As an important stakeholder of the ecosystem, Registered Valuers are required to maintain fine balance between high degree of proficiency and ethical standards which accentuate the need of best practices to be followed by the Valuation Professionals (RVs).

Going forward in this direction and as part of its knowledge dissemination, ICAI Registered Valuers Organisation along with the Valuation Standards Board of ICAI has brought out this publication – "Handbook on Best Practices for Registered Valuers", which is a compilation of best practices that can be adopted by the Registered Valuers while undertaking any Valuation Assignment and this Handbook will serve as a reference point for them.

I appreciate the thought leadership provided by my colleagues on the Board of Directors comprising of Shri Pawan Singh Tomar, Shri Ashok Haldia, Prof. Anil Saini, CA. Nihar N. Jambusaria and CA. Prafulla P. Chhajed. I would also like to thank CA. Anil S. Bhandari, Chairman and CA. M. P. VijayKumar, Vice Chairman, Valuation Standards Board for joining in this endeavour and in bring this important publication at the right time. Technical Contribution of team led by Shri Rakesh Sehgal, Managing Director, ICAI RVO with CA. Sarika Singhal, Officiating CEO, ICAI RVO and Ms S. Rita, Deputy Secretary, ICAI with the able assistance of CA. Nikita Aggarwal in providing technical and administrative support for bringing out this Handbook deserves special recognition.

I am confident that this publication will fill the vacuum of non-availability of such benchmarking reference and members of the profession, industries and other stakeholders will find it very helpful. All suggestions for further enhancement are welcome.

Rajeev Kher
Independent Director, ICAI RVO and Chairperson ICAI RVO

Message from President, ICAI & Director, ICAI RVO

Valuation in its entirety is the most decisive and, in fact, the most important aspect on which the entire decision making process is dependent.

The valuation report is developed and prepared by exercising judicious discretion by the Registered Valuer, by considering the relevant factors. There will always be several factors, e.g. management capability, present and prospective competition, yield on comparable securities, market sentiment, etc. which may not be apparent from the Balance Sheet but they can have a significant impact on value.

Any change in the assumptions or factors which has an influence on valuation may impact the Value. Therefore, utmost care and caution must be exercised by the Valuers while deriving the value and must produce and present a detailed and fully reasoned valuation report that covers all aspects in detail.

Further, the strength and efficiency of a Valuation process and in turn its outcome will remain undiluted only if the RVs observe high standards of professional ethics. To enforce a set of professional conduct and performance for the valuation profession in the interest of stakeholders, a Code of Conduct has been prescribed under the Companies (Registered Valuers and Valuation) Rules, 2017, which has to be mandatorily adhered to by the Registered Valuers in addition to the requirements of the Companies Act, 2013 and other applicable laws.

Registered Valuer is expected to act in good faith in discharge of his duties, with the utmost integrity, objectivity, independence, impartiality in the performance and to seriously pursue the highest standards of professionalism. It also emphasizes the need to adapt best practices while undertaking Valuation Assignment.

In light of the same, ICAI Registered Valuers Organisation together with the Valuation Standards Board of the ICAI, as part of its initiative in bringing relevant publications in the Valuation arena has brought out this publication – *Handbook on Best Practices for Registered Valuers*, which is a compendium of best practices that can be adopted by the Registered Valuers while undertaking a **Valuation** Assignment and serves as a reference point for them.

I am pleased to thank the Board of Directors Shri Rajeev Kher, Chairman and Independent Director, Independent Directors viz. Shri Pawan Singh Tomar, Shri Ashok Haldia and Prof. Anil Saini as also CA. Prafulla P. Chhajed for visualising the need and steering this exercise. I also appreciate the efforts of CA. Anil S. Bhandari, Chairman and CA. M. P. Vijay Kumar, Vice Chairman, Valuation Standards Board for joining in this initiative. I also appreciate the efforts and contribution by Rakesh Sehgal, Managing Director, ICAI RVO and CA. Sarika Singhal, Officiating CEO, ICAI RVO and Secretary Valuation Standards Board for developing and bringing this Handbook with assistance of CA. Nikita Aggarwal.

I am confident that this publication will be of great help to all professionals, industries and other stakeholders.

CA. Nihar N. Jambusaria
President, ICAI
Director, ICAI RVO

Date: 27th December, 2021

Place: New Delhi

Message from Chairman and Vice-Chairman, VSB, ICAI

Various processes such as Corporate Insolvency Resolution Process (CIRP), Merger & Acquisition, Investment Analysis, Capital Budgeting etc. is dependent upon the final outcome that has been reported in the Valuation Report and as such the Valuer plays a key role in the development of economy. A Valuer by being entrusted with the responsibility of arriving at valuation; upon which the entire decision of stakeholders is being dependent upon; remains a key player in the exercise.

It is utmost important that a Valuer exercise due diligence and ensure high standards of integrity and fairness in all his dealings during the course of discharge of his duties so that the Valuation Report is fully reasoned and presents an accurate and reasonable value of the asset under valuation.

As we all know that Valuation has always been an ever evolving subject due to its versatile nature. The Regulator has taken various steps to ensure that highest standards of ethics and professionalism amongst the Registered Valuers are being followed. Therefore, a need was felt to provide the Registered Valuers a publication which may serve as a reference point of the best practices to be carried out while undertaking valuation assignment.

It is against this background that the Valuation Standards Board ICAI along with ICAI Registered Valuers Organisation has brought out this publication – Best Practices for Registered Valuers. The book covers important aspects including Code of Conduct, Do's and Don'ts for the Registered Valuers, Best Practices to be ensured at the time of Initial Engagement, during Assignment and while issuance of Valuation Report etc.

I heartily commend the efforts put in by the Valuation Standards Board, Shri Rakesh Sehgal, Managing Director, ICAI RVO, CA. Sarika Singhal, Officiating CEO, ICAI RVO and Secretary Valuation Standards Board, ICAI, Ms S. Rita, Deputy Secretary, ICAI for providing their technical and administrative support in bringing out this publication and for special contribution by CA. Nikita Aggarwal.

I fervently believe that this publication will provide the desired utility to members of the profession, industry and other stakeholders in terms of its ready to use assimilated provisions.

CA. Anil S. Bhandari
Chairman
Valuation Standards Board, ICAI

CA. M. P. Vijay Kumar
Vice-Chairman
Valuation Standards Board, ICAI

Date: 27th December, 2021

Place: New Delhi

Index

Preamble

Valuation of assets is crucial for strategic business decisions including fund raising, M&A, Sale of businesses, Insolvency proceedings under CIRP, Strategic business decisions like family or shareholders dispute, Voluntary value assessment or may be just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax Act, Companies Act, SEBI, FEMA etc.

The profession of valuation, though central in the emerging business environment, is generally laden with working with limited inputs and gathering of information from external sources and making estimates about the future viability of the entity or asset. All this brings in a factor of uncertainty in the valuation framework. Professional judgment of a valuer is thus pivotal in any valuation exercise. This, coupled with different regulators prescribing different valuation requirements to be applied in specified situations in India, adds to a certain lack of uniformity in the valuation practices in the Indian Valuation framework.

Recognising the need for institutionalizing and regulating the profession of Valuation under legal ambit, effective 1st February 2019, the concept of Registered Valuers was introduced through Section 247 of the Companies Act, 2013 which provides that where a valuation is required to be made under the provision of this Act, it shall be valued by a person who, having the necessary qualifications and experience, and being a member of a Registered Valuer Organisation (RVO), is registered as a valuer.

Central Government has notified Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) which provide for a complete framework for development and regulation of profession of Valuation and the power of the authority have been delegated to Insolvency and Bankruptcy Board of India (IBBI).

With the rules firmly in place and under the guidance of IBBI as the regulating authority the profession of Valuation has, slowly yet steadily, started shaping up as a neo-profession having regulatory recognition. As on 30th June 2021, there were a total of 4172 RVs and 38 RVs registered with IBBI under different asset classes across India enrolled with 16 RVOs.

Valuation as a process is generally laden with working with limited inputs and gathering of information from external sources and making estimates about the future viability of the entity or asset. All these bring in a factor of uncertainty in the valuation framework. It is imperative to address issues surrounding valuations in the Indian market.

With the objective of bringing uniformity in the Valuation practices adopted by the RVs across the country and bringing credence to the Valuation Reports prepared by the RVs, the Rules among other things, provide for a Code of Conduct to be mandatorily adhered to by the RV while undergoing any valuation assignment. As prescribed under the Code of Conduct, an RV is required to maintain Integrity and Objectivity, Independence and Disclosure of Interest, Professional competence and due care, Confidentiality, information management throughout his journey.

The key objective of enforcing the Code of Conduct so mandatorily on a RV is to ensure that utmost professional ethics and professionalism is being maintained so as to help build stakeholders confidence in the valuation reports prepared by a RV and in the entire valuation exercise.

To further bring uniformity, credibility and drive professional ethics in the profession of Valuation, ICAI Registered Valuers Organisation in collaboration with the Valuation Standards Board ICAI has brought out this publication – Handbook on Best Practices for Registered Valuers. This handbook is a treasury of best practices like fundamental ethical principles, Learnings from Peer Review findings, Learning from Judicial Pronouncements, Do's and Don'ts at the time of acceptance of assignment, undertaking the process of valuation as well as Issuance of Valuation Report that can be adopted during valuation engagement by the Registered Valuers. This handbook also captures Global Practices, and it aims to serve as a reference point for them.

In this connection, we take this opportunity in thanking the IBBI and the Board of Directors of ICAI RVO for their continued encouragement in bringing out this publication.

We sincerely believe that the Registered Valuers, industries, and other stakeholders will find the publication very helpful.

Rakesh Sehgal
Managing Director
ICAI Registered Valuers
Organisation

Sarika Singhal
Officiating CEO
ICAI Registered Valuers
Organisation

Date: 27th December, 2021
Place: New Delhi

Chapter 1
Introduction

***"Best Practices for the Registered Valuers
are the set of generally acceptable procedures and methodologies
that results in the illustrative and transparent representation
of true value of the final outcome,
under the given circumstances."***

Before going through the concept of Best Practices for Registered Valuers, it is paramount to understand the terms "Valuation" and "Registered Valuer".

Valuation *per se* is the process of estimating the market value of a financial asset or liability. To understand the valuation process, it is necessary to understand the term value. It is a complex subject which needs professional acumen and in-depth knowledge to unravel the same. However, over a period of time and with the Regulatory framework being put into place, Valuation as a subject has witnessed huge importance and prominence in financial understanding.

The field of valuation existed even before the introduction of Regulatory framework for Valuers under the Companies Act, 2013. Valuation was required under various statutes – FEMA 1999, SEBI Act 1992, Companies Act 2013 (& erstwhile Companies Act 1956 as well), Income Tax 1961, IBC 2016 to facilitate a variety of transactions like mergers, acquisitions, liquidations, financing, taxation etc.

Today, a Registered Valuer would imply a person registered with the Authority (IBBI) as a valuer, in accordance with the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017.

A great emphasis is being placed on the best practice to be followed by Registered Valuers because the outcome and process of valuation holds a pivotal stand in the entire decision-making as the outcome relies heavily on it and as such, it concerns and impacts the community of stakeholders and society at large.

For example, the Committee of Creditors (CoC) takes an informed decision, on the basis of the information supplied in the valuation report, as to whether to continue with the resolution process or resolve to liquidate and the realization in a CIRP/Liquidation is also based on the valuation of assets of the corporate debtor. The decision of the stakeholders in case of Amalgamation and Merger is dependent upon the valuation determined by the Valuer. Nonetheless, Valuation in case of transfer of shares, obtaining loans, acquisition/transfer of property etc., all of these have a huge role to play.

It is therefore important to understand the context of best practices in valuation. While a generalised statement can say that a best practice is the one which results in preparation of a transparent, reliable and authentic valuation report issued by the valuation professional; in context of the Valuation profession; it is important to understand beyond the conventional wisdom in understanding best practice.

Definition of best practice as put forth by Merriam Webster online says it to be a procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption.

Collins dictionary defines it as the way of running a business or providing a service that is recognized as correct or most effective.

Best practice as per Wikipedia is a method or technique that has been generally accepted as superior to any alternatives because it produces results that are superior to those achieved by other means or because it has become a standard way of doing things, e.g., a standard way of complying with legal or ethical requirements.

With the regulation of the profession of Registered Valuers recently, the Regulators have also emphasized on the need of adapting best practices by the Registered Valuers by introducing Code of Conduct as part of the Companies (Registered Valuers and Valuation) Rules, 2017. The said Rules mandate every Registered Valuer to adhere to the Code of Conduct laid down by the Registered Valuers Organisation of which he/she is a member. The Code of Conduct acts as guidance in the areas of ethical risk and helps in fostering a culture of integrity, independence, transparency and accountability.

Further, ICAI Valuation Standards 2018 also provide for best practices including what practices a Valuer shall follow/ undertake like the fundamental ethical principles to be adopted during valuation engagement, approaches and methods to be applied, responsibility of the Valuer for a valuation assignment, specify the responsibility of a *Valuer* in preparing the relevant documentation for arriving at a value.

Any enactment keeps on evolving as per various developments, amendments, and rulings by various judicial forums. Various judicial pronouncements have been issued by the Supreme Court of India and various High Courts of India.

One of the important citations that have been relied upon by the Courts in most of the Company Law cases as decided in the Case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd is that "valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. So many imponderables enter the exercise of valuation of shares. A company court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness."

The Courts have also held that valuation is based on reflections of the potential value of business at a particular time and is dependent upon various underlying factors that may change over a period of time; therefore, a value which is relevant today may not be relevant after a certain period of time.

Further, valuation under the DCF method (which is the commonly used method) is essentially based on estimated future projections only and thus hindsight view should not be adopted to compare the projections with the actuals to expect the same figures as were projected, since future projections cannot be evaluated on purely arithmetic precision and rather a reasonable approach to determine the factors affecting projections have to be adopted.

To put forth the best practices that can be adopted by the Registered Valuers while undertaking a Valuation Assignment, the document has been prepared to serve as a reference point. Further, field of Valuation being dynamic; conception of best practices would ever remain enigmatic and ever evolving.

Chapter 2

Emergence of the profession of Registered Valuers

Even before the existence of any regulatory framework for Registered Valuers in the country, Valuation process was required to facilitate a variety of transactions like mergers, acquisitions, financing, taxation, liquidations etc. Different statutes – FEMA, SEBI, the Companies Act, the Income Tax Act, and IBC required valuation for a variety of purposes which continues till date.

Valuation practices were not uniform and there were varied perspectives of the Valuers, Regulators and other stakeholders with regard to valuation. Valuation as a profession was required to be streamlined for bringing in uniformity in the practices and procedures followed by Valuation professionals, since the Valuation remains most fundamental which is crucial to understand while deriving the value.

With the notification of Section 247 of the Companies Act, 2013 and the Companies (Registered Valuers and Valuation) Rules, 2017, the valuation profession in India has got regulated and disciplined like other professions through a Regulatory framework. This profession got statutory status in October, 2017 for the valuations related to the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016.

The Companies (Registered Valuers and Valuation) Rules, 2017; a unified institutional framework for development and regulation of valuation profession specified three asset classes for Valuation being "Plant and Machinery", Land and Building and Financial or Securities asset class and had designated the Insolvency and Bankruptcy Board of India (IBBI) as an Authority under the Rules.

Subsequently, Registered Valuers Organisations were formed through the aforesaid rules which were entrusted with the responsibility of enrolling and regulating Registered Valuers and Registered Valuers Entities.

The Government of India taking together developments like role of professions in a market oriented economy, need for consolidation of Valuation requirements, evolution of valuation profession, evolution of institutional framework for professions, and contemporary thought on regulatory design – had set up a 'Committee to advise on Valuation Matters' in April, 2018.

It was also observed that in absence of any statutory mandate and local valuation standards, the Valuers were generally following the IVS General Standards (International Valuation Standards) or the RICS Red Book.

In this direction, a need was felt to standardize the valuation practices and therefore the Institute of Chartered Accountants of India through its Valuation Standards Board has issued ICAI Valuation Standards 2018 which are first of its kind in India for financial valuation and the same Valuation Standards have also been adopted by ICAI Registered Valuers Organisation in terms of Rule 16 (2)(b) of Companies (Registered Valuers and Valuation) Rules, 2017. ICAI Valuation Standards have been made applicable by ICAI for all valuation engagements on mandatory basis under the Companies Act 2013 for members. In respect of Valuation engagements under other Statutes like Income Tax, SEBI, FEMA etc., it has been on recommendatory basis for the members of the Institute. These Valuation Standards are effective for the valuation reports issued on or after 1st July, 2018.

It is also pertinent to state herein that the Committee formed by Central Government to advise on Valuation Matters has since submitted its first report to Central Government in February, 2019

With the convergence of Accounting Standards with IFRSs and subsequent adoption of Ind ASs for presenting financial statements, the concept of fair value measurement became noticeable; as the financial statements started showing financial figures based on fair value measurement.

Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 read with Regulation 35 of the said Regulations also requires Registered Valuers to determine the fair value and liquidation value of the corporate debtor.

As the concept of fair value measurement has gained huge prominence over time, therefore, it is important for the Valuers to be aware about the various aspects of Fair Value such as its difference from the concept of fair market value, factors influencing fair value etc. to be considered while valuing etc.

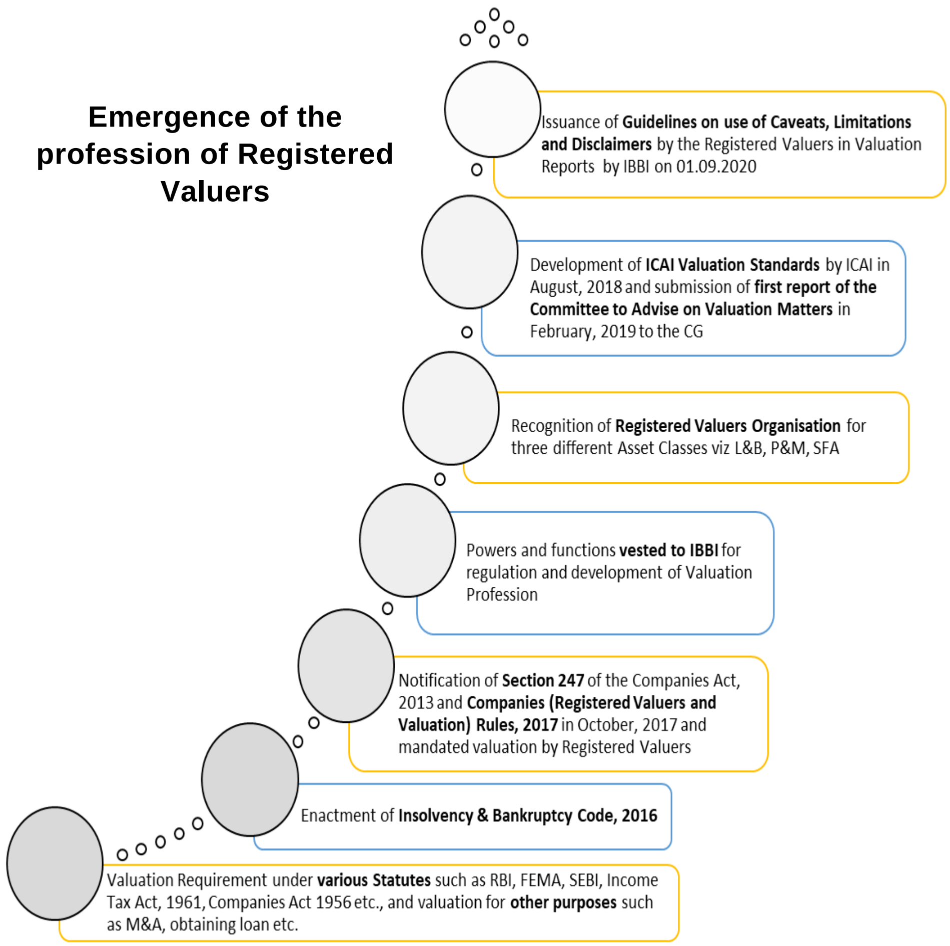
The valuation of an asset is an estimate of the worth of that asset which is arrived at after factoring in multiple parameters and externalities. In such a scenario, variances were often observed in the valuation report of different Registered Valuers even when the purposes and the circumstances in which the valuation was undertaken were the same.

The “ICAI Valuation Standards-2018” issued by the ICAI also provide guidance to determine the “Fair Value” as per Ind AS 113 as notified by the

Ministry of Corporate Affairs. Valuers should take note of the same while valuing as per fair value.

In this regard, considering the interest of the stakeholders where crucial economic and commercial decisions are taken on the basis of the valuation report, IBBI has brought out guidelines on Use of Caveats, Limitations and Disclaimers by the Registered Valuers in Valuation Reports in the month of September 2020.

Valuation as a practice and as a profession is being regulated now and is evolving with each passing day to improve Corporate Governance and better transparency in the corporate sector which is important to infuse confidence amongst investors in Indian market and abroad.



Evolution of profession of Registered Valuers

The profession of Valuation got recognition through introduction of Section 247 under the Companies Act, 2013 read with Rules thereunder namely the Companies (Registered Valuers and Valuation) Rules, 2017 as also the IBC Code 2016.

The provision for Valuation by Registered Valuers is provided under Chapter XVII i.e. under Section 247 of the Companies Act, 2013 read with Companies (Registered Valuers and Valuation) Rules, 2017 which got notified by the Central Government on 18th October 2017.

Section 247 prescribes that where a valuation is required to be made in respect of any:

- property
- stocks
- shares
- debentures
- securities
- goodwill or
- any other assets (herein referred to as the assets) or
- net worth of a company or its liabilities under the provision of the Act

it shall be valued by a person having such qualifications and experience and registered as a Valuer in such manner, on such terms and conditions as prescribed under Rule 3 and 4 and shall be appointed by the audit committee or in its absence by the Board of Directors of that company.

It further states that the Valuer (RV) as appointed above shall:

a) make an impartial, true and fair valuation of any assets which may be required to be valued;

b) exercise due diligence while performing the functions as Valuer;

c) make the valuation in accordance with Rule 8 and such other rules as may be prescribed; and

d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as Valuer or three years after the valuation of assets was conducted by him.

The Central Government has designated the Insolvency and Bankruptcy Board of India (IBBI) as an Authority under the said Rules. Upon designation as an Authority, the IBBI started registration of Registered Valuers Organisations (RVOs) and commenced the online examination in March, 2018 and subsequently, the registration of Valuers.

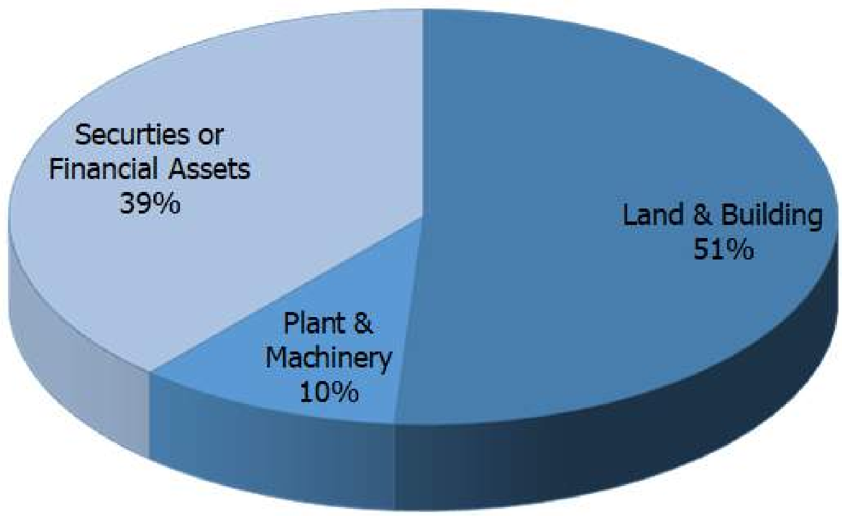
The year-wise breakup of the Registered Valuers registered with the IBBI under the three asset classes as on 30.06.2021 is tabulated below.

Total RVs registered with IBBI as on 30th June' 2021

Year/Quarter	Land & Building	Plant & Machinery	Securities or Financial Assets	Total
2017-18	0	0	0	0
2018-19	781	121	284	1186
2019-20	848	204	792	1844
2020-21	409	82	446	937
April-June'21	95	25	86	206
Total	**2133**	**432**	**1608**	**4173**

Source: https://ibbi.gov.in/uploads/publication/66f97a29cc6b2f020f15387f379e1aa5.pdf (Table 18)

As on June' 2021, the percentage-wise breakup of total RVs registered with the IBBI is as follows:



Source: Newsletter issued by IBBI (April- June 2021)

Chapter 3

Adherence to Statutory cum Regulatory Compliances

With the recognition of the concept of Registered Valuers under the Companies Act, 2013 read with Rules thereunder and the IBC Code, 2016, it became important to note the difference between the terms **"Valuer"** and **"Registered Valuer"**.

A Valuer is an individual, who does the work of valuation, whereas a Registered Valuer means a person registered with the Authority (IBBI) as a Valuer, in accordance with the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017.

A Registered Valuer while performing its Assignment shall adhere to the various Statutory cum Regulatory Compliances such as:

- Compliance of the provisions of the Companies Act, 2013 and Companies (Registered Valuers and Valuation) Rules, 2017
- Compliance of the provisions of the Insolvency and Bankruptcy Code, 2016
- Compliance of Code of Conduct of the concerned Registered Valuers Organisation of which he is a member

- Compliance of Bye-Laws and Internal Regulations of the Registered Valuers Organisation of which he is a member
- Compliance of Valuation Standards- i.e. Internationally Accepted Valuation Standards or ICAI Valuation Standards 2018
- Compliance of Guidelines/Circulars/Notifications issued by IBBI from time to time.
- Compliance of the provisions of the Law under which the Assignment has been accepted such as SEBI, Income Tax Act, 1961, RBI, IBC etc.

1. Compliance of the provisions of the Companies Act, 2013 and Companies (Registered Valuers and Valuation) Rules, 2017

A Valuer registered with the IBBI has to abide by the provisions contained in Chapter XVII of the Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017 while undertaking valuation assignment.

Before going into the nitty-gritties of valuation and valuation professionals, it is pertinent to note that a person is eligible to be registered as a Registered Valuer under the Act if it qualifies the eligibility and qualification prescribed under Rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017.

Rule 3 read with Rule 4 of the said Rules states that a person shall be eligible to be a Registered Valuer only if he-

- is a valuer member of a Registered Valuers Organisation;

  Explanation- For the purposes of this clause, "a valuer member" is a member of a Registered Valuers Organisation who possesses the experience for being registered as a valuer;
- is recommended by the Registered Valuers Organisation of which he is a valuer member for registration as a Valuer;
- has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;
- possesses the qualifications and experience as follows:

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

(c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a Valuer or recognition as a Registered Valuers Organisation is sought under these rules.

Explanation-II- Qualifying education and experience for various asset classes, is given in an indicative manner in Annexure-IV of these rules.

Explanation III- For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources equivalent to professional and technical degree.

- is not a minor;
- has not been declared to be of unsound mind;
- is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- is a person resident in India;

  Explanation- 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of 1999 (42 of 1999) as far as it is applicable to an individual;

- has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence of five years has not elapsed from the date of expiry of the sentence.

however, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years registered;

- has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have and
- is a fit and proper person

  Explanation- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

  (i) Integrity, reputation and character,

  (ii) Absence of convictions and restraint orders, and

  (iii) Competence and financial solvency.

It further states that no partnership entity or company shall be eligible to be a Registered Valuer if-

- it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate
- it is undergoing an insolvency resolution or is an undischarged bankrupt;
- all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e),(f), (g), (h), (i), (j) and (k) of sub-rule (1);
- three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not Registered Valuers; or
- none of its partners or directors, as the case may be, is a Registered Valuer for the asset class, for the valuation of which it seeks to be a Registered Valuer.

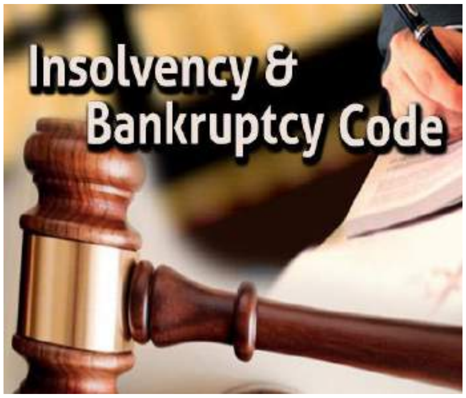
The Registered Valuer so appointed shall adhere to the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017, while performing each of its Valuation Assignment under the Act.

The Rules are enclosed at Annexure-1 or can also be referred at:

https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html

In case of non-compliance of the provisions, the Registered Valuer shall be liable to pay hefty penalties.

2. Compliance of the provisions of the Insolvency and Bankruptcy Code, 2016



It is the objective of the Insolvency and Bankruptcy Code, 2016 (Code) to have a transparent, credible and consistent determination of the value of assets of the corporate debtor which can only be ensured by adopting uniform valuation standards and best practices to maximize the value of assets of interested persons.

The Valuation Report of the Valuer becomes a fundamental basis upon which crucial decisions of the Committee of Creditors are dependent such as continuation with the resolution process or liquidation of the Corporate Debtor.

Moreover, it also facilitates the resolution professional to invite prospective resolution plans and inaccuracies in determining the liquidation value could undermine the resolution plan that may be approved on the basis of an incorrect liquidation value. Therefore, the fate of the corporate debtor and its stakeholders hinges on an accurate valuation of assets.

In this light, the Code read with the Regulations has been framed in a way that it mandates that the valuations required under the Code or any of the Regulations made thereunder shall be conducted by a Registered Valuer.

Regulation 27 of IBBI (CIRP) Regulations states that the Resolution Professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two Registered Valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 35.

3. Compliance of Code of Conduct of the Registered Valuers Organisation of which he is a member

The Companies (Registered Valuers and Valuation) Rules, 2017 mandates a Registered Valuers Organisation to develop a Code of Conduct based on the Model Code of Conduct and a Registered Valuer shall in turn be granted registration by the Authority to practice as a Registered Valuer, subject to the condition that he/she/it shall mandatorily comply with the same.

Accordingly, every Registered Valuers Organisation lays down and enforces a Code of Conduct for its Members. The Registered Valuer shall go through the Code of Conduct and follow each and every clause of the Code of Conduct in letter and spirit.

The Code of Conduct laid down by ICAI RVO is available at: https://icairvo.in/code-conduct.aspx and is also annexed as Annexure-2 of this document.

4. Compliance with Bye-Laws and Internal Regulations of the Registered Valuers Organisation of which he is a member

A Valuer is granted registration by the Authority to practice as a Registered Valuer, subject to the condition that he/it shall mandatorily comply with the:

- Bye-Laws and
- Internal Regulation(s)

of the Registered Valuers Organisation (RVO) of which he is a member.

Nonetheless, a Registered Valuer shall also comply with all the requirements (that are applicable to him) of the Bye-Laws and the Internal Regulations of the RVO of which he is a member. The Bye-Laws of the ICAI RVO can be referred at:

https://icairvo.in/documents/Bye_Laws_of_ICAI_RVO.pdf

The Bye-Laws of the ICAI RVO mandates that in the performance of his functions, a member shall-

(a) act in good faith in discharge of his duties as a Registered Valuer

(b) discharge his functions with utmost integrity and objectivity

(c) be independent and impartial

(d) discharge his functions with the highest standards of professional competence and

(e) professional ethics

(f) continuously upgrade his professional expertise

(g) comply with applicable laws in the performance of his functions; and

(h) maintain confidentiality of information obtained during his professional conduct

The Bye-Laws of the ICAI RVO also mandates the following to be ensured by the Members:

- An individual shall be enrolled as a member only if he is eligible to be registered as a Registered Valuer with the authority:
- An individual may apply for enrolment as a member by submitting an application in Form "A" with the relevant documents to Organisation in such manner and with such fees as may be specified by the Governing Board of the Organisation from time to time.
- Members should pay an annual membership fee as may be specified by the Governing Board from time to time.
- **Temporary Surrender of Membership**

  A member shall make an application for temporary surrender of his membership of the Organisation at least thirty days before he-

  (a) becomes a person not resident in India;

  (b) takes up employment; or

  (c) starts any business, except as specifically permitted under the Code of Conduct;
- A member may make an application to revive his temporarily surrendered membership when the conditions for temporary surrender as provided in sub-clause (1) cease to be applicable, and upon

acceptance of the application for revival, the name of the member shall be re-inserted in the register of the Organisation, and the same shall be intimated to the authority

- **Surrender of Membership**

  A member who wishes to surrender his membership of the Organisation may do so by submitting an application for surrender of his membership.

  Any fee that is due to the Organisation from a member surrendering his membership shall be cleared prior to his name being struck from the registers of the Organisation.

- **Expulsion from Membership**

  A member shall be expelled by the Organisation –

  a. if he becomes ineligible to be enrolled under bye-law 9;

  b. on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;

  c. upon non-payment of membership fee despite at least two notices served in writing;

  d. upon the cancellation of his certificate of registration by the Authority;

  e. upon the order of any court of law.

The ICAI RVO has also developed **Grievance Redressal, Monitoring and Disciplinary Policies**. The members of the ICAI RVO are advised to mandatorily comply with the requirements stated therein.

5. Compliance of Valuation Standards- i.e. Internationally Accepted Valuation Standards or ICAI Valuation Standards 2018

Rule 8 of the Companies (Registered Valuers and Valuation) Rules, 2017 read with Rule 18 of the said Rules prescribes that a Registered Valuer shall comply with the valuation standards as notified or modified under the Rule while conducting a valuation.

However, until any valuation standards are notified or modified by the Central Government, a Valuer shall make valuations as per:

a) internationally accepted valuation standards

b) valuation standards adopted by any Registered Valuers Organisation.

The Valuation Standards Board of the Institute of Chartered Accountants of India has issued ICAI Valuation Standards 2018.

The applicability of the ICAI Valuation Standards is as follows:

- **Mandatory-** In respect of all valuation engagements under the Companies Act 2013 for the members of ICAI.
- **Recommendatory-** In respect of Valuation engagements under other Statutes like Income Tax, SEBI, FEMA etc., for the members of ICAI.

These Valuation Standards are effective for the valuation reports issued on or after 1st July, 2018.

Though, the compliance with the Valuation Standards is recommendatory for chartered accountants who are not enrolled with ICAI Registered Valuers Organisation for Valuation under any Statute except under the Companies Act 2013, we encourage the members to follow the Valuation Standards 2018 so as to adopt uniform and best practices.

The following Valuation Standards have been issued by ICAI which will be effective till Valuation Standards are notified by the Central Government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2017:

1. Preface to the ICAI Valuation Standards
2. Framework for the Preparation of Valuation Report in accordance with the ICAI Valuation Standards
3. ICAI Valuation Standard 101 – Definitions
4. ICAI Valuation Standard 102 - Valuation Bases
5. ICAI Valuation Standard 103 - Valuation Approaches and Methods
6. ICAI Valuation Standard 201 - Scope of Work, Analyses and Evaluation
7. ICAI Valuation Standard 202 - Reporting and Documentation
8. ICAI Valuation Standard 301 - Business Valuation

9. ICAI Valuation Standard 302 - Intangible Assets

10. ICAI Valuation Standard 303 - Financial Instruments

The ICAI Valuation Standards can be referred at:

https://icairvo.in/documents/ICAI%20VALUATION%20STANDARDS.pdf

ICAI Valuation Standards are at par with the international practices and have been formulated as per the applicable laws, customs, usages and business environment prevailing in India and Judgements taken pertaining to Valuation. They deal with India's special needs and conditions arising from India's economic, social and legal environment. Therefore, we encourage the members to follow the Valuation Standards 2018 so as to adopt uniform and best practices.

6. Compliance of Guidelines/Circulars/ Notifications issued by IBBI from time to time

A Registered Valuer is required to adhere to any Guidelines, Circulars, Notifications and Frequently Asked Questions (FAQs) etc. issued by IBBI from time to time. Some of them are briefed below:

a) Guidelines on Use of Caveats, Limitations and Disclaimers by the Registered Valuers in Valuation Reports (Annexure-3)

b) Timely submission of Half Yearly Reports with the RVO for further submission of same to the IBBI.

c) Completion of CEP hours each year as mandated by IBBI.

d) Not accepting/ conducting valuation assignments till to time of issuance of Certificate of Practice by the RVO.

e) Not accepting any assignments other than the asset class in which the RV is registered.

7. Compliance with the provisions of the Law under which the Assignment has been accepted such as SEBI, Income Tax Act, 1961, RBI, IBC etc.

Valuation is required to facilitate a variety of transactions like mergers, acquisitions, financing, taxation, liquidations etc. Different statutes such as FEMA, SEBI, Income Tax, IBC etc. also require valuation for a variety of purposes.

As the various provisions as enumerated in part iv that follows hereto, a Registered Valuer is inter alia required to mandatorily comply with the requirements of the said Statute under which the Assignment is accepted/ undertaken.

Chapter 4

Requirement of Valuation under various Laws

The requirement of Valuation under various Laws such as the Companies Act 2013, the Insolvency & Bankruptcy Code 2016, the Income Tax Act 1961, SEBI, FDI, FIMMDA etc. are tabulated below.

- **Requirement of Valuation as per Companies Act, 2013 and Rules thereunder**

S. No	Purpose	Section	Rule
1.	Chapter II- Incorporation of Companies	Section 8(4)- Formation of companies with charitable objects, etc Conversion of Section 8 company to any other company	Rule 21 – Conversion of Section 8 company to any other company Copy of valuation report by a registered valuer about the market value of assets is required in case of filing of INC-18 by a company under Rule 21 of the Companies (Incorporation) Rules to convert a section 8 Company to any other kind of company.
2.	Chapter III- Allotment of Securities for consideration other than Cash	39 (4)- Allotment of Securities by company	Rule 12 (5)- Return of Allotment A report of a Registered Valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).
3.	Chapter IV- Issue of sweat	Section 54 (1)- Issue of Sweat Equity	Rule 8 - Issue of Sweat

S. No	Purpose	Section	Rule
	equity shares	Shares	Equity Shares 8 (6) The sweat equity shares to be issued shall be valued at a price determined by a Registered Valuer as the fair price giving justification for such valuation. 8 (7) The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a Registered Valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.
4.	Chapter IV- Issue of Shares / convertible securities on preferential basis by unlisted company for cash or for consideration other than cash	Section 62 (1) (c) - Further issue of share capital. to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a Registered Valuer	Rule 13 (1)- Issue of shares on preferential basis Provided further that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a Registered Valuer.

S. No	Purpose	Section	Rule
		subject to such conditions as may be prescribed.	
5.	Chapter IV- Issue of shares on preferential basis.-	Section 67 (3) (b)- Restrictions on purchase by company or giving of loans by it for purchase of its shares	Rule 16 (1) (c) - Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees.- where shares of a company are not listed on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a Registered Valuer;
6.	Chapter V- Acceptance of Deposits Valuation of bonds where secured by charge of any assets	Section 73- Prohibition on acceptance of deposits from public	Rule 2 (ix) - Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a Registered Valuer;
7.	Chapter V- Acceptance of Deposits	Section 73 (2)- Prohibition on acceptance of deposits from public	Rule 6 – Creation of Security Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of

S. No	Purpose	Section	Rule
			such assets as assessed by a Registered Valuer.
8.	Chapter V- Terms of Reference of Audit Committee	Section 177 (4) (vi) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,— valuation of undertakings or assets of the company, wherever it is necessary;	-
9.	Chapter XII- Non-cash transactions with Directors for acquiring assets from the company	Section 192 (2) Restriction on non-cash transactions involving directors. The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a Registered Valuer.	-

S. No	Purpose	Section	Rule
10.	Chapter XV- In case of any scheme of corporate debt restructuring	Section 230 (2) (c) (v) any scheme of corporate debt restructuring consented to by not less than seventy-five percent. of the secured creditors in value, including a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a Registered Valuer.	-
11.	Chapter XV- For valuation including swap ratio, in case of any scheme for the reconstruction of the company or companies involving merger/ amalgamation or demerger, copy of Valuer Report to be accompanied	Section 232 (2) (d) Merger and amalgamation of companies. Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal,	-

S. No	Purpose	Section	Rule
		namely:— (d) the report of the expert with regard to valuation, if any;	
12.	Chapter XV- Exit for dissenting shareholder of transferor company	Section 232 (3) (h) (B) where the transferor company is a listed company and the transferee company is an unlisted company,— (A) the transferee company shall remain an unlisted company until it becomes a listed company; (B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under	-

S. No	Purpose	Section	Rule
		this provision may be made by the Tribunal: Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;	
13.	Chapter XV- Purchase of minority shareholding	Section 236 (2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a Registered Valuer in accordance with such rules as may be prescribed.	-
14.	Chapter XVII-	Section 247	-

S. No	Purpose	Section	Rule
	Responsibilities of Registered Valuers	Valuation by Registered Valuer Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a Valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.	
15.	Chapter XX- Submission of report by Company Liquidator in	Section 281 (1) (a) the nature and details of the assets of the company including their	-

S. No	Purpose	Section	Rule
	case of winding up Order by NCLT	location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company: Provided that the valuation of the assets shall be obtained from Registered Valuers for this purpose.	
16.	Schedule III-	Division I Title deeds of Immovable Properties not held in name of the Company Where the Company has revalued its Property, Plant and Equipment, the company shall disclose as to whether the revaluation is based on the valuation by a registered valuer as defined under rule 2 of the Companies (Registered Valuers and Valuation) Rules, 2017.	

S. No	Purpose	Section	Rule
17.	Schedule III-	Division II and III Title deeds of Immovable Properties not held in name of the Company The company shall disclose as to whether the fair value of investment property (as measured for disclosure purposes in the financial statements) is based on the valuation by a registered valuer as defined under rule 2 of Companies (Registered Valuers and Valuation) Rules, 2017. Where the Company has revalued its Property, Plant and Equipment (including Right-of-Use Assets), the company shall disclose as to whether the revaluation is based on valuation by a Registered Valuer as defined under rule 2 of Companies (Registered Valuers	

S. No	Purpose	Section	Rule
		and Valuation) Rules, 2017. Where the Company has revalued its Intangible assets, the company shall disclose as to whether the revaluation is based on valuation by a Registered Valuer as defined under rule 2 of Companies (Registered Valuers and Valuation) Rules, 2017.	

- **Requirement of Valuation as per Insolvency & Bankruptcy Code, 2016 and Regulations thereunder**

S. No.	Section/ Regulation	Brief description	Requirement
1.	Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016	Appointment of Registered Valuers	The Insolvency Resolution Professional (IRP) shall within 7 days of his appointment, appoint two Registered Valuers to determine the fair value and liquidation value of the corporate debtor in accordance with regulation 35
2.	Regulation 35 of IBBI (Insolvency Resolution	Liquidation value	The 2 Registered Valuers appointed under Regulation 27 shall submit to the IRP, an estimate of the fair value and

S. No.	Section/ Regulation	Brief description	Requirement
	Process for Corporate Persons) Regulations 2016		liquidation value. If in the opinion of the IRP, the 2 estimates are significantly different, he may appoint another Registered Valuer who shall submit an estimate in the same manner. The average of the 2 closest estimates shall be considered the fair value and liquidation value
3.	Regulation 3 (2) of IBBI (Voluntary Liquidation Process) Regulations 2016 Section 59(3)	Initiation of voluntary liquidation	Where a corporate person intends to liquidate itself voluntarily, the declaration shall be accompanied by the report of the valuation of assets of the corporate person, prepared by a Registered Valuer.
4.	Regulation 38 (1) of IBBI (Voluntary Liquidation Process) Regulations 2016	Final report prior to dissolution	The liquidator shall prepare a sale statement of assets showing the value realized lesser than the value assigned by the Registered Valuer
5.	Section 46	Valuation of avoidable transactions	The adjudicating authority may require an independent expert to assess evidence relating to the value of the transactions.
6.	Regulation 34 (1) of IBBI	Fair Value and	The registered valuer appointed under regulation 26

S. No.	Section/ Regulation	Brief description	Requirement
	(Fast Track Insolvency Resolution Process for Corporate Persons) Regulations 2017	Liquidation Value	shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor.

- **Requirement of Valuation under SEBI – SEBI (Listing Obligations and Disclosure Requirement) Regulations 2015 (LODR), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR), SEBI (Employee Stock Option Scheme) Regulations, 2014 (ESOP)**

S. No	Regulations	Brief description	Requirement
1.	SEBI delisting regulations - 23	Rights of public shareholders in case of compulsory delisting	Where equity shares are delisted by a recognized stock exchange, the stock exchange shall appoint an Independent Valuer or Valuers who shall determine the fair value of the delisted equity shares; from out of its panel of expert valuers.
2.	SEBI ICDR – 158(6)(b)–	Preferential issue – conversion of debt into equity under strategic debt restructuring scheme	Conversion price shall be certified by two independent qualified Valuers.
3.	SEBI ICDR –	Disclosures –	Where specified

S. No	Regulations	Brief description	Requirement
	163	consideration other than cash	securities are issued on a preferential basis for consideration other than cash, the valuation of assets in consideration for which the equity shares are issued shall be done by an independent qualified Valuer, which shall be submitted to the recognized stock exchange where the equity shares are listed; provided that if the stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other Valuer
4.	SEBI ICDR – 165	Shares not frequently traded	Where the shares of an issuer are not frequently traded, the price determined by the issuer shall take into account the valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:
5.	SEBI ICDR annexure to the due diligence certificate	Revaluation certificate	Revaluation certificate of the issuing company's assets given by an approved Valuer

S. No	Regulations	Brief description	Requirement
6.	SEBI LODR regulation 87(C)	Valuation, Rating and NAV disclosure	An issuer whose security receipts are listed on a stock exchange shall ensure that the valuation is conducted by an independent valuer.
7.	SEBI LODR Part C – regulation 18(3)	Role of audit committee	Valuation of undertakings or assets of the listed entity, wherever it is necessary
8.	SEBI SAST regulations – regulation 8	Offer price	The open offer for acquiring shares under regulations 3, 4, 5 or 6 shall be determined in accordance with sub-clause (2) or (3). (2)(e) where the shares are not frequently traded, the price determined by the acquirer and manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples and such other parameters as are customary for valuation of shares of such companies; or the per share value computed under sub-reg (5). (16) For the purposes of clause (e) of sub-reg (2) and sub-reg (4), the Board may, require

S. No	Regulations	Brief description	Requirement
			valuation of the shares by an independent merchant banker or an independent CA.
9.	SEBI issue of sweat equity regulations – regulation 6(4)	Valuation of IP	The value of the IP or technical know-how to be received from the employee, along with the valuation report to be attached to the notice to shareholders for approval of sweat equity shares
10.	SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008-38G(1)(a)	Valuation, Rating and NAV disclosure	An issuer whose security receipts are listed on a recognized stock exchange shall ensure that the valuation is conducted by an independent valuer.

- **Requirement of Valuation as per Reserve Bank of India – Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI) and Fixed Income Money Market and Derivatives Association of India (FIMMDA)**

S. No.	Section/ Circular/ Notification	Brief description	Requirement
1.	FIMMDA/FIMCIR/2017-18/034 dated 31/3/18	Guidelines for valuation of instruments: Valuation of traded (non-SLR)/ non-traded bonds (non-	Methodology is prescribed by FIMMDA, e.g., corporate bond spread matrix methodology is

S. No.	Section/ Circular/ Notification	Brief description	Requirement
		SLR), bonds with call and put options; bonds not rated by rating agency but corresponding rated bond of issuer exists	outlined; Bonds / debentures having special features such as floating rate bonds (non SLR), MIBOR linked bonds, Bonds with floor and cap, staggered redemption bonds, perpetual bonds, coupon bearing and non-coupon bearing deep discount bonds, CD/CP, bonds with call and put options, Discom bonds issued under FRP and UDAY bonds, tax free bonds, security receipts/pass through certificates issued by reconstruction company, priority sector PTC, Basel 3 compliant AT1 Perpetual Bonds, Bonds issued as a part of restructuring an advance, preference shares, convertible debentures, priority sector bonds, securitized paper, unrated govt guaranteed non-SLR bonds, valuation of bonds issued by

S. No.	Section/ Circular/ Notification	Brief description	Requirement
			NBFC now banks, valuation of SWAPS,
2.	RBI Master circular – Prudential norms for classification, valuation, and operation of investment portfolio by banks dated July 1, 2015	Valuation of government securities, valuation of non-SLR bonds,	Central government securities, state government securities, treasury bills, floating rate bonds (CG), inflation indexed bonds, Other SLR bonds / securities, special securities issued by GOI, etc
3.	RBI Master Circular – Operational Guidelines to Primary Dealers dated July 1, 2015	Valuation of government securities	As above
4.	RBI	Valuation of shares of foreign company	Investment by way of remittance from India in existing company, valuation of shares of the company outside India shall be made, where the investment is more than USD 5 mn by a MB or by an IB registered outside India, in other cases by a CA or CPA
5.	RBI	Valuation of shares of foreign company acquired through SWAP	Valuation of shares of the company outside India shall be carried out by a MB or IB
6.	RBI – scheme for issue of FCCB and ordinary shares (through Dep	Valuation of shares of foreign company acquired against	Valuation to be made by an IB, or based on the current market

S. No.	Section/ Circular/ Notification	Brief description	Requirement
	receipt mechanism) 1993	ADR/GDR	capitalization of the company
7.	RBI	Acquisition of shares of foreign company through approval route	Investment by way of remittance from India in existing company, valuation of shares of the company outside India shall be made, where the investment is more than USD 5 mn by a MB or by an IB registered outside India, in other cases by a CA or CPA
8.	RBI	Transfer by way of sale of shares of a JV/WOS outside India, not involving write off	Value to be certified by a CA or CPA
9.	RBI guidelines issued as on Sept 1, 2016	Sale of stressed assets by banks	Banks should have a clear policy for valuation of assets proposed to be sold and whether they will rely on internal or external valuation; in case of exposures beyond INR 50 cr, banks shall obtain 2 valuation reports; however, discount rate to be used will be spelt out by the bank's policy,

- **Requirements of Valuation as per the Income Tax Act, 1961**

S. No.	Section/ Rule	Brief description	Requirement
1.	56 – rule 11UA	Valuation of unlisted shares; jewellery, works of art;	Rule 11UA specifies a formula or valuation by a merchant banker using DCF method
2.	56(viib) – rule 11UA	Valuation of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56	FMV of unquoted equity shares
3.	28(via)	Profits and gains from conversion of inventory into capital assets	Rule 11UAB
4.	56(2)(x)	Any person receives any property without consideration or for inadequate consideration	Mainly Rule 11UA to compute taxable amount
5.	Rule 11UB	Fair market value of assets in certain case	(3) Where the asset is a share of an Indian company not listed on a recognised stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by the liability, if any, considered in such determination.

S. No.	Section/ Rule	Brief description	Requirement
			(4) Where the asset is an interest in a partnership firm or an association of persons, its fair market value shall be determined in the following manner, namely:— the value on the specified date of such firm or association of persons, shall be determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology as increased by the liability, if any, considered in such determination; (5) The fair market value of the asset other than those referred to in sub-rules (2), (3) and (4) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.
6.	50CA- Rule 11UAA	Special provision for full value of consideration for transfer of shares other than quoted shares	Fair market value is the full value of consideration, where shares are transferred at less than fair market value

S. No.	Section/ Rule	Brief description	Requirement
7.	Rule 7CB	Method of valuation for the purposes of sub-section (2) of section 115TD.	The fair market value of shares and securities other than equity shares shall be estimated to be price it would fetch if sold in the open market on the specified date on the basis of the valuation report from a merchant banker or an accountant in respect of such valuation.
8.	Rule 40C-115WC(1)(ba)	Valuation of specified security or sweat equity share being a share in the company	The fair market value of any specified security or sweat equity share, being an equity share in a company, which is not listed on a recognized stock exchange, on the date on which the option vests with the employee, shall be determined by a merchant banker on the specified date.
9.	Rule 40D-115WC(1)(ba)	Valuation of specified security not being an equity share in the company	The fair market value of any specified security not being an equity share in a company, which is not listed on a recognized stock exchange, on the date on which the option vests with the employee, shall be determined by a merchant banker on the specified date.
10.	Rule 3(9)	Valuation of perquisite-	For the purposes of sub-

S. No.	Section/ Rule	Brief description	Requirement
		specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assesse	clause (vi) of clause (2) of section 17, (i.e. value of perquisite in the form of specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assesse) the fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

Chapter 5

Do's and Don'ts for the Registered Valuers

A. General Practices

S No.	Do's	Don'ts
1.	A Registered Valuer should be appointed only through the Company and the Insolvency Professional (IP).	Assignment for valuation under IBC should not be accepted by a Registered Valuer from third party.
2.	A Registered Valuer should accept assignment for valuation of the asset only for the asset class for which he/she is registered.	Assignment for the other asset classes in which the Registered Valuer is not registered should not be accepted.
3.	A Registered Valuer should abide by the Code of Conduct issued under the Companies (Registered Valuers and Valuation) Rules, 2017	A Registered Valuer should refrain from doing any act which is not in accordance with the Code of Conduct issued by the RVO in which he/she is a member.

4.	The Registered Valuers should share the Liquidation Valuation Report with the Committee of Creditors (COC) only and the contents of the report shall be treated as Confidential.	Liquidation Valuation report should not be shared by the Registered Valuers to any person other than the Committee of Creditors (COC).
5.	A Registered Valuer should accept the assignment only after enrolling himself as a Registered Valuer with the Authority.	A Registered Valuer should not accept assignment merely upon passing of the valuation examination.
6.	An individual shall be enrolled as a member only if he is eligible to be registered as a Registered Valuer with the Authority.	An individual should not be in employment even at the time of enrolling himself as the primary member with the RVO.
7.	A Registered Valuer should exercise utmost care while communicating its identity; it should not demonstrate and mislead the users on account of usage of certain terminologies.	A Registered Valuer should not create any URL which is misleading and may give a wrong impression that the Registered Valuer is closely associated with or is in some way related to the IBBI. For Example: creation of URL by the name of 'www.ibbivaluer.com'

B. Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 vis-à-vis Do's and Don'ts for the Registered Valuers

S. No.	Code of Conduct	Do's and Don'ts in order to comply with the Code of Conduct and ensure that no violation is committed
	Integrity and Fairness	
1.	A Valuer shall, in the conduct of his/its business, follow high	A Registered Valuer while discharging his/her duties cast

	standards of integrity and fairness in all his/its dealings with his/its clients and other Valuers.	upon him/her under various provisions of the Companies Act 2013 and IBC 2016 and Rules & Regulations made thereunder in his/her capacity as a Valuer may have to seek advise, expert opinion or appoint various Professionals to assist/support him or to comply with relevant provisions/rules/regulations. It is very important for RVs that while appointing any professional, he/she must ensure – 1. That such appointment is made in a very transparent manner by adopting due procedure such as inviting quotations from some eligible persons, due negotiations, defining the scope in a very clear manner etc. 2. It does not result in any conflict of interest due to past or present professional or other relationship 3. The appointment is done on arm's length basis 4. The fees is commensurate with the scope of work The RV shall also monitor the work of Professional to ensure that the work is done as per the scope of work and within the timelines. Apart from above, the RV while

		dealing with any stakeholder shall be fair in his/her dealings. He/she must observe utmost care that while such dealings the interest of all stakeholders are protected. To the maximum extent possible, the RV shall also maintain such documents/papers in support of the above so as to justify things if it is required in future.
2.	A Valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.	During the course of discharge of his/her duties, the Registered Valuer is required to interact with various stakeholders, professionals, authorities, etc. Such interactions and dealings are expected to be extremely careful. He/she must provide factual information and situation which he believes to be correct after taking due care on the authenticity of such information/situation. The RV must not provide false information or misleading information to any of the persons listed above. The RV also should refrain himself/herself from involving in any such acts or actions which would bring disrepute or malign the profession. Such actions/acts may include many things such as favoritism, providing false information etc.
3.	A Valuer shall endeavour to	The Registered Valuer while

	ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.	carrying out valuation processes must be guided by the objective of the IBC Code, 2016 and objective of that particular process. The decisions taken by the RV and the dealings done by the RV in various processes must be rational, and on provisions based as per the provisions of Act. In no case, the RV should compromise his/her position due to bias, conflict of interest, coercion or undue influence from anyone.
4.	A Valuer shall refrain from being involved in any action that would bring disrepute to the profession.	It may be possible that there might be situations, wherein at the time of commencement of any assignment or during the course of conducting such assignment, the RV comes to know regarding any conflict of interest he/she has in the assignment. The RV, in such a situation, immediately upon becoming aware of such conflict of interest must inform such conflict to all the stakeholders.
5.	A Valuer shall keep public interest foremost while delivering his services.	The RV in his/her various roles is expected to maintain highest level of integrity and honesty. Since the RV is the one who is carrying on various processes and he/she is aware of many insider things which the others are not. Hence, in order to maintain

		utmost integrity and honesty, the RV must not himself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so.
	Professional Competence and Due Care	
6.	A Valuer shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.	Any enactment keeps on evolving as per various developments, amendments, and rulings by various judicial forums. An RV is expected to keep an eye on such developments which are happening. He/she must update himself/herself thoroughly with such developments. An RV must have upto date knowledge of the enactments so as to render his/her services in accordance with the law. The RV is also expected to acquire and develop soft skills through attaining various seminars/conferences/trainings etc. which are necessary for efficient discharge of his/her duties.
7.	A Valuer shall carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time.	A Registered Valuer shall comply with the technical and professional standards like Valuation Standards adopted by the RVO, Guidelines, Circular, Advisories etc. issued by RVO, IBBI and MCA.

8.	A Valuer shall continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.	Any enactment keeps on evolving as per various developments, amendments, and rulings by various judicial forums. A RV is expected to keep an eye on such evaluation and development which are happening in the act. He/she must update himself/herself thoroughly with such developments. A RV must have upto date knowledge of the relevant enactments so as to render his/her services in accordance with the law. The RV is also expected to acquire and develop soft skills through attaining various seminars/conferences/trainings etc. which are necessary for efficient discharge of his/her duties.
9.	In the preparation of a valuation report, the Valuer shall not disclaim liability for his/her expertise or deny his/its duty of care, except to the extent that the assumptions are based on statements of fact provided by the company or its auditors or consultants or information available in public domain and not generated by the Valuer.	The Registered Valuer shall follow the Guidelines issued by IBBI on Caveats, Limitations and Disclaimers. He shall take responsibility of the information provided by him and should not disclaim his liability by providing a disclaimer.
10.	A Valuer shall not carry out any instruction of the client insofar as they are incompatible with the requirements of integrity,	A Registered Valuer shall comply with the relevant Act, Rules and Regulations rather than instructions of the client so

	objectivity and independence.	as to not compromise with his integrity, objectivity and independence in carrying out the instruction of the client.
11.	A Valuer shall clearly state to his client the services that he would be competent to provide and the services for which he would be relying on other Valuers or professionals or for which the client can have a separate arrangement with other Valuers.	A Registered Valuer should inform the client about the services that he can provide or where he would require to engage other professionals or will rely on the reports of other professionals. The Registered Valuer should accept assignment of the asset class for which he is registered and should not accept assignment for the other asset classes.
	Independence and Disclosure of Interest	
12.	A Valuer shall act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.	Here the Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 expects from the Registered Valuer that he must conduct independently in various processes carried on with him/her. He/she shall conduct the processes while undertaking any kind of valuation assignment and engage in his/her professional relationship without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.
13.	A Valuer shall not take up an assignment if he/it or any of	To ensure independence of the profession, integrity and

	his/its relatives or associates is not independent in terms of association to the company.	honesty, the RV must not allow himself/herself or his/her relatives to knowingly acquire such assets, directly or indirectly. However, there might be situations, wherein, although the RV himself/herself or his/her relatives are the buyers of assets of debtor, there is no impairment of independence, objectivity. In such rare cases, the RV must obtain prior approval of IP/ Board for such transaction and in no case shall do it without getting such approval.
14.	A Valuer shall maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.	In order to protect integrity, independence and objectivity of the profession and to ensure that various processes are carried out with upmost integrity and honesty, certain restrictions have been stipulated on the RVs while accepting any assignment. The RV must take utmost care while accepting any assignment that stipulations stipulated are duly complied with. If the RV is of the opinion that there exists any relation as stipulated in the regulations, he shall never accept such assignment.
15.	A Valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased	The provisions of the Act very firmly aim at independence of the Registered Valuer so as to ensure that the processes under the Companies Act, 2013 are

	services.	carried out in a very honest and transparent manner without with fair treatment to all the stakeholders. Accordingly, this Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 requires every RV to disclose existence of any pecuniary or personal relationship with any of the stakeholders It is very important for an RV to evaluate his relationship with various stakeholders on a continuous basis. And as soon as he becomes aware of existence of any such relationship he/she must disclose it by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.
16.	A Valuer shall not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or till the time the valuation report becomes public, whichever is earlier.	Importance of independence of an RV is evident. It is expected of RV that he/she must be fair to every stakeholder and shall not have any sort of bias or favoritism towards anyone. To ensure that there shall not be any doubt over the impartiality of the RV, the said Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 makes it mandatory to declare whether an RV was an employee or has

		been on panel of any Financial Creditor of the Corporate Debtor. Such disclosure shall also be submitted to the RVO of which the RV is a member. The RVO shall publish such disclosures on its website. This will enable all the stakeholders to see such relationship, if any, of the RV.
17.	A Valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs.	Integrity of the RV and honesty are of utmost importance. Various provisions of the Companies Act, 2013 and the IBC Code, 2016 aims at ensuring that the RV shall act in a very honest manner and maintain integrity of the highest level. This Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 also aims at ensuring the same. It specially restricts the RV from adopting any illegal or improper means to achieve any mala fide objectives. During the assignment, an RV shall never influence any decision of any stakeholder to make any undue or unlawful gains either for himself/herself or for his/her related parties. He shall also not indulge in any practice to give undue preference for any other persons for undue or unlawful gains.
18.	As an independent Valuer, the	The fees of the Registered

	valuer shall not charge success fee.	Valuer should not be dependent on the enterprise value. It should be a fixed fee based on the assignment. He should never charge success fee as the same shows conflict of interest.
19.	In any fairness opinion or independent expert opinion submitted by a Valuer, if there has been a prior engagement in an unconnected transaction, the Valuer shall declare the association with the company during the last five years.	The Registered Valuer should always disclose, association, if any, with the company during the last five years before accepting any assignment. He shall not compromise his independence.
	Confidentiality	
20.	A Valuer shall not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.	The RV in his/her various roles undertakes confidential and important work. The role of RV is Fiducial. The RV has to protect interest of all stakeholders. In order to ensure this, the RV must maintain confidentiality of the information & records possessed by him/her. The RV shall never disclose any confidential information to anyone. However, where an RV must maintain confidentiality, it does not stop him from disclosing relevant information with the consent of the relevant parties or as it may be required under any law for the time being in force.

	Information Management	
21.	A Valuer shall ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.	For meaningful use of any information, apart from being conveyed, it is also very important that the information must be provided well in advance and in a way which is simple, clear and easy to understand to the recipient. While discharging various duties in an assignment, the RV is required to communicate various information to various stakeholders. In such communications or exchange of information, the RV must take care and ensure that the information is provided well in advance and in a manner which is simple, clear and easy to understand to the recipient.
22.	A Valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the Registered Valuers Organisation with which he/it is registered or any other statutory regulatory body.	An RV has been entrusted with a very delicate work and is expected to maintain highest level of integrity, honesty, transparency, fairness in his dealings. The work and decisions of the RV are subject to scrutiny by judicial or other persons. Therefore, it becomes imperative on the part of RV to maintain all records supporting and substantiating his/her decisions. The decisions taken shall be sufficiently backed by proper reasons and rationale. The RV must maintain sufficient

		records so as to sufficiently demonstrate appropriateness of his/her decisions and actions which may be subject to scrutiny by judicial or any other persons.
23.	A Valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the Registered Valuers Organisation with which he/it is registered, or any other statutory regulatory body.	The various assignments, a RV undertakes involves interests of many stakeholders and it is legal duty of RV to ensure and protect interest of all stakeholders. An RV must not make any private communications with any of the stakeholders. All the communications must be official and duly recorded. However, if certain private communications are specifically required under the relevant Act, Code, Rules, Regulations and Guidelines under which the assignment is accepted or pursuant to such orders by the Adjudicating Authority, in such case the RV may do private communications. Except these, the RV must not involve in any sort of private communications.
24.	A Valuer while respecting the confidentiality of information acquired during the course of performing professional services, shall maintain proper working papers for a period of three years or such longer period as required in its contract for a specific valuation, for production before a regulatory authority or for a peer review. In	An RV has been entrusted with a very confidential and important work and is expected to maintain highest level of integrity, honesty, transparency, fairness in his dealings. The work of the RV is subject to inspections and investigations by the Insolvency and Bankruptcy Board of India, any person authorized by the IBBI or the Registered Valuers

	the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case.	Organisation with which he/she is enrolled. It is the duty of an RV to fully co-operate with such inspections and investigations whenever it is conducted. He must appear before such persons who are conducting inspections and investigations. It is very important for an RV to maintain all records supporting and substantiating his/her work which will be helpful in such inspections and investigations. Any sort of non-cooperation or insufficient supporting documents may lead to penal actions.
	Gifts and hospitality	
25.	A Valuer or his/its relative shall not accept gifts or hospitality which undermines or affects his independence as a Valuer. Explanation.— For the purposes of this code the term 'relative' shall have the same meaning as defined in clause (77) of Section 2 of the Companies Act, 2013 (18 of 2013).	An RV has to ensure highest level of integrity, independence, transparency and fairness of the processes he/she undertakes under various provisions of the Companies Act, 2013 and the IBC Code, 2016. An RV shall only receive the remuneration which has been fixed by the approving persons. The remuneration shall also be commensurate with the work. In addition to the remuneration, an RV or his/her relative must not accept any sort of gifts or hospitality which undermines or affects his independence as a Registered Valuer.
26.	A Valuer shall not offer gifts or	Around the valuation profession,

	hospitality or a financial or any other advantage to a public servant or any other person with a view to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.	interest of lot of stakeholders is involved in various processes being conducted under the Companies Act, 2013 and the IBC Code, 2016. Hence, an RV is expected to behave and act in a very honest manner. An RV has to ensure highest level of integrity, independence, transparency and fairness of the processes he/she undertakes under various provisions of the Act. To achieve this, an RV must not indulge in any activity which will result in compromise of his independence and/or bring disrepute to this profession. Hence, a Registered Valuer shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession for himself
	Remuneration and Costs.	
27.	A Valuer shall provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.	The Companies Act, 2013 does not have any provision on the professional remuneration of the RV. As such the remuneration is suggestive and is based on the assignment. However, a RV shall charge remuneration which shall be commensurate with the work involved in the assignment. The

		remuneration should be fair reflection of his/her time deployment and resource deployment. It should not be exorbitant. The remuneration shall depend on assignment to assignment. The remuneration must be clearly defined in a transparent manner. There should not be any sort of ambiguity or contingency in the remuneration. Importantly, the remuneration shall not be inconsistent with the applicable Rules, Regulations.
28.	A Valuer shall not accept any fees or charges other than those which are disclosed in a written contract with the person to whom he would be rendering service.	A Registered Valuer shall accept fee which is mentioned in the Engagement Letter and has been decided at the time of acceptance of assignment. He should not accept any other fee, gifts etc. from the client so that his independence is compromised.
	Occupation, employability and restrictions.	
29.	A Valuer shall refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.	Although the Companies Act, IBC Code or Rules & Regulations nowhere prescribe any number of assignments which an RV can accept, it is imperative that the RV should restrict number of assignments as per the time and infrastructure available with him. This is subjective matter and would vary from case to case. However, the important thing to notice here is that the RV should

		be able to demonstrate that he shall be able to do justice with all the assignments that he is handling. The different assignments would require different type of skill set, different time commitments etc. Hence, the RV must take into consideration various aspects of the assignment and availability of his/her time and infrastructure while accepting any assignment.
30.	A Valuer shall not conduct business which in the opinion of the authority or the Registered Valuer Organisation discredits the profession.	The Code of Conduct as per the Companies (Registered Valuers and Valuation) Rules, 2017 has clarified here that a person who is in employment/ business is ineligible to become RV. Further, a person who has been registered as RV must not engage in any employment. If he does so, he shall immediately apply for temporary surrender of membership as per the provisions of the Companies Act, Rules, etc.

Chapter 6

Best Practices to be ensured at the time of Initial Engagement

By implementing some simple processes, individual members and firms can ensure that they follow best practice procedures as part of their Registered Valuer status.

Some of the practices that should be ensured by a Registered Valuer at the time of Initial Engagement are listed below:

- **Terms of Engagement/Scope of Assignment**

Firms and individual Registered Valuers should use terms of engagement that comply with the requirements of the applicable Law and is in accordance with the Valuation Standards adopted by the Registered Valuer.

The Registered Valuer should get the scope of his duties and responsibilities defined by obtaining instructions in writing. Along with this, some of the important aspects such as Duration of the Assignment, Fees, Limitation of liability, Termination, and additional terms of engagement etc. shall also be discussed and duly recorded in writing before acceptance of the Assignment.

The terms of engagement shall clearly specify that the ownership of the working papers rests with the Valuer. It should also be made clear that the Valuer may provide copies of non-proprietary working papers, upon a written request of the client.

In this regard, a Sample Engagement Letter for accepting Assignments as a Registered Valuer is annexed at Annexure-4. The said sample engagement letter is for use as a guide to the Valuer and it needs to be varied according to individual requirements and circumstances relevant to the engagement.

Using a standard template that complies with the standards and is adaptable to specific cases produces a consistent approach and protects the firm/individual Valuer in the event of a claim.

It shall be ensured that a signed and dated copy is always kept on file in an appropriate place i.e. should be properly documented.

- **Conformance of Acceptance of Engagement vis-à-vis Skill set of Registered Valuer**

A Registered Valuer shall accept only those assignments under the asset class(es) in which he is registered.

Further, before providing acceptance of engagement, the Registered Valuer should ensure that he possesses the necessary skills and knowledge to undertake the task in hand.

Following matters should be identified and taken care of by the Valuer before accepting the engagement of valuation:

- Subject and interest to be valued
- Scope of work
- Date of valuation
- Purpose of valuation
- Premise of value
- Assumption, Limiting conditions and scope limitations
- Nature of Business
- Knowledge of the Industry
- Sources of information available
- Governing laws and Regulations

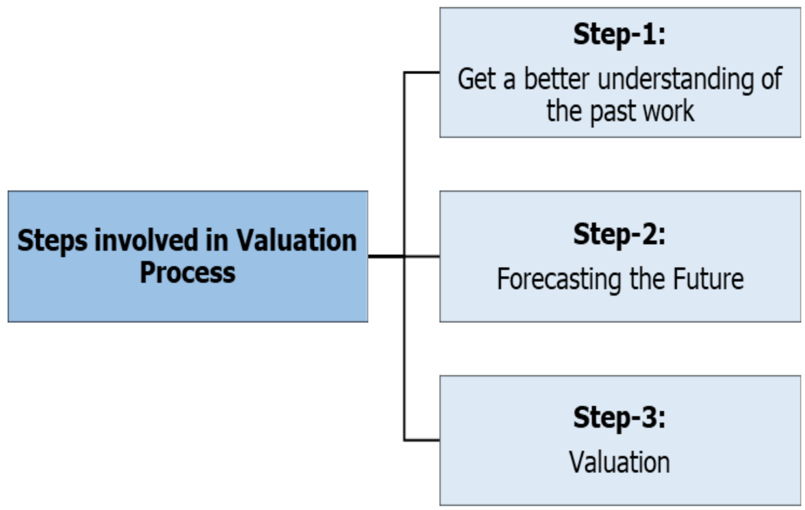
- **Strategic Planning**

Once, the acceptance has been made a Registered Valuer should establish strategy and develop a plan to perform the Valuation Assignment efficiently and effectively in a time-bound manner with the limited resources. This also involves deployment of resources such as appropriate human resource allocation for the conduct of Valuation.

Chapter 7

Best Practices to be ensured during Assignment

The valuation process can be broken down into 3 distinct steps, as illustrated below:



STEP 1: Get a better understanding of the past work such as

- Information Collection/Data Research
- Industry and Economy Analysis
- Business Analysis/Historical Analysis:
    - i. Understanding the business
    - ii. Understanding the Regulatory framework for the industry
    - iii. Understanding the value drivers
    - iv. Accounting analysis
    - v. Accounting policy review
    - vi. Length of financial history
    - vii. Adjustments to financial statements

viii. Assets and liability analysis including contingent assets and liabilities

ix. Income and expenses analysis

x. Financial analysis

- Ratio analysis
- Trend Analysis
- Cash flow analysis
- Strategy Analysis
- Company Risk Analysis

STEP 2: *Forecasting the future*

- Structured forecasting
- Income statement forecasts
- Balance sheet forecasts
- Cash flow forecasts

STEP 3: Valuation

- Taking Assumptions
- Determining Cost of Capital/Discounting Rate
- Use of Valuation models
  i. Income Approach
  ii. Market Approach
  iii. Asset Approach
- Arriving at Final Value
- Preparation of Valuation Report

While arriving at the final figure for Valuation, a Registered Valuer should also ensure the implementation of the below mentioned practices:

- **Avoiding Conflict of Interest**

A Valuer should not allow bias, conflict of interest or undue influence of others to override professional or business judgments at any time during his engagement.

He shall also ensure that the relevant law does not prohibit the acceptance of an assignment by a Valuer due to the existence of any interest in the asset valued, or any conflict of interest.

- **Source of Information**

A critical aspect under the Valuation process is selection of the Source of Information. A Valuer should exercise professional judgement while selecting the Source as it can immensely impact the Valuation.

If the Valuer relies on the information available in public domain, the Valuer should assess the credibility/reliability of such information taking into account, inter-alia, the purpose of valuation, and materiality vis-à-vis the valuation conclusion.

- **Valuation Methodology**

Valuation though backed by research and analysis, involves significant amount of judgment hence the Valuer needs to select the most appropriate approach or method very responsibly as there is no single approach or method that is best suited in every situation.

The valuation approaches and methods shall be selected in a manner which would maximize the use of relevant observable inputs and minimise the use of unobservable inputs.

- **Linkage of Final Outcome with Comparables/ Benchmark**

The Valuer should ensure that the final outcome of the valuation is the comparables with the Industry Average. In case of non-availability of Industry Average or deviation from the same, the valuation figure should clearly and transparently set out the thought processes and reasoning used to arrive at the valuation.

- **Establishment of Internal Quality Assurance**

Registered Valuers should use a suitable framework or checklist approach to ensure that valuation is done in accordance with the applicable Valuation Standards, provisions of the Law and other applicable statutory guidelines etc.

- **Documentation**

One of the most important aspects that need to be followed during the Valuation process is Proper Documentation. Comprehensive records of every document that influenced the valuation shall be kept in such a way that it clearly explains and support the valuation if there is a claim in the future. Documentation serves as the most vital evidence to defend the Valuer against any future claim.

Documentation/ information should be documented for each valuation assignment as every valuation engagement differs with each other. Some of the important information to be documented is as follows:

- engagement or appointment letter which appoints the Valuer to undertake the valuation
- tabulation of data obtained during the course of valuation
- workings undertaken to arrive at the value
- copies of relevant circulars, extracts of legal provisions
- the base/s, approach/es, and method/s, or a combination thereof, used to arrive at the value
- assumptions, a change in which, may materially affect the value
- a copy of the signed valuation report issued; and
- management/ client representation letter or such communication received, if any.

The valuation documentation is not limited to records prepared by the Valuer but may include appropriate records such as minutes of meetings, reports issued by other experts, and other independent industry/sector or other such data provided to the Valuer by the client, if any.

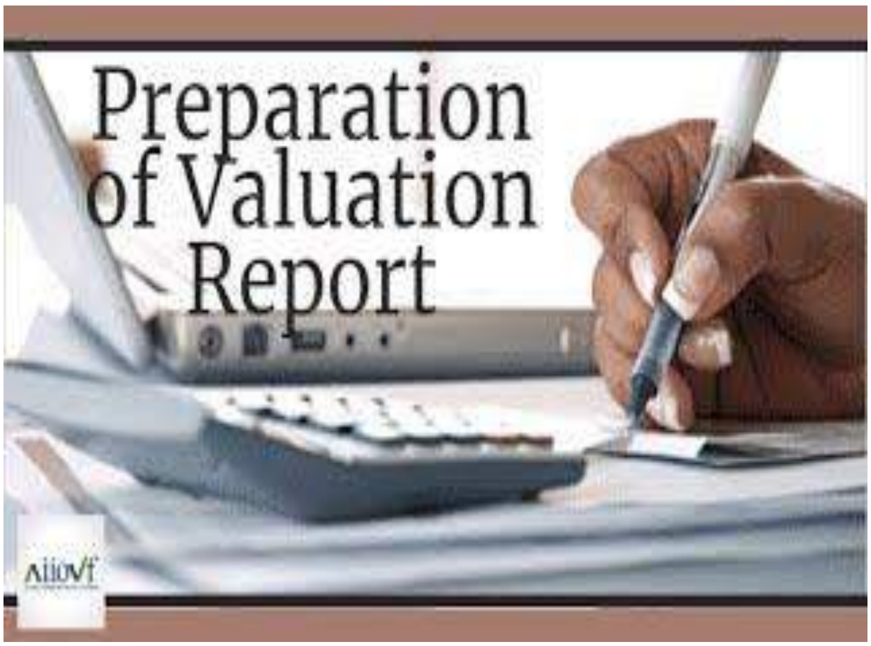
The valuation analyst should retain the documentation for a period of three years as per the Companies (Registered Valuers and Valuation) Rules, 2017, for a period of eight years as per ICAI Valuation Standards 2018 and the Companies Act 2013 or for the time period specified by any other law to meet the needs of applicable legal, regulatory, or other professional requirements for records retention.

- **Regular Trainings and Assessment of Registered Valuers**

Last but not the least; professionals should continuously train themselves and upskill their competency to meet the requirements of the ever-changing business and economic environment. ICAI RVO in association with the industry chambers organises various training/ workshops in India, to train and develop the Valuers on a continuous basis.

Chapter 8

Best Practices to be ensured at the time of Reporting i.e. issuance of Valuation Report



A Valuation report is a report prepared by the Registered Valuer for the purpose of arriving at the fair value of the asset under valuation on the date of reporting, for the pre-determined purpose and scope mutually agreed upon between the Registered Valuer and the intended users of the report.

It is important to understand that valuation report is the first document that a Valuer presents to the intended user and if it is not properly written it may not do justice to the immense professional work undertaken by him to complete the assignment.

A good business valuation is not only about determining an accurate and reasonable value, but also about being able to defend it if needed with a clear and concise explanation supporting the conclusions. A detailed and fully reasoned valuation report should be prepared in every case of valuation done in respect of both mandatory and discretionary valuation, where an RV is appointed.

Contents of Valuation Report

The Companies (Registered Valuers and Valuation) Rules, 2017 and the ICAI Valuation Standards clearly spells out the minimum requirements for a valuation report.

a) background information of the asset being valued;

b) purpose of valuation and appointing authority;

c) identity of the Valuer and any other experts involved in the valuation;

d) disclosure of Valuer interest or conflict, if any;

e) date of appointment, valuation date and date of report;

f) inspections and/or investigations undertaken;

g) nature and sources of the information used or relied upon;

h) procedures adopted in carrying out the valuation and valuation standards followed;

i) restrictions on use of the report, if any;

j) major factors that were taken into account during the valuation;

k) conclusion; and

l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by Valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

The form and content of the valuation report depends on the nature of the engagement and purpose of the valuation.

A few salient points associated with each of these basic components of a valuation report are as follows:

(a) Background information of the asset being valued

The aim is to provide the unfamiliar and familiar reader alike, with the particulars of the company, business, assets/liabilities that form the subject of the valuation with as much context as required to gain an accurate understanding of the assignment. Transaction details, summary of historical financials, capital structure, identification of pertinent facts such as related party issues, changes in shareholding pattern, impact of restructuring or proposed transaction etc. typically form part of this section.

(b) Purpose of Valuation and Appointing Authority

The context and purpose of the valuation and the appointing authority commissioning the exercise must be clearly stated e.g., the Management's decision to seek an advisory opinion should be disclosed, or the Audit Committee's decision to appoint or the appointment of an independent Valuer itself should be disclosed. As part of this section of the report, Valuers should also state the "premise of value".

(c) Identity of the RV and any other experts involved in the valuation

Identity of the Valuer (with his registration number) as well as the organization performing the valuation and other team members/external experts consulted in the process of valuation should be disclosed.

(d) Disclosure of Valuer Interest/Conflict, if any

This section of the report is key in ensuring transparency and as such Valuers should clearly disclose any facts that are relevant and may lead to a conflict or perceived conflict of interest while performing the analysis. As such, the Valuer should disclose in his/her report, possible sources of conflict and material interests, including association or proposed association/with the company, its associates, the counter party to the transaction or its associates, in the form of auditor, lead advisor or in any other capacity, together with the nature of the fee arrangements for the valuation services undertaken.

(e) Date of appointment, valuation date and date of the report

Valuation assignments are performed as of a particular point in time. As such, clearly stating the Valuation Date i.e., the date as of which the valuation analysis has been performed is very important. Furthermore, the date of the appointment of the Valuer as we well as the date on which the report has been issued should also be included. Furthermore, the Report should also mention the timeline associated with the validity of the report and/or within which the user must accept or reject the report.

(f) Nature and Sources of the information used or relied upon

Principal sources of information that form the basis of the valuation report should be clearly listed. This typically includes information such as company financials and projections that are provided by management as well as other sources such as analyst reports, publicly available sources of data Valuation professionals should make the effort to accurately state which sources have been relied upon and to what extent such information been incorporated into the valuation.

(g) Procedures adopted in carrying out a valuation and valuation standards followed

Procedures adopted in carrying out a valuation may vary with circumstances, nature and purpose of valuation as well as information and time available. The principal procedures adopted by the Valuer in carrying out the valuation should be set out in the report. Such procedures may typically include:

- Review and analysis of Historical and Projected Financials
- Industry and SWOT Analysis
- Comparison with similar transactions and other similar listed companies
- Discussions with Management
- Review of principal agreements/documents etc.
- Site visit (external, internal or both) or desktop valuation.
- Assignment specific assumptions must be explicitly stated i.e. in case of a desktop valuation a Valuer must state that the basis of the report is photographs provided, documents provided and secondary research only.
- Process of site identification, i.e., self-identified or with the help of clients representative or client itself.
- A Valuer's report should also include an affirmative statement that information provided and assumptions used by Management/Others in developing projections have been appropriately reviewed, enquiries made regarding the basis of key assumptions in context of the historical performance of the business being valued and comparable industry/economy indicators. An affirmative statement on adequacy of information and time for carrying out the valuations should also be included.

It is important to note that such affirmative statements shall not negate the professional liability for expertise applied in determining value and if the degree of inadequacy of information is severe, fundamental questions and information as assessed by the Valuer as key for the valuation needs to be disclosed.

(h) Valuation Methodology

The valuation methodology adopted by the Valuer, which includes various methods under the Income, Market and Cost Approaches has to be disclosed. The rationale and appropriateness for the adoption of a particular valuation methodology or combination of methods in the context of the valuation of a business or asset should be clearly justified. The report should disclose the rationale for exclusion of a valuation methodology.

(i) Restriction on use of report

The clause related to restricted use of the report shall be clearly mentioned in the Report.

(j) Major factors influencing the Valuation

Key material factors including inter alia the size or number of the corporate assets or shares, their materiality or significance, minority or majority holding and changes on account of the transaction, any impacts on controlling interest, diminution, or augmentation therein and marketability or lack thereof; prevailing market conditions and government policy in the specified industry should be described in the report. Here it will be relevant to mention that disclosure of projected financial information should be done taking into consideration aspects of confidentiality, regulatory requirements, purpose of valuation, and potential of misuse by users and competitors.

(k) Conclusion

The report must contain a clear statement of the value ascribed, including the Valuation Date, the Premise of Value, the valuation methods relied upon and appropriate weightage placed on each.

(l) Caveats, Limitations and Disclaimers

These should be clearly stated, often in a separate section of the report and serve to inform the reader of the caveats associated with the valuation and help them assess the impact of these clauses on the credibility and reliability of the report. For example, in the preparation of a valuation report, the Valuer should not disclaim liability for their expertise or duty of care. However, an Independent Valuer will prepare the report based on information and records provided by management. The Independent Valuer can disclaim the reliability of management provided projections and may disagree with the projections if they are conjectural or bordering on the unreal. An Independent Valuer has the right to demand relevant information and basis of the projections before commenting thereon.

The Insolvency and Bankruptcy Board of India (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 provides for Caveats, limitations and disclaimers as follows:

i. Caveats are warnings or cautions to the client/user of services.

ii. Limitation is a restriction on the scope of the RV"s work including inspection or investigation of the data available for analysis that may be present and known to the RV at the outset of the valuation engagement or that may arise during the course of a valuation assignment.

iii. A disclaimer is a statement intended to specify or delimit the scope of rights and obligations that may be exercised and enforced by parties in a legally recognized relationship. It is a statement denying responsibility intended to prevent civil liability arising for particular acts or omissions.

iv. While caveat, limitations and disclaimers have different connotation, in the context of a valuation, the clauses may get used in an interchangeable manner as limitation or a disclaimer by a RV could be caveat for the user of the report. Hence it is imperative that the users of the report are familiarized about the same to enable them to assess the impact of the disclaimer/caveat/limitation on the credibility and reliability of the report.

v. Any caveats, limiting conditions or other disclaimers to the report must be clearly stated with appropriate specificity.

vi. In the preparation of a valuation report, the RV shall not disclaim liability for his expertise or deny his duty of “due care”. However, it is recognized that a RV, shall prepare the valuation report of the company based on information and records concerned as provided by the management. The management remains liable for the correctness and veracity thereof. However, significant inputs provided to the RV by the management/owners should be considered, investigated and /or corroborated. In cases where credibility of information supplied cannot be supported, consideration should be given as to whether or how such information is used.

vii. The RV does not make or calibrate the projections but factors his response and the valuation assessment on the reliability and credibility of the information. The various projections of business growth, profitability, and cash flows etc., which are used in the valuation report are the company's estimates. The RV should consider the reliability and credibility of projections after testing the assumptions made by the management / owners / company in given market conditions and after sufficient inspection, enquiry, computation and analysis. The extent of evidence requires professional judgement and RV has to ensure that it is adequate for the purpose of valuation. The RV may disagree with the projections if they are conjectural or bordering on the unreal and accordingly make necessary modifications.

viii. A RV has the right to demand relevant information and basis of the projections before commenting thereon. It is the duty of the entity being valued to be fair and to provide accurate information about the subject asset.

ix. In a valuation report, the RV can state that the assumptions are statements of fact provided by the company and not generated by the RV. This warning statement is necessary as data provided by the company is often construed to be a part of the valuation report. Notwithstanding this, the RV has to carry out sufficient inspection, enquiry, computations and analysis to ensure that valuation is properly supported.

x. All valuations are to be carried out in sufficient detail to comply with the requirements of "due care". However, it can be reasonably expected that circumstances may place certain limitations regarding access to information or the time available. Hence, one has to recognize limitations of time and context in valuations, as it cannot constrain business need and flexibility.

xi. Keeping in view business needs and circumstances and, in the interest of transparency, any significant concerns regarding the justification, the information or the time available to complete the valuation be stated in the valuation report, together with appropriate explanation and implications.

xii. The effort, diligence and level of expertise applied by the relevant Registered Valuer, need to be stated in the valuation report.

The detailed Guidelines are available at Annexure-3

Assumptions and limitations to be considered in a Valuation Report

An Illustrative list of assumptions and limiting conditions are given here below:

- Valuation report is considered valid for the valuation date only.
- All the statements given and presented represent the true and fair view.
- Opinions, conclusions, decisions represented by a Valuer in terms of valuation are unbiased and fair.
- There is no personal interest in the assets, property, intangibles, intellectual rights etc., valued by a Valuer.
- We have relied on the information provided by the Management for the purpose of valuation.
- Public information and industry and statistical information have been obtained from sources believed to be reliable. However, no representation is made as to the accuracy or completeness of such information and has performed no procedures to corroborate the information.
- Do not provide assurance on the achievability of the results forecasted by [ABC Company] because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the forecasted results is dependent on actions, plans, and assumptions of management.
- If an intangible asset is not able to generate benefits for the firm/ company and the benefits cannot be measured reliably then it is treated as expenditure and not an asset.
- Legal background, financial aspects and tax matters regarding business valuation.
- Description of principles used in business valuation.

Chapter 9

Application of Learnings from the orders issued by IBBI and Judicial Pronouncements

Since the Valuation profession is continuously evolving to streamline the processes in sync with the emerging scenario, the judgements as pronounced by the Judiciary provide clarification on various issues and become all the more important to understand the various aspects of Valuation.

These judgements are an important repository to understand the concept of valuation and its underlying principles.

Therefore, a Registered Valuer as a part of its general practice should refer and perform its valuation assignment based on the citations of judicial decision, to the extent applicable.

The orders issued by the IBBI are another important legal source.

A. Key Takeaways for the Registered Valuers as per the Orders issued by the IBBI

Few of the important learnings from the orders passed by the IBBI are given below:

1. In the matter of Mr Abhishek Ahuja, Registered Valuer (Order dated 4th September, 2020)

Facts of the matter

It came to the notice of the IBBI that Mr Abhishek Ahuja before being registered as Valuer under the Rules took valuation assignment in the Corporate Insolvency Resolution Process (CIRP) of M/s Arjun Ispat India Private Limited. The engagement letter dated 2nd March, 2019 issued by the resolution professional, Mr Rajneesh Singhvi, was accepted by Mr Ahuja and the valuation report dated 5th April, 2019 was also submitted by him prior to him being registered as a Valuer with IBBI.

Key Takeaways for the Registered Valuers

- A Registered Valuer should accept the assignment only after enrolling himself as a Registered Valuer with the Authority.
- A Registered Valuer should not accept assignment merely upon passing of the valuation examination or completion of 50 hours mandatory training.
- For the purpose of Insolvency proceedings, a Registered Valuer should be appointed only through the Company and the Insolvency Professional (IP) who shall ensure that only a Registered Valuer is appointed by him.

2. In the matter of Mr Lakhan Gupta, Registered Valuer (Order dated 12th March, 2021)

Facts of the matter

It was observed that Mr. Gupta was authorized signatory on behalf of IBR Consulting Private Limited (Company) for the purpose of making application of the Company for registration as RVE.

The unaltered MOA (which contained objects in violation of Rule 3) was erroneously forwarded to IBBI for registration as a Registered Valuer Entity, which was disclosed at a later stage.

Key Takeaways for the Registered Valuers

- A Registered Valuer should behave in a responsible and accountable manner; he should avoid casual conduct as it could affect his integrity and ability to adhere to the standards of professional ethics.
- The object clause of the Partnership entity or Company i.e. the applicant entities should not contain any objects which states that it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate.

3. In the matter of Mr Mukesh Kumar Rathi, Registered Valuer (Order dated 8th January, 2020)

Facts of the matter

Mr. Mukesh Kumar Rathi created a Universal Resource Locator ('URL') by the name of 'www.ibbivaluer.com' which according to the IBBI was misleading and gave a wrong impression that the Registered Valuer was closely associated with or was in some way related to the IBBI.

Key Takeaways for the Registered Valuers

- A Registered Valuer should not create any URL which is misleading and may give a wrong impression that the Registered Valuer is closely associated with or is in some way related to the IBBI. For Example: creation of URL by the name of 'www.ibbivaluer.com'.
- Any such conduct is considered to be in violation of Rule 3(1)(k) and Rule 7(a), (b) and (g) of the Companies (Registered Valuers and Valuation) Rules, 2017, and Clauses 1, 2, 3 and 4 of the Model Code of Conduct for Registered Valuers stipulated under Annexure – I of the said Rules. It is considered to be an attempt to conduct business which in the opinion of the IBBI discredits valuation profession against clause 30 of the above said Model Code of Conduct.
- Accordingly, a Registered Valuer should exercise utmost care while communicating its identity; it should not demonstrate and mislead the users on account of usage of certain terminologies which shows association with the IBBI.

B. Key Takeaways for the Registered Valuers as per the Judicial Pronouncements

Few of the important judicial pronouncements highlighting key takeaways are cited hereinunder for reference purposes; however for detailed contextual understanding the case laws referred be seen:

1. Miheer H. Mafatlal Vs. Mafatlal Industries Ltd. (1997) 1 SCC 579

Key takeaways in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd. (1997) 1 SCC 579

- In the mentioned case law, the Court considered the fact that before formulating the proposed Scheme of Compromise and Amalgamation, an expert opinion was obtained by the respondent-company as well as the transferor-company on whose Board of Directors appellant himself was a member.
- The Court further suggested that since valuation of shares is a complex problem so it should be appropriately left to the consideration of experts in the field of accountancy i.e., Chartered Accountants.
- The Valuer considering all the relevant aspects and obviously keeping in view the accounting principles underlying the valuation of shares

suggested the exchange ratio at 5:2, which was found acceptable by both, the Board of Directors of the respondent-company as well as the Board of Directors of the transferor-company and was later objected by the director of transferor company who earlier gave green signal to the Scheme.

- The counsel of appellate suggested that the proper exchange ratio would be one share of transferee-company to six shares of transferor-company. It was difficult to appreciate the said contention of the appellant. It must be kept in view that the appellant never bothered to personally remain present in the meeting of equity shareholders for pointing out the unfairness of this exchange ratio.
- The Supreme Court finally concluded that 'Once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies.

Key Takeaways for the Registered Valuers

- The Court suggested that since valuation of shares is a complex problem so it should be appropriately left to the consideration of experts in the field of accountancy i.e., Chartered Accountants.
- Pennington in his 'Principles of the Company Law' mentions four factors which had to be kept in mind in the evaluation of shares :

  "(1) Capital Cover,

  (2) Yield

  (3) Earning Capacity, and

  (4) Marketability

  For arriving at the fair of share, three well known methods are applied:

  (1) The manageable profit basis method (the Earnings per Share Method)

  (2) The net worth method or the beak value method, and

  (3) The market value method,"

So many other imponderables enter the exercise of valuation of shares.

- The Supreme Court concluded that 'Once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the Court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies.'

Brief Particulars	Allegations	Decision of the Court
Miheer H. Mafatlal vs Mafatlal Industries Ltd on 11 September, 1996		
The Scheme of Amalgamation of M/s Mafatlal Industries (MIL) being the transferee company and the Mafatlal Fine Shipping and Manufacturing Company Limited (MFL) being the transferor company was proposed. An exchange ratio of 5:2 was determined by the Valuer which was found acceptable by both Board of Directors of the respondent-company as well as the transferor-company and was later objected by the director of transferor company who earlier gave green signal to	The Scheme was otherwise unfair to the equity shareholders as the exchange ratio of equity shares of the transferor and transferee companies were ex facie unreasonable and unfair to the shareholders of the transferee-company MIL in so far as it provides under the Scheme that two equity shares of the transferee company will be allotted against five equity shares of the transferor- company at their respective face value of Rs. 100/- per share; and Whether the exchange ratio of two equity shares of MIL for five equity shares of MFL was ex facie unfair and unreasonable to the equity	• The Court suggested that since valuation of shares is a complex problem so it should be appropriately left to the consideration of experts in the field of accountancy i.e., Chartered Accountants. • Pennington in his 'Principles of the Company Law' mentions four factors which had to be kept in mind in the evaluation of shares : "(1) Capital Cover, (2) Yield (3) Earning Capacity, and (4) Marketability For arriving at the fair

the Scheme.	shareholders of MIL and consequently the Scheme of Amalgamation on that account was liable to be rejected. Whether the exchange ratio of two equity shares of MIL for five equity shares of MFL was ex facie unfair and unreasonable to the equity shareholders of MIL and consequently the Scheme of Amalgamation on that account was liable to be rejected.	value of share, three well known methods are applied: (1) The manageable profit basis method (the Earnings per Share Method) (2) The net worth method or the beak value method, and (3) The market value method," So many imponderables enter the exercise of valuation of shares. • The Supreme Court referred to a decision of the Gujarat High Court in Kamala Sugar Mills Limited dealing with an identical objection about the exchange ratio adopted in the Scheme of Compromise and Arrangement and concluded that 'Once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out

		by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies. • The Court also relied on the judgement in the case of Hindustan Lever Employees' Union.

2. Dinesh Vrajlal Lakhani V/s. Parke Davis (India) Ltd. [2005] 124 Comp Case 728 (Bom)

Key takeaways in the case of Dinesh Vrajlal Lakhani Vs. Parke Davis (India) Ltd. [2005] 124 Comp Case 728 (Bom)

- Under this case law, a few of the shareholders of the transferor company opposed the Scheme of Amalgamation. According to them, the swap ratio proposed in the Scheme of Amalgamation was unfair and against the interest of minority shareholders of the transferor. Also, the Chairman of the Company rejected the resolution for amendment in the swap ratio.
- The Learned Judge held that while considering a Scheme of Amalgamation, the Court does not exercise an appellate jurisdiction, but a jurisdiction founded on fairness. The Court would not interfere with the

swap ratio adopted on the advice of an expert unless it was contrary to the law. The Learned Judge held that it was not the case before him that the swap ratio was contrary to the law or that the experts who had submitted the valuation report were not independent.

Key Takeaways for the Registered Valuers

- The Court relied on the judgement of the Supreme Court as enunciated in the case of Hindustan Lever Employees Union V/s Hindustan Lever Ltd. And Others.
- The Learned Judge held that while considering a Scheme of Amalgamation, the Court does not exercise an appellate jurisdiction, but a jurisdiction founded on fairness. The Court would not interfere with the swap ratio adopted on the advice of an expert unless it was contrary to the law. The Learned Judge held that it was not the case before him that the swap ratio was contrary to the law or that the experts who had submitted the valuation report were not independent.
- The Supreme Court held, in paragraph 4 of the judgment of Mr. Justice R.M. Sahai, that where more than 95 percent of the shareholders had agreed to the valuation determined by the chartered accountant, the procedural irregularities which were present in it could not vitiate the determination. These principles have been reiterated in the judgment of the Supreme Court in Miheer H. Mafatlal's case.

Brief Particulars	Allegations	Decision of the Court
Dinesh Vrajlal Lakhani V/s. Parke Davis (India) Ltd. [2005] 124 Comp Case 728 (Bom)		
The proposed Scheme of Amalgamation provides for a Share exchange ratio in pursuance of which, upon the Scheme becoming effective, the transferee shall issue and allot 4 equity shares of Rs. 10 each to every	The objector proposed that four equity shares of Pfizer Limited should be issued for every six equity shares each of Rs. 10 held in Parke-Davis (India) Ltd. The objections before the Company Judge were as follows : 1 The swap ratio proposed in the	The Court relied on the judgement of the Supreme Court as enunciated in the case of Hindustan Lever Employees Union v. Hindustan Lever Ltd. [1994] 4 Comp. LJ 267. The Learned Judge held that while considering a Scheme of Amalgamation, the

equity shareholder of the transferor whose name appears in the Register of Members on the record date for every 9 equity shares of Rs. 10 each held in the transferor. The Board of Directors of the transferor and the transferee accepted the suggested ratio.	Scheme of Amalgamation was unfair to the shareholders and against the interest of a minority of shareholders of the transferor; 2 The detailed valuation report of the Chartered Accountant was not made available to the objectors.	Court does not exercise an appellate jurisdiction, but a jurisdiction founded on fairness. The Court would not interfere with the swap ratio adopted on the advice of an expert unless it was contrary to law. It was held that it was not the case before him that the swap ratio was contrary to law or that the experts who submitted the valuation report were not independent. The first two objections were overruled.

3. Brooke Bond Lipton India Ltd. [1999] 98 Comp Cas 496 (Cal)

Key takeaways in the case of Brooke Bond Lipton India Ltd. [1999] 98 Comp Cas 496 (Cal)

- In accordance with the specified case law, under the scheme of Amalgamation in consideration of the transfer and vesting of the undertaking of the transferor-company in the transferee- company, the transferee-company shall issue 9 equity shares to every shareholder of the transferor company for every 20 shares held by them.
- The sanction or approval of the appropriate authorities concerned was obtained in respect of any of the matters in respect of which such sanction or approval is required.
- The Supreme Court clarified, "Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor-company has been worked out by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the Court to substitute its exchange ratio, especially when the same has

been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest."

- It was further held that "if the ratio of exchange has been fixed by an experienced and reputed firm of chartered accountants, then in the absence of any charge of fraud against them, the court will accept such valuation and ratio of exchange."

Key Takeaways for the Registered Valuers

- In the said case, the Valuer has been accused of not taking into consideration the relevant matters in the Valuation Report, rather irrelevant matters have been taken into account. Many other allegations have been made against the Valuer's Report.
- It was noted that that the company has produced the valuation report which was submitted by the Valuers and which was tendered for inspection to the members. Both ANZ Grindlays Bank and ICICI Securities and Finance Co. Ltd. have considered the valuation report independently and found the same to be fair and reasonable. It was further noted that another firm of, chartered accountants have also certified the valuation report, and their opinion cannot be ignored.
- Also, the method followed by the Valuer has been specifically approved by the Supreme Court in the merger of the transferee and TOMCO where the same Valuers have submitted a valuation report and had followed exactly the same procedure. In this connection, the Court relied on the judgment and decision in Hindustan Lever Employees' Union v. Hindustan Lever Ltd. [1995] 85 Comp Cas 30 ; [1994] 4 Comp LJ 267 (SC)" that where more than 95 percent, of the shareholders who are the judge of their interest and are better conversant with the market trend agreed to the valuation determined, it could not be interfered with by Court and it is not part of the judicial process to examine such activities to ferret out flaws. The Court had observed that it is least equipped with such things nor is it a judge's function to do so. Such an exercise would amount to inspection of internal management which is incompetent, improper and out of bounds for the Court"
- It was further held that "if the ratio of exchange has been fixed by an experienced and reputed firm of chartered accountants, then in the

absence of any charge of fraud against them, the court will accept such valuation and ratio of exchange."

- It was strongly contended on behalf of the objectors that the valuation report has not taken into consideration various well-known brands of the transferor-company and as such the same suffers from gross infirmity.

  However, the Court relied on the affidavit filed on behalf of the transferor-company that the transferee-company owns many more valuable brands than the transferor-company. Moreover, it stated that it is well-recognised that the brands are part of the goodwill of the business and cannot be valued separately. Further, it is also well settled that if a business is closed or transferred than the brand goes with it. Separate mention of the mark in Schedule VI only takes place when a brand is acquired in which case the cost is mentioned. It may also be noted that even then once acquired it becomes part of the goodwill of the business and is valued accordingly.

Brief Particulars	Allegations	Decision of the Court
Brooke Bond Lipton India Ltd. [1999] 98 Comp Cas 496 (Cal)		
Brooke Bond Lipton India Ltd. -The transferor-company, and Hindustan Lever Ltd. - The transferee-company. Five shareholders holding 298 shares objected to the scheme. None of them had shown any interest in the matter till their sudden appearance in the court at a belated stage.	The main objections urged/raised by the objectors are as follows: • The exchange ratio has not been properly or fairly determined. • The valuation report does not value the assets of the company properly in that the value of the brands has not been taken into account. • The following points had been made to challenge the valuation report:	On the question of exchange ratio of the shares, the Supreme Court inter alia held as follows: • "Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor-company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no

	(i) The valuation report though it purports to record that for determining the exchange ratio it will first be needed to determine the value per share of both the companies and Hindustan Lever Ltd. the said report does not disclose the value per share of either the company or Hindustan Lever Ltd. and as such the basis of arriving at the exchange ratio referred to in the said valuation report and in the scheme has not been disclosed. From the purported report it does not appear whether any such valuation was at all made. (ii) The valuation report purported to record that the value per share of both the	mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest." • It was further held that "if the ratio of exchange has been fixed by an experienced and reputed firm of chartered accountants, then in the absence of any charge of fraud against them, the Court will accept such valuation and ratio of exchange,"

	companies and Hindustan Lever Ltd. has been determined by an amalgamation of three conventional methods of valuation referred to in the said reports. However, neither the said report nor the scheme of which the sanction has been sought from this court disclosed the value per share of either the company or Hindustan Lever Ltd. either on book value basis or yield value basis or stock exchange quoted value basis and as such the basis for arriving at the exchange ratio has not been disclosed. (iii) The said Valuers have not carried out any audit or other tests to verify the accuracy of the audited financial	

	statements of both the said companies and information and explanations given by the said Valuer which clearly shows that no independent exercise was undertaken by the said Valuers. (iv) The said valuation report clearly shows that no valuation has been conducted "on assets basis". The company is the owner of a large number of well-known and popular trademarks and brand names which are valuable assets. Such brand names are Kissan, Kwality, Dalda, Anikspray, Brooke Bond, Lipton, Red Label Tea, Yellow Label Tea, Green Label Tea, Bru, Cafe, Milkana, etc. The market value of the said	

	trademarks and brand names will be running into several hundred crores of rupees. In fact, some brands like Kwality, Anikspray etc. have been acquired by the company from third parties upon payment of massive sums of money. The value of such trademarks and brand names is not reflected in the audited accounts of the company. The value of the said trademarks and brand names has not been taken into account by the said Valuers while recommending the exchange ratio. Such omission totally vitiates the purported valuation reports. Had the value of the said brand names and	

	trademarks been taken into account the value of the shares of the company would have gone up considerably resulting in an exchange ratio far more favourable to the shareholders of the company and that the value of the said brand names and trademarks was not taken into account deliberately to manipulate the share exchange ratio. (v) No provision has been made in the scheme with regard to the shareholding of the company in Hindustan Lever Ltd. However, in an affidavit filed in the instant proceeding it has been sought to be contended by and/or on behalf of the company that prior to the	

	scheme becoming effective the shareholding of the company in Hindustan Lever Ltd. will be sold. The valuation report does not take into account the consequences of such sale and as such the said valuation report fails to take into account relevant consideration. The purported valuation report alleges to take into account only book value of the said shares which is much below the market price. (vi) Further, in the valuation report, irrelevant matters have also been taken into account. As on December 31, 1995, the disputed premium of Rs. 595 per share amounting to Rs. 17,758 lakhs cannot be said to belong to Hindustan Lever	

	Ltd. As the same is lying in an "escrow" account yet the same has been taken into consideration in arriving at the exchange ratio which has caused prejudice to the shareholders of the company in spite of the fact that both Hindustan Lever Ltd. and Unilever plc. of U. K. have challenged the said premium by filing a writ petition in the High Court of Judicature at Bombay. (vii) The scheme of which sanction has been sought provides that the shareholding of Hindustan Lever Ltd. and its subsidiaries in the company are to be cancelled. Yet the value of such shares had been taken into consideration in arriving at the	

	exchange ratio in the valuation report. Such shareholding is substantial and clearly shows that in making the said valuation report the said Valuers have taken into consideration matters which they ought not to have. (viii) The valuation reports of ANZ Grindlays bank and ICICI Securities and Financial Company Ltd. merely adopted the valuation reports of two Valuers and no independent exercise has been undertaken by the said entities nor has any independent verification been conducted with regard to the accurateness and completeness of data provided by the management of the two	

	companies. (ix) The appraisal report of ANZ Grindlays bank records that the exchange ratio arrived at in the valuation reports are fair and reasonable to the shareholders of Hindustan Lever Ltd. but no such opinion is found with regard to the shareholders of the company i.e. Brooke Bond Lipton India Ltd. (x) The appraisal report of ICICI Securities and Finance Co. Ltd, should be totally ignored because of the fact that one of the joint Valuers are statutory auditors not only of ICICI Securities and Finance Co. Ltd. but also of its holding company i.e. the Industrial Credit and Investment Corporation of India Ltd. (ICICI)	

	and a host of its other subsidiaries. (xi) The brand names of Brooke Bond Lipton India Ltd. are very valuable intellectual properties of this company.	

4. **Hindustan Lever Employees Union V/s Hindustan Lever Ltd. And Others (1995) (83 COMPCASE 30) (SC)**

Key takeaways in the case of Hindustan Lever Employees' Union V/s. Hindustan Lever Limited

- According to the given case, share exchange ratio had been determined by combining the three methods by a well reputed Valuer of a chartered accountant firm and a director of TOMCO (Tata Oils Mills Co.).
- Following factors must be taken into account while determining the share exchange ratio-The stock exchange prices of shares of two companies, Dividend presently paid on the shares of the company, relevant growth prospects of two company, the cover (ratio of after-tax earnings to dividends paid during the year) for the present dividend of two company, the relative gearing of the shares of two company, the value of net assets of two company, voting strength in the merged enterprise of the shareholders, past history of prices of two companies.
- They held that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness.
- It is not required to interfere only because the figure arrived at by the Valuer was not as better as it would have been if another method would have been adopted.
- It was further held that the exchange ratio determined cannot be considered as malafide merely on the fact that the share exchange ratio is calculated through combination of three well known methods i.e., net worth, market value and earning method.

- It was also held that "More than 95% of the shareholders who are the best judge of their interest and are better conversant with market trend agreed to the valuation determined, so it could not be interfered by courts."
- It was further held that "A financial institution holding 41% of shares of the transferor company did not find any fault in the valuation of share, the court should not interfere with such valuation."

Key Takeaways for the Registered Valuers

- ICICI had given a valuation report stating that this report was only on the basis of the material supplied by HLL and not on the basis of any independent verification
- The Court held that the petitioner failed to establish any fraud or prejudice. On valuation of share for exchange ratio the Court found that a well reputed Valuer of a renowned firm of chartered accountants and a director of TOMCO determined the rate by combining three well known methods namely, the net worth method, the market value method and the earning method. The figure so arrived could not be shown to be vitiated by fraud and mala fide and the mere fact that the determination done by slightly different method might have resulted in different conclusion would not justify interference unless it was found to be unfair. And in that the petitioner failed miserably
- It is not required to interfere only because the figure arrived at by the Valuer was not as better as it would have been if another method would have been adopted.

Brief Particulars	Allegations	Decision of the Court
Hindustan Lever Employees Union V/s Hindustan Lever Ltd. And Others (1995) (83 COMPCASE 30) (SC)		
TOMCO decided to collaborate with Hindustan Lever Ltd. ("HLL"), a 100% subsidiary of Unilever ("UL"), a London based multinational company. Both TOMCO & HLL	The appellant opposed the scheme of Merger on one of the ground that the Valuation of share exchange ratio is grossly loaded in favour of HLL. The other arguments related to Valuation are as	The Court noted that an overwhelming majority of the shareholders had approved the Scheme at the meeting called for

availed service for the valuation report which recommended an exchange ratio of two equity shares of HLL for every fifteen ordinary shares of TOMCO. The Board of Directors of both the Companies at their separate and independent meetings accepted the recommendation and approved the Scheme of Amalgamation. The valuation of the shares for exchange ratio was determined by combining three well-known methods: a) the yield method; b) the asset value method; and c) the market value method	follows: • It was also argued that the Valuer could not be appointed as auditor of TOMCO under Section 226(3) of the Companies Act, 1956. In view of the matter, he should not have been appointed Valuer under the Indian Companies Act, 1956. Further, the shareholders were not informed the joint Valuer was none other than the director of TOMCO. • ICICI had given a valuation report stating that this report was only on the basis of the material supplied by HLL and not on the basis of any independent verification • A combination of different methods of valuation was adopted, which was clearly against the law laid down by the Supreme Court in the case of Commissioner of Gift Tax, Bombay v. Smt.	this purpose and had approved the exchange ratio. In fact, a proposal for amendment of the exchange ratio was also rejected by the overwhelming majority of 99% shareholders. There is no reason to presume that the shareholders did not know what they were doing. Further, the Court held that it is also difficult to follow the argument that the Valuer's report is not acceptable to the TOMCO shareholders, because he was a Director of TOMCO, HLL had no difficulty in accepting the share exchange ratio fixed by the Valuer, even though he was a Director of TOMCO, if there was any bias, it should have been in favour of TOMCO and not against TOMCO. This exchange ratio was endorsed by two

	Kuswnben Mahadevia, 122 ITR 38 • If the valuation was done by the net asset method, the exchange ratio should have been 1:2 in favour of TOMCO. Moreover, market value of the shares of the two Companies was taken at a point of time when the price of TOMCO shares was the lowest for a period of 27 months.	other eminent firms of Chartered Accountants and also by ICICI. They held that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company Court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness. On valuation of share for exchange ratio the Court found that a well reputed Valuer of a renowned firm of chartered accountants and a director of TOMCO determined the rate by combining three well known methods namely, the net worth method, the market value method and the earning method. The figure so

		arrived could not be shown to be vitiated by fraud and mala fide and the mere fact that the determination done by slightly different method might have resulted in different conclusion would not justify interference unless it was found to be unfair. And in that the petitioner failed miserably.

5. **G.L. Sultania and Another V/s SEBI and Others (2007) (5 SC 133) (SC)**

Key takeaways in the case of G.L Sultania and Another V/s. Securities and Exchange Board of India.

- According to the mentioned case law, Appellant claimed that the SEBI as well as merchant banker had not valued the shares of the target company under the "takeover code" and the Board had taken all the necessary precaution to safeguard the interest of shareholders to ensure payment of best price for the shares sold by them.
- Learned counsel of appellant had provided valuation report of two chartered accountants before the Board, which valued the shares of target company at Rs.590/- per share and Rs. 480/- per share. The Board had rejected the report of these Valuers as the shares were valued at an abnormally high price with a vast difference of Rs. 182/- per share.
- On the contrary, the Board appointed its own Valuer to value the shares of the target company and ultimately the report of Valuer appointed by the Board was accepted by the acquirer.
- The court held that "Board committed no error in accepting the report, as Valuer has acted in a reasonable manner. Unless it is shown to the

court that some well accepted principle of valuation has been departed from without any reason or that the approach adopted is erroneous, the court cannot interfere with the valuation of an expert."

Hence, Board had exercised its discretion wisely.

Key Takeaways for the Registered Valuers

- The Court relied on the judgement in the case of Miheer H. Mafatlal, and stated that the valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. So many imponderables enter the exercise of valuation of shares.
- The Court held that unless it is shown that some well accepted principle of valuation has been departed from without any reason, or that the approach adopted is patently erroneous or that relevant factors have not been considered by the Valuer or that the valuation was made on a fundamentally erroneous basis or that the Valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter, this Court would not interfere with the valuation of an expert.
- The Valuation Report was assailed on the ground that the calculations were made after giving due weightage to various factors on the basis of principles applied in the case of Hindustan Lever Employees Union which was the case of amalgamation of two companies. However, it was held that through the case related to amalgamation but for determining the value of the shares of the companies for the purpose of equivalence and to determine the ratio in which the shares were to be allotted, the valuer had to determine the value of the shares of the amalgamating companies applying the same accounting principles of valuation which are usually applied by the Valuer in valuation of shares for other purposes as well. And therefore, the Valuer had committed no mistake in applying the principles approved by the Court in Hindustan Lever Employees Union.

Brief Particulars	**Allegations**	**Decision of the Court**
G.L. Sultania and Another V/s SEBI and Others (2007) (5 SC 133) (SC)		
C.K. Somany and Ace Glass Containers Ltd., (hereinafter referred to	The thrust of the argument by the appellant was that the	The Court opined that it is true that Hindustan Lever Employees

as "acquirers") had acquired 7.3% of the shares of Hindustan National Glass and Industries Ltd., (hereinafter referred to as the "target company"). By this acquisition, the acquirers had triggered the Regulation 11 of Takeover Code. On account of objection by the appellant in the valuation of share performed by UTI, the shares of the target company have been valued by another three firms of Chartered Accountants. The Board ultimately approved the highest price per share determined by the firm of Valuers appointed by the Board. The appellant (G.L. Sultania) had complained to the Board against the valuation of shares by the Merchant Banker and while doing so he had enclosed copies of two valuation	valuation is based on non-compliance with clause (c) of Regulation 20(5) of the Code. The other arguments which followed were as follows: • The principles laid down in Hindustan Lever Employees' Union vs. Hindustan Lever Limited and others: 1995 Supp (1) SCC 499 did not apply to the facts of this case as that was a case of amalgamation whereas in the instant case Regulation 20(5) had to be strictly complied with. However, the Valuer has considered the principles laid down in such case. • While applying the Earning Per Share method for arriving at an alternate value the Valuer took P/E ratio at 9.6 instead of 20.9. According to the appellants the figure pertaining to March 1 to 14, 2004 which had been taken into account	Union related to a case of amalgamation but for determining the value of the shares of the companies for the purpose of equivalence and to determine the ratio in which the shares were to be allotted, the Valuer had to determine the value of the shares of the amalgamating companies applying the same accounting principles of valuation which are usually applied by the Valuer in valuation of shares for other purposes as well. Therefore, no mistake had been committed by the Valuer in applying the principles approved by this Court in Hindustan Lever Employees Union. The Valuer has really estimated the value of the shares adopting all the three well-known methods of valuation, namely, the net assets value method, the market value method and the profit earning capacity method. Thereafter after giving

reports valuing the shares of the target company at much higher rates namely, Rs.408/- and Rs.590/- per share. **Brief about the Valuation Report of Valuer hired by Board** Valuer proceeded on the basis of financial data made available to it by the target company, which included inter- alia its audited financial statements for the financial years ending 31st March, 2002 and 2003, and the unaudited results of quarter ended June, 2003. It takes note of the three commonly adopted methods of valuation of shares, namely, the Net Asset Method, The Profit Earning Capacity Method, and the Market Price Method. It observes that each method proceeds on different fundamental assumptions, which have greater or lesser relevance, and at times there is no	by the Valuer was not relevant and it should have taken the figures relevant to the public announcement date 13th November, 2003 and the letter of offer dated 25th August, 2005 which was represented in the issues of Capital Market relevant to the period, November 1-2003, and not March 1-14, 2004. According to him in both the periods there were only three profit making companies and therefore there was no reason why the Valuer should have taken the industry P/E ratio as represented during the period March 1-14, 2004. • The appellants then submitted that the Net Asset Value comes to Rs.133.27 if reserves and surplus as per consolidated accounts of the target company and subsidiaries at book value was taken.	appropriate weightage it has worked out the value of the shares of the target company. Further w.r.t. other arguments/objections raised by the appellants and the reply of the respondents to those objections, the Court was of the view that they only demonstrate that they are really matters within the realm of the experts to determine and the Court may not be justified in delving into those matters, and which must be left to the wisdom, expertise and experience of a qualified Valuer. The Court relied on the judgement noted in the case of Miheer H. Mafatlal (supra), that "valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. So many imponderables enter the exercise of valuation of shares." The Court held that

relevance of a particular methodology to a given situation. While the Net Value Method represents the value of the shares with reference to the value of the assets owned and the liability as on the valuation date, the Profit Earning Capacity Method (for short the "PECV") involves determination of the future maintainable earnings of the Company from its normal operations. The common method employed to derive the value of the business is to multiply estimated maintainable earnings with the price earning ratio of comparable companies in the industry. The report also refers to the approval of this Court in Hindustan Lever Employees Union of the method adopting a combination of all three methods of valuation after giving appropriate weightage to them. Applying the Profit	This was not done by the Valuer • The capitalization ratio of 15 % was taken by the Valuer whereas the capitalization ratio should have been 8 %. It was submitted that the guidelines issued by the CCI had been repealed and, therefore, reliance could not be placed on the aforesaid guidelines. • If revaluation reserve was considered the Net Asset Value would have come to Rs.124.82 but this was not done by the Valuer. • Profit Earning Capacity Value should not be calculated on the basis of past earnings alone as done by the Valuer, but on future maintainable profit basis. The fallacy of the valuation lies in the fact that while valuing the shares	having considered all aspects of the matter, it is satisfied that the Valuer has not committed any such error which may justify any interference. They have considered all the factors relevant under Regulation 20(5)) of the Takeover Code and have adopted a reasonable approach which does not call for interference by the Court.

Earning Capacity Method, it has calculated the "yield value" by taking the average of 9 years, from 1993-1994 to 2001-2002. The year 2002-2003 was excluded for the reasons recorded in the report which show that on account of abnormal situations the profits of the Company had decreased. In Hindustan Lever, the principle that for working out the average profit, profit of only those years which were normal and not affected by abnormal situations should be considered, was approved. Taking the capitalization rate as 15% as suggested for manufacturing Companies in erstwhile Controller of Capital Issues guidelines, the value of shares has been worked out to Rs.55.06 per share. By adopting the Net Asset Value Method the value of Rs.77 per share has been	in accordance with PECV method, the Valuer has arrived at a figure of 55.06 per share while undertaking the said exercise in accordance with HLL guidelines and the said value is reduced to Rs.34.39 while adopting the very same method but while valuing the shares in terms of Regulation 20(5))	

worked out by dividing the Share Capital of the Company plus Reserves and Surplus (excluding Revaluation Reserve and Contingent Liabilities) by the number of equity shares of the Company. Applying the Market Value Method, having regard to the infrequently traded shares of the Company, the average of market price of six months prior to October 7th, 2002, the reference date as stated in the letter of offer has been taken resulting in a value of Rs.66.87 paise per share. Combining all the three values and giving them appropriate weightage, value of each share has been worked out to Rs.64.18 paise. In applying the weightage, the precedent in Hindustan Lever has been followed.		

6. Cadbury India Limited – Brief discussion on Bombay High Court Judgement dated 9th May 2014

Key takeaways in the case of Cadbury India Limited

- The Court held that "In order to decline sanction it must be shown that the valuation is ex-facie unreasonable. The mere existence of other possible methods of valuation would not be sufficient to deny sanction to such a scheme.
- It was held that the assent of the Court would be given if:
  - ✓ the scheme is not against the public interest;
  - ✓ the scheme is fair and just; and
  - ✓ the scheme does not unfairly discriminate against or prejudice a class of shareholders"
- Hence, it was held that the valuation of Rs. 2,014.50/- per fully paid-up equity share as arrived at by the Court-appointed Valuer in its second (supplementary) report dated 29th July 2011 was accepted.

Key Takeaways for the Registered Valuers

- No valuation is to be disregarded merely because it has used one or the other of various methods. It must be shown that the chosen method of valuation is such as has resulted in an artificially depressed or contrived valuation well below what a fair-minded person may consider reasonable
- The court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden that is no part of its remit or expertise, and no part of a statutory obligation.
- The sanctioning court has no power or jurisdiction to exercise any appellate functions over the scheme. It is not a Valuer. It does not have the necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate.
- Before a Court can decline sanction to a scheme on account of a valuation, an objector to the scheme must first show that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted. That unreasonableness must exist on the face of the valuation: one so apparent that "he who runs can read." To upset a

valuation, a wrong approach must be demonstrated clearly and unequivocally, and the result must be plainly invidious. A plausible rationale provided by a Valuer is not to be readily discarded merely because an objector has a different point of view.

Brief Particulars	Allegations	Decision of the Court
Cadbury India Limited – Brief discussion on Bombay High Court Judgement dated 9th May 2014		
The Cadbury India relied on the valuation report of the two Independent Valuers Both these reports have valued the shares of Cadbury India at Rs **1340/-** per fully paid up equity shares. In order to cut short the controversy, Cadbury India, agreed to a fresh valuation by another Valuer i.e. 3rd Independent Valuer appointed by the Court. The valuation was to be as on the appointed date and based on the unaudited balance sheet as on 31.07.2009, taking into account the same material as was provided to the earlier Valuers. The 3rd Valuer submitted its report dated 20th May 2010 ("the first report by the	At the broadest level, the submissions made by the opponent were to this effect: • That Cadbury India withheld its financial and business projections from the 3rd Valuer. These are crucial to a valuation of share on the DCF method; ▪ That the date of 31st July 2009 was taken as the appointed date only because the P/E ratio was demonstrably lower than at 30th September 2009. This resulted in Cadbury India denying its shareholders that which was just and fair; ▪ That following the CCM method, the valuation as on 30th September 2009 was Rs.1,878/- per share.	The first report makes it clear that the 3rd Valuer did not take into account any premium, although the minority shareholders demanded this. However, the Court noted that this demand is without basis, and it is hard to fault the 3rd Valuer on this score alone. The first report by the 3rd Valuer was based on the unaudited financial statements as on 31st July 2009. Growth rates were obtained from Cadbury India-provided data, which clarified that recent growth was not attributable to accounting standards adopted but to real improvements in business and to organic growth.

3rd Valuer"). It adopted the Comparable Companies Multiples ("CCM") method of valuation, and returned a value of Rs.**1,743/-** per fully paid up equity share. The 3rd Valuer was directed to update its valuation report dated 20th May 2010 taking into account the valuation of the Company based on the Discounted Cash Flow ("DCF") method as also on the CCM method to reflect a valuation as on 30th September 2009. This report, ("the second report by the 3rd Valuer") was to be submitted to Court on 29th July 2011. That report was submitted as directed, with a valuation of **Rs.2,014.50** per fully paid up equity share. The report was based on significantly changed parameters; in fact, the Court itself shifted the goal posts. The report of 29th July 2011 reported a valuation of **Rs.2,014.50** per share.	On 31st July 2009 it was Rs.1,743/-. The difference is substantial and works out but approximately Rs.4198 million when applied to all outstanding shares; ▪ That from all these facts it is clear that it is Cadbury India's policy to not reward its shareholders, and to treat them in a stepmotherly fashion. This is a company that has abundant reserves but has always pegged its dividend payments at 20%; ▪ **The 3rd Valuer** second report does not have a disclosed basis of valuation. There are items in that report that are neither confidential nor proprietary. It has taken figures of 2009 and 2010 and these cannot be 'projections' but would be actuals available in the Annual Reports. Cadbury India's claims to confidentiality and	The 8th July 2011 order directed the 3rd Valuer to update this report to include a valuation based on the DCF method as well as the CCM method, and to reflect a valuation as on 30th September 2009. The 3rd Valuer was bound to a non-disclosure and confidentiality condition. The Court was of the following view: • Before a Court can decline sanction to a scheme on account of a valuation, an objector to the scheme must first show that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted. That unreasonableness must exist on the face of the valuation: one so apparent that "he who runs can read." To upset a valuation, a wrong

Between the first and second report by the 3rd Valuer, the objectors obtained their own report from another Valuer, who valued it at Rs. 1,979/- per share plus a control premium. What the objectors now demand is a price of at least Rs. 2,500/- per share	proprietary information have no basis; • That while the second report by the 3rd Valuer adopted the CCM method, the growth rate of comparable companies is higher and that is the rate of growth that should have been adopted by Cadbury India as well; • That a multinational conglomerate, Kraft Foods Inc. ("Kraft"), has taken over the holding company of Cadbury India's holding company, namely Cadbury Plc, and that this should have been reflected in the valuation; • That 3rd Valuer's adoption of Cadbury India's growth rate at 6% is incorrect and should have been taken to be 11%; • That, in any event, the 3rd Valuer should have insisted on following only the DCF	approach must be demonstrated clearly and unequivocally, and the result must be plainly invidious. A plausible rationale provided by a Valuer is not to be readily discarded merely because an objector has a different point of view. • In considering an application for sanction will ask itself if, at a minimum, these tests are met: Is a fair and reasonable value being offered to the minority shareholders? Have the majority of non-promoter shareholders voted in favour of the resolution? Can it be said, on reading a valuation as any fair-minded and reasonable person would do, and without microscopic scrutiny, that the valuation is so egregiously wrong

	method; • That the sale of Cadbury House has not been factored into the valuation of shares; • That the amount spent in open offers and buy backs was deducted, and ought not to have been.	that the judicial conscience will not permit it? Has the Valuer gone so far off-track that the results his valuation returns cannot but be wrong? • The sanctioning court has no power or jurisdiction to exercise any appellate functions over the scheme. It is not a Valuer. It does not have the necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate. The Court is not "a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel; the effort is not to emphasize the loopholes, technical mistakes and accounting errors".

		• Valuation is not an exact science. Far from it. It is always and only an estimation, a best judgment assessment. The fact that a particular estimation might not catch an objector's fancy is no ground to discredit it. All valuations proceed on assumptions. To dislodge a valuation, it must be shown that those assumptions are such as could never have been made, and that they are so patently erroneous that the end result itself could not but be wrong, unfair and unreasonable. The court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden that is no part of its remit or expertise,

		and no part of a statutory obligation. In particular, the court must guard against the seductiveness of a proposition that suffers from the fallacy of the undistributed middle: all x is z; some y is z; ergo, all y is z. 27 The errors and consequent unreasonableness must be shown to be patent and self-evident • It is impossible to say which of several available valuation models are "best" or most appropriate. In a given case, the CCM method may be more accurate; in another, the DCF model. There are yet others. No valuation is to be disregarded merely because it has used one or the other of various methods. It must be shown that the

		chosen method of valuation is such as has resulted in an artificially depressed or contrived valuation well below what a fair-minded person may consider reasonable. Accordingly, the valuation of Rs.2,014.50/- per fully paid up equity share arrived at by the Court-appointed Valuer in its second (supplementary) report dated 29th July 2011 was accepted.

7. What is the Revenue Ruling 59-60 (of USA)?

The Revenue Ruling, published in 1959, (Internal Revenue Service, Revenue Ruling 59 60, 1959-1 C.B. 237) is one of the earliest expositions in business valuation. The purpose of the Ruling is to outline general approaches, methods and factors to be considered while valuing shares of closely held companies or shares of companies whose market quotations are not available or scarcely available. Even though the Ruling was delivered for estate tax, gift tax and income tax, its principles are considered for valuation of any business and the seven factors which must be considered in the valuation are given below:

- The nature of the business and the history of the enterprise from its inception.
- The economic outlook in general and the condition and outlook of the specific industry in particular.
- The book value of the stock and financial condition of the business.
- The earning and the dividend-paying capacity of the company.

- Whether or not the enterprise has goodwill or other intangible value.
- Sales of the stock and the size of the block of stock to be valued.
- The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.

Chapter 10

Application of Learnings from Finding of Peer Review/Inspection

A Peer Review System (PRS) is a mechanism of evaluating the professional/ audit and assurance activities/services carried out by a Firm by peers by looking into the systems and procedures adopted and records maintained while carrying out professional/audit and assurance activities with the objective to evaluate and suggest improvements of systems, procedures and quality of reporting.

A Registered Valuer should apply the learnings from the findings observed during the Peer Review process or Inspection as it will help the Registered Valuer in substantial improvement of the quality of service rendered by him by way of enhancing credibility, transparency and adopting best practices and imparting knowledge and skills.

Application of learning's from the findings of peer review of the firm itself or of others will help in improving their performance and adherence to various statutory and other regulatory requirements.

The application of learnings from peer review findings is similar to one of the quotes of Warren Buffet, wherein he has stated that:

"*It's good to learn from your mistakes. It's better to learn from other people's mistakes.*"

Essentially, a Registered Valuer learns the proper and regular application of technical Standards and adherence to various requirements of the applicable Law in letter and spirit.

Considering the vast importance of peer review findings and to make the RVs aware about the same, the ICAI Registered Valuers Organisation in association with Insolvency and Bankruptcy Board of India (IBBI) has organised various workshops to share findings of Peer Review for the three Asset Classes, i.e., Financial or Securities Assets Class, Land and Building and Plant and Machinery as per Companies (Registered Valuers and Valuation) Rules, 2017.

Learning from the major findings during the said workshops are highlighted below:

1. Valuation quality in general should not be affected by
   a. Advocacy – Lack of independence.
   b. Insufficient technical competence (e.g., Inadequate knowledge or insufficient technical skills)
   c. Negligence (e.g., Inadequate valuation procedures or inadequate quality control)

   Of the above three quality issues, NEGLIGENCE is the major quality issue observed during peer review.
2. A Registered Valuer should take care that lapses in the Valuation report should not be due to NEGLIGENCE like
   a. Vague or undetailed scope (of work summary)
   b. Insufficient explanation of supporting evidence
   c. Lacking explanation of how methodology was applied to the subject property
   d. Errors in grammar, math, logic
   e. Inconsistencies, contradictions within the report
   f. Assumptions not clearly stated
3. There should not be insufficient explanation of supporting evidence
   a. Valuation is an opinion of value, it needs to be properly supported for credibility. Must be supported by relevant evidence and logic -as necessary for the intended use.
   b. Detailed listing on sources of data
   c. Comprehensive Market data interpretation & Analysis
   d. Steps involved in logical conclusion.
4. As we all know that the Valuation is unbiased logical presentation of evidence that supports an opinion of value. A Valuer should present the report which clearly and competently explains a story of value.
5. Important sources for land ownership should be indicated.
6. Statement or disclosure on conflict of interest should be specifically mentioned.
7. Along with the purpose of valuation, name of appointing authority should be mentioned

8. All the dates relevant to Valuation should be mentioned.
9. Valuation Standards complied with while undertaking Valuation should be indicated.
10. Caveats, limitations and disclaimers in the valuation report should be specifically mentioned.
11. All the major factors that were taken into account during the valuation should be mentioned.
12. Conclusion should be provided.
13. Restrictions on use of the report, if any, should be mentioned.
14. Bases of Valuation should be arrived as per Valuation Standards for liquidation value.
15. Mere percentage should not have been applied, explanation should be given for choosing a certain percentage.
16. Figures should not be computed based on provisional balance sheets.
17. Valuation Report should mention about the Liabilities.
18. Margin money with bank cannot be mentioned as NIL. Since no creditors can be settled as on date of Corporate Insolvency Resolution Professional other than through water fall line of settlement. Hence, margin money lying in bank cannot be directly settled and shall be made available to Resolution Professional for settlement under waterfalls.
19. Scope of work should be elaborately captured in engagement transmittal letter/ Executive summary for valuation
20. Statement explicitly restricting the end use of the report to intended user and for intended purpose only should be mentioned in the Valuation report
21. Name of the Appointing Authority should be stated.
22. Report should not state that the Valuer takes no responsibility for the data presented in the report.
23. Adherence/Compliance with valuation standards used should be specifically stated in the Report.

24. Structure and formatting of the report should be as per Rule 8(3) of the Companies (Registered Valuers & Valuation) Rules, 2017.
25. Important definitions should be captured in the report.
26. Date of appointment should be mentioned in the Valuation Report. Valuation Date should also be mentioned in the Valuation Report.
27. Limitations should not be addressed in the form of non-availability of projections by ignoring the income approach for valuation. Some more justification for the same should be incorporated.
28. Limiting Conditions that directly affect the Valuation should be clearly stated.
29. Valuation Approach- Management Certified Projections were used by the Valuers. It is advisable to provide information on:
    - procedures performed by the Valuer especially with respect to projections provided by management;
    - reason for not considering certain methodologies;
    - current state of operations of the Company; and
    - financials as at the valuation date.
30. The purpose of valuation should be clearly stated.
31. Valuers should clearly state the face value of the instrument which are being valued.
32. Nature and sources of information should be properly stated at one place.
33. Conclusion should be under a separate heading.
34. Assumptions and limitations should be justified and pertinent to the valuation in hand.
35. The extent of investigation undertaken including the limitation on that investigation set out in the scope of work were not disclosed.
36. Due diligence done, if any, should be separately described and discussed in detail.
37. The Premise, Assumptions should be stated under separate headings.
38. Executive Summary should be there in some reports.

39. There should not be typographical errors in the report.

40. Valuers should state the reasoning for adoption of a particular valuation approach(es) in the valuation report.

41. While using DCF method, a disclaimer clarifying whether projections used were solely provided by Management or were rationalized subsequently with reasons thereof should be there.

42. Reasons to justify extent of Liquidation Discount applied should be recorded.

43. Valuer should ensure that the letters of engagement issued by IPs should be comprehensive.

44. Any material uncertainty in relation to valuation should be commented upon.

45. A Valuer should ensure that following deficiencies should not be there:

    - due weightage to be given to uncertain time, like COVID-19 crisis;
    - steady growth of business presumed during pandemic;
    - non-inclusion of intangible related to IT enabled services;
    - the method of valuing subsidiaries was not provided; and
    - adoption of tangible asset valuation from the books of accounts.

46. Other Issues:

    - Appointment of Single Valuer (representing one class of asset) as an umbrella valuation engagement involving valuations under other classes of asset.
    - Fair Value of Financial Assets (ICDs, Receivables etc.) of companies under Insolvency/ resolution plan.
    - Liquidation Value – sometimes misused for lower bids under bankruptcy/ insolvency auctions.
    - Importance of rationale in Valuer's Report.

Chapter 11

Application of Learnings from Practical Insights of Other Valuers

Valuation is the most fundamental term in finance but is extremely crucial to understand it while deriving the value.

As we all know that Valuation of businesses, assets and liabilities is a multi-faceted discipline driven by various factors such as purpose of valuation, statutory requirements, business drivers, macro and micro economic environment, government policies etc. and hence it cannot be completely codified into any digital tool or software.

Though, there exist much guidance that has been issued by the Authority and the Regulators (as mentioned in the preceding chapters), however, sometimes it is practical insight and interpretations of the experts in the field of valuation that can prove to be immensely beneficial for the Valuer in understanding these intricacies and complexities.

The Registered Valuers are having different practices/ views in the preparation of valuation reports. Accordingly, in this direction, it becomes imperative to understand the various viewpoints on valuation to make a considered view.

The interpretations of experts in the field of valuation prove to be immensely beneficial in understanding the intricacies involved in valuation.

A Registered Valuer, as part of its general practice, should also consider the practices that are generally followed by the Valuation Professionals globally.

In this regard, a Registered Valuer may refer to the publication titled "Valuation: Professionals' Insights issued by the Valuation Standards Board jointly with ICAI Registered Valuers Organisation, wherein various articles written by Valuation Experts are compiled for giving deeper insights. ICAI has issued six series of this publication. Few of the topics are referred below that have been covered in the "Valuation: Professionals' Insights".

- Discount for Lack of Marketability
- All about Valuation of Receivables
- Discounted Cash Flow Method and its Ingredients

Application of Learnings from Practical Insights of Other Valuers

- Buyback of Shares – An Insight into Valuations
- Business Valuation in Good and Bad Times
- Valuation: Its Drivers in Times of Crisis
- Implication and Redressal of the Global Pandemic on Valuation.
- Valuation Process: Key Aspects
- Decoding Pre-Money and Post-Money Valuation
- Effect of Due Diligence on Valuation – A Practical Perspective

Chapter 12

Commonly observed Irregularities in Valuation Reports and ICAI RVO's Recommendations thereon

Some of the commonly noticed irregularities which are illustrative in nature; would elaborate on how to avoid such occurrences:

1. Valuation report mentions that since the projections are price sensitive information, the income approach has not been used. However, the fact that the Valuer has been appointed to perform valuation of the company and he is bound by the confidentiality agreement which the company may have entered with the Valuer should not deter the Valuer from using financial projections. Valuer should have provided a cogent rationale for not using the projections.

2. Valuer has indicated that how he has worked out the discount rate. However, the justification of the discount rate needs strengthening; considering the stage of operations, comparable used should be provided.

3. Explicit declaration regarding compliance with the Valuation Standards

followed in valuation (VS issued by ICAI RVO or any other VS) is required to be mentioned However, the same has not been mentioned in the Valuation Reports

4. COP Number should be mentioned in the report.

5. Eligibility of Registered Valuer clause satisfying Rule 3 of The Companies (Registered Valuer and Valuation) Rules 2017 must be mentioned.

6. While mentioning the purpose of valuation, it is advised that Valuers should reproduce the relevant section of the particular enactment; because the user might not be aware of the sections and the related provisions.

7. Valuers should identify the instrument with separate heading. It will be useful in cases where there are number of instruments with different classifications.

8. The Valuer must mention the extent of examination and verification made in respect of the information on which his valuation is based on. In case any public data is used, the source must be clearly stated with the extent of examination performed by Valuer.

9. Under NAV method, Valuers must mention the details of Tangible Assets, Non-Current Assets, Current Assets and Liabilities rather than classifying them under broad heads. This will enable user to understand the nature of assets or liabilities under broad heads.

10. An executive summary to give a quick glance to user to understand the valuation report shall be provided, it shall include the methodology used, the value which is arrived, important dates, valuation standard followed and purpose of valuation etc.

Chapter 13
An Insight into Best Practices – A Global View

RICS[1]- Royal Institution of Chartered Surveyors

Best practice for Registered Valuers

By implementing some simple processes, members and firms can ensure that they follow best practice procedures as part of their Registered Valuer status.

RICS has visited Registered Valuers to identify common areas where, by implementing some simple processes, members and firms could ensure that they are following best practice.

Overall, the findings have been very positive and demonstrated good compliance, with 80% of visits rated from 'satisfactory' to 'very good'. The following findings apply to both the firm and the Registered Valuer. By raising awareness of these areas, both can raise the level of compliance and continue to improve quality.

Terms of engagement and report templates

This suite of documents by RICS is aimed at the sole practitioner and small firm and facilitates the production of documents which comply with Red Book. They provide a framework for setting out the requirements of Red Book.

Confirm the Valuer's qualification and demonstrate expertise and competence in areas of skill and knowledge.

The terms of engagement and valuation report must confirm that the valuer possesses the necessary skills to undertake the task in hand. Valuers operating in geographic or specialist areas for which they do not possess the requisite skills pose a claims-related risk to the client, the valuer and their firm. Firms and individual valuers should both ensure and document that the valuer is suitably qualified.

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1 https://www.rics.org/en-in/upholding-professional-standards/regulation/valuer-registration/best-practice-for-registered-valuers/ (accessed at 10.05.2021 at IST 13.15)

Confirm conflict of interest checks

Any case file must be able to confirm the independence of the valuer. Firms should use audits or file checklists to achieve this and keep a consistent approach to recording information. Valuers must inform the client of the check – a requirement under RICS valuation standards – and should include a statement to this effect in the terms of engagement and the final valuation report.

Terms of engagement

Firms and individual Valuers should use terms of engagement that comply with the Red Book valuation standards and ensure that a signed and dated copy is always kept on file in an appropriate place. Using a standard template that complies with these standards and is adaptable to specific cases produces a consistent approach and protects the firm in the event of a claim.

Terms of engagement and report frameworks

This suite of documents is aimed at the sole practitioner and small firm and facilitates the production of documents which comply with Red Book. They provide a framework for setting out the requirements of Red Book.

Inspection notes

Use a dedicated inspection note template so that your notes are structured and all the required information is included consistently. Use file checklists to make sure these notes are always completed appropriately and kept on file. If site notes are unclear, unstructured or insufficient, future questions relating to the scope of the inspection cannot be answered – leaving the firm or valuer at risk of a potential claim.

Record, reference and analyse comparables

Keep comprehensive records of comparables on file using a dedicated comparable table template. Having all comparables clearly documented and referenced, together with the analysis and record of how they influenced the valuation, support the valuation if there is a claim in the future.

Quality of reports: meet RICS standards and/or clients' specialist requirements

Use a framework or template for reports and establish a robust quality assurance procedure to ensure that all reports meet RICS minimum requirements and/or client's specialist requirements. Where advice is not clear, poorly structured or non-compliant with Red Book valuation standards, it can lead to bad decisions by clients and their lenders. Furthermore, it can make defending a claim very difficult due to any failure to follow prescribed standards.

Manage your files

The best files show an audit trail of information from first contact with the client through to eventual report, with reasoning clearly demonstrated. A suitable file checklist approach ensures that this happens on every file.

Establish quality assurance processes

Firms should use a suitable framework or file checklist approach to ensure all their Valuers are working to the same standard. If your firm can provide administrative support, it's good to have a dedicated file manager who can ensure that the framework is adhered to and every task complies with both the firm's protocols and Red Book valuation standards.

Link comparables with the valuation figure

The file must link the comparables with the valuation figure clearly and transparently: set out the thought processes and reasoning used to arrive at the valuation. This will be vital if your firm needs to defend itself against any future claim.

Valuation calculation or methodology

This should always be the final part in providing an audit trail for the valuation figure. The best files set out a clear valuation calculation, including reasoning and process. This will assist in defence against any future claims.

RICS also provides the terms of engagement and report frameworks (which is downloadable from their site) as given below:

- Red Book Terms of Engagement and Valuation Report Frameworks
- Terms of Engagement Framework
- Terms of Engagement Covering Letter
- Valuation Report Covering Letter
- Valuations Instruction Form
- Valuation Report Framework

AICPA-American Institute of Certified Public Accountants

The American Institute of CPAs is the world's largest member association representing the accounting profession.

The AICPA develops standards for audits of private companies and other services by CPAs; provides educational guidance materials to its members; develops and grades the Uniform CPA Examination; and monitors and enforces compliance with the profession's technical and ethical standards.

Business Valuation[2]

The Business Valuation Resources section presents guidance on performing valuations of closely-held businesses and intangible assets, including an overview of the valuation process, the factors to consider before accepting the valuation engagement, and the various methods of valuation. Additionally, it includes tools and aids that would facilitate the business valuation process.

Professional Standards

- **AICPA's Code of Professional Conduct[3]**

The Code of Professional Conduct was revised effective December 15, 2014. A mapping document is available in Appendix D of the Code to facilitate smooth transition.

Code of Conduct is available at https://pub.aicpa.org/codeofconduct/Ethics.aspx#

[2] https://www.aicpa.org/interestareas/forensicandvaluation/resources/businessvaluation.html (accessed on 12.10.2021 at IST 2:48 pm)
[3] https://www.aicpa.org/research/standards/codeofconduct.html (accessed on 12.10.2021 at IST 3:25 pm)

- **VS Section 100- Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset (formerly SSVS No. 1)**[4]

The Statement on Standards for Valuation Services, Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset ("VS Section 100" or "SSVS") was issued by the AICPA Consulting Services Executive Committee in June 2007 for engagements accepted on or after January 1, 2008.

AICPA members* are required to follow VS Section 100 when they perform engagements to estimate value that culminates in the expression of a conclusion of value or a calculated value. The standard is intended to provide guidelines for developing estimates of value and reporting on the results.

It applies to AICPA members who perform an engagement that estimates the value of a business, business interest, security or intangible asset for numerous purposes, including sales transactions, financing, taxation, financial reporting, mergers and acquisitions, management and financial planning and litigation.

VS Section 100 applies to all AICPA members who perform valuation services for various purposes (such as transactions, financings, taxation, financial accounting, bankruptcy, management and financial planning and litigation) as well as for various disciplines in the profession (including consulting, litigation services, personal financial planning, tax and accounting). VS Section 100 contains several exceptions when the requirements do not apply.

*Non-AICPA members should verify with their state boards of accountancy for regulations that state that CPAs must comply with VS Sections 100 and 9100.

The Statement on Standards for Valuation Services is available at: file:///C:/Users/Delll/Downloads/ssvs-full-version.pdf

VS Section 100 SSVS Toolkit[5]

AICPA members* are required to follow the Statement on Standards for

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[4] https://future.aicpa.org/resources/download/statement-on-standards-for-valuation-services-vs-section-100 (accessed on 12.10.2021 at 3:26 pm)

[5] https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/standards-valuation-services-toolkit.html (accessed on 12.10.2021 at IST 3:46 pm)

Valuation Services (VS Section 100), *Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset* when they perform engagements to estimate value that culminates in the expression of a conclusion of value or a calculated value.

This toolkit was designed to provide non-authoritative guidance on the development of valuation or calculation engagements as well as the development of engagement letters and reports in accordance with VS Section 100.

Customizable Valuation and Calculation Engagement Letter Templates

These customizable engagement letter templates have been supplemented with best practice recommendations to ensure the letters are as effective as possible in clearly documenting the terms of the engagement.

- Customizable Engagement Letter Template for a Valuation Engagement - https://future.aicpa.org/resources/download/customizable-engagement-letter-template-for-a-valuation-engagement
- Customizable Engagement Letter Template for a Calculation Engagement - https://future.aicpa.org/resources/download/customizable-engagement-letter-template-for-a-calculation-engagement

VS Section 100 Development and Reporting Compliance Checklists

The following development and reporting compliance checklists provide valuation and calculation engagement and reporting considerations pursuant to VS Section 100.

Development Compliance Checklists

Scope of VS Section 100 Development Compliance Checklists

- Calculation Engagement Development Compliance Checklist- https://future.aicpa.org/resources/download/vs-section-100-ssvs-development-compliance-checklists
- Valuation Engagement Development Compliance Checklist- https://future.aicpa.org/resources/download/vs-section-100-ssvs-development-compliance-checklists
- Valuation/Calculation Engagement Development Compliance Checklist - Addendum for Intangible Assets -

https://future.aicpa.org/resources/download/vs-section-100-ssvs-development-compliance-checklists

Reporting Compliance Checklists

Scope of VS Section 100 Reporting Compliance Checklists

- Detailed Valuation Report Contents Checklist- https://future.aicpa.org/resources/download/vs-section-100-ssvs-reporting-compliance-checklists
- Summary Valuation Report Contents Checklist- https://future.aicpa.org/resources/download/vs-section-100-ssvs-reporting-compliance-checklists
- Calculation Report Contents Checklist- https://future.aicpa.org/resources/download/vs-section-100-ssvs-reporting-compliance-checklists
- Oral Report Contents Checklist - https://future.aicpa.org/resources/download/vs-section-100-ssvs-reporting-compliance-checklists

Sample Valuation Reports

Samples of the types of written reports that a valuation analyst may use to communicate the results of an engagement to estimate or value pursuant to VS Section 100 for a valuation engagement, a detailed report or a summary report, are downloadable in PDF format.

- Sample Detailed Valuation Report – available for only enrolled members
- Sample Summary Valuation Report – available for only enrolled members

Other Resources are also available (some of them are available only to the enrolled members) which are as follows:

Other Non-Authoritative Resources

White Papers

- White Paper: Intangible Asset Valuation - Cost Approach Methods and Procedures

Quick Reference Guides

- Quick Reference Guide to Valuing Assets in Business Combinations
- Quick Reference Guide to Standards and Premises of Value

Articles

- FAQs on Valuation Considerations When Valuing Distressed or Impaired Businesses
- Coronavirus and the Value of Minority Interests in Private Businesses

IVSC- INTERNATIONAL VALUATION STANDARDS COUNCIL[6]

The International Valuation Standards Council (IVSC) is a not-for-profit organisation that acts as the global standard setter for the valuation profession, serving the public interest.

The extracts of two of the Publications of IVSC related to practices to be followed by Valuers have been given below:

- Code of Ethical Principles for Professional Valuers
- A Competency Framework for Professional Valuers

Code of Ethical Principles for Professional Valuers

Introduction

1 The International Valuation Standards Council (IVSC) is an independent, not-for- profit, private sector organisation that has a remit to serve the public interest. The IVSC's objective is to build confidence and public trust in the valuation process by creating a framework for the delivery of credible valuation opinions by suitably trained valuation professionals acting in an ethical manner.

2 The IVSC achieves this objective by:

   a) creating and maintaining the International Valuation Standards (IVSs);

   b) issuing technical guidance for professional valuers; and

   c) promoting the development of the valuation profession and ethical practices globally.

[6] https://www.ivsc.org/the-profession/publications (accessed on 12.10.2021 at IST 7:15 pm)

3 This Code of Ethical Principles (this 'Code') has been prepared by the IVSC Professional Board in order to promote ethical practice and conduct in valuation.

4 This Code consists of:

The Fundamental Principles

The Fundamental Principles – Guidance

Appendix 1 – Threats and Safeguards

Appendix 2 – Discussion of Fundamental Principles

5 The 'Fundamental Principles' consist of five principles of conduct to which a professional valuer is expected to adhere when providing a valuation service.

6 The 'Fundamental Principles – Guidance' provides guidance on the conceptual approach that should be adopted in applying the Fundamental Principles.

7 Appendix 1 identifies the principal categories of threat that may compromise a professional valuer's ability to comply with the Fundamental Principles and the types of safeguard that may be appropriate to avoid or mitigate those threats.

8 Appendix 2 contains additional discussion of the Fundamental Principles with some illustrations of some common threats to a professional valuer's ability to comply with each of them and steps that should be taken to avoid those threats.

Applicability of this Code

9 Valuation Professional Organisations in membership of the IVSC is required to have rules requiring ethical conduct by their members. A Valuation Professional Organisation may adopt this Code or maintain its own rules, providing such rules reflect the five Fundamental Principles of this Code.

10 The 'Fundamental principles – guidance' and the discussions in the appendices may not be applicable where the professional valuer is subject to the rules of a Valuation Professional Organisation and those rules contain specific actions that should be either taken or avoided in order to comply with the Fundamental Principles in the context of the professional valuer's area of practice.

11 In this Code references to a professional valuer are as outlined in the IVSC paper 'A Competency Framework for Professional Valuers'. Depending on context, this may be an individual person, a firm or other corporate body.

Fundamental Principles

12 It is fundamental to the integrity of the valuation process that those who rely on valuations have confidence that those valuations are provided by valuers who have the appropriate experience, skill and judgement, who act in a professional manner and who exercise their judgement free from any undue influence or bias. Accordingly, a professional valuer is expected to comply with the following ethical principles:

a. **Integrity:** to be straightforward and honest in professional and business relationships.

b. **Objectivity:** not to allow conflict of interest, or undue influence or bias to override professional or business judgement.

c. **Competence:** to maintain the professional knowledge and skill required to ensure that a client or employer receives a service that is based on current developments in practice, legislation, and valuation techniques.

d. **Confidentiality:** to respect the confidentiality of information acquired as a result of professional and business relationships and not to disclose such information to third parties without proper and specific authority (unless there is a legal or professional right or duty to disclose), nor to use information for the personal advantage of the professional valuer or third parties.

e. **Professional behaviour:** to act diligently and to produce work in a timely manner in accordance with applicable legal requirements, technical and professional standards. To always act in the public interest and to avoid any action that discredits the profession.

Fundamental Principles – Guidance

13 This guidance is designed to assist professional valuers with the approach that should be taken to applying the Fundamental Principles

and to identify, evaluate, and address threats to their ability to comply with the Fundamental Principles.

14 The circumstances in which professional valuers operate may create specific threats to compliance with these Fundamental Principles. Some common types of threat are identified in the appendices to this Code. However, it is impossible to define every situation that creates threats to compliance with the Fundamental Principles and to specify the appropriate action. Valuation assignments differ significantly in their nature and, consequently, different threats arise that require the application of different safeguards. This guidance may help deter a professional valuer from concluding that a situation is permitted if it is not specifically prohibited by this Code or among the situations discussed in the appendices.

15 When a professional valuer identifies a potential threat to their ability to comply with the Fundamental Principles they should evaluate the significance of that threat. Some threats may be eliminated or reduced to an acceptable level by taking appropriate safeguards. Examples of such safeguards are discussed in the appendices to this Code. In deciding whether it is appropriate to accept a valuation assignment subject to putting such safeguards in place, the professional valuer should take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available at the time, would be likely to conclude that the threat or threats would be eliminated or reduced to an acceptable level by the application of the safeguards and that compliance with the Fundamental Principles is not compromised.

16 If the threat or threats to the professional valuer's ability to comply with the Fundamental Principles cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied, the valuation assignment should be declined or discontinued.

17 If a professional valuer encounters unusual circumstances in which the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the professional valuer consult with the member body to which they belong or, if appropriate, the relevant regulator.

18 If a significant conflict cannot be resolved by either declining the assignment or putting in place safeguards, a professional valuer may consider obtaining professional advice from the relevant professional body or from legal advisors. This can generally be done without breaching the Fundamental Principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.

19 Instances in which the professional valuer may consider obtaining legal advice vary. For example the valuer may encounter a fraud, the reporting of which could breach their responsibility to respect confidentiality. The professional valuer may consider obtaining legal advice in that instance to determine whether there is a requirement to report.

20 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional valuer would need to decide whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organisation.

-Appendix 1:

Threats and Safeguards

This Appendix includes discussion of the major categories of threat to a professional valuer's ability to comply with the Fundamental Principles and of the categories of safeguard that may eliminate or mitigate those threats. A Valuation Professional Organisation to which a professional valuer belongs may have rules that identify different or more specific threats or safeguards against those threats that are appropriate to the area of valuation practice in which its members operate.

A1.1 Threats to a professional valuer's ability to comply with the Fundamental Principles may be created by a broad range of relationships and circumstances. A circumstance or relationship may create more than one threat, and a threat may affect compliance with more than one Fundamental Principle. Threats fall into one or more of the following categories:

a) **Self-interest threat** – the threat that a financial or other interest will inappropriately influence the professional valuer's judgement or behaviour;

b) **Self-review threat** – the threat that a professional valuer will not appropriately evaluate the results of a previous judgement made or service performed, or by another individual within the same firm or employing organisation, on which the valuer may rely when forming a judgement as part of providing a current service;

c) **Client conflict threat** – the threat that two or more clients may have opposing or conflicting interests in the outcome of a valuation;

d) **Advocacy threat** – the threat that a professional valuer will promote a client's or employer's position to the point that their objectivity is compromised;

e) **Familiarity threat** – the threat that due to a long or close relationship with a client or employer, a professional valuer may be too sympathetic to their interests or too accepting of their work; and

f) **Intimidation threat** – the threat that a professional valuer will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the valuation opinion.

A1.2 The extent to which any of the categories of threat listed above will impinge on a professional valuer's ability to comply with the Fundamental Principles will depend upon the facts surrounding the potential assignment. For example, if Company A had launched a hostile takeover bid for Company B, a client conflict threat would arise if a valuer was to accept an instruction from Company A when it was already instructed by Company B. In contrast, if Company A and Company B could not agree on a price and jointly instructed the valuer to provide an independent valuation, no conflict would arise.

A1.3 Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into the following broad categories:

a) Safeguards contained in statutes or regulations relating to the purpose for which the valuation is undertaken.

b) Safeguards contained in rules of conduct issued by a Valuation Professional Organisation to which the professional valuer belongs and

c) safeguards contained in a firm's internal working procedures and quality controls.

A1.4 Typical examples of safeguards created by statute or regulation include:

- regulations on the corporate structure and governance of firms providing valuation services
- statutory licensing of valuers for certain types of valuation
- regulations on the educational, training and experience requirements for individuals providing valuation services for specific purposes
- external review by a legally empowered third party of valuations, reports or other information produced by a professional valuer.

A1.5 Typical examples of safeguards created by a Valuation Professional Organisation include:

- requirements to comply with professional standards
- monitoring of compliance with professional standards and disciplinary procedures
- rules on the basis of remuneration for valuation assignments.

A1.6 Typical examples of safeguards in a firm's working procedures include:

- structuring a firm so that the professional valuer or valuation team dealing with a valuation assignment is operationally separate from parts of the firm providing any potentially conflicting service. Separation of managerial control, access to data and support services should all be considered as appropriate to the circumstances and level of threat
- requirements for maintaining a register of the material personal interests of professional valuers and other staff engaged in valuation assignments
- requirements for internal peer review of valuations
- periodically changing the professional valuer responsible for a recurring valuation assignment

- controls on the acceptance of gifts or hospitality from those commissioning valuations.

A1.7 The typical examples of safeguards listed in the foregoing three paragraphs are not intended to be exhaustive, nor are they capable of avoiding or mitigating every threat that a professional valuer may encounter to their ability to comply with the Fundamental Principles

A1.8 The effectiveness of a safeguard will often be enhanced by it being disclosed to the client and to any others who may rely upon the valuation. Consideration should therefore be given to the disclosure of any safeguards appropriate to the assignment that are in place or that are proposed before an assignment is commenced. Consideration should also be given to including reference to these safeguards in the valuation report or any published reference to the report, especially where the valuation is to be relied upon by parties other than the commissioning client.

A1.9 Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards include:

- effective, well-publicised complaint systems operated by the employing organisation, a Valuation Professional Organisation or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behaviour
- an explicitly stated duty on professional valuers to report breaches of ethical requirements.

-Appendix 2:

Discussion of Fundamental Principles

This Appendix examines each of the Fundamental Principles and provides illustrations of common threats to compliance and actions that a professional valuer can take or avoid to mitigate those threats. A Valuation Professional Organisation to which a professional valuer belongs may have rules that impose different or more specific detailed requirements in order to apply the Fundamental Principles to the area of valuation practice within which its members operate.

Integrity

A2.1 The principle of integrity imposes an obligation on all professional valuers to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

A2.2 A professional valuer should not knowingly be associated with a valuation, a report containing a valuation, a reference to a valuation or any other communication about a valuation if they believe that it either:

a) contains statements or information that are materially false or misleading or that are made recklessly; or

b) omits or obscures information required to be included where such omission or obscurity would be misleading.

A2.3 If a professional valuer becomes aware that they have been associated with such information, they should take immediate steps to be disassociated from that information, for example by issuing a modified valuation or report.

Objectivity

A2.4 The principle of objectivity imposes an obligation on the professional valuer not to compromise their professional or business judgement because of bias, conflict of interest or the undue influence of others.

A2.5 A professional valuer may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all situations to which a professional valuer may be exposed that would create a threat to objectivity. Some threats to objectivity are incapable of avoidance or mitigation and where this is the case the professional valuer should decline the assignment. However, some potential threats to objectivity may be either eliminated or effectively mitigated by safeguards. These safeguards can include appropriate disclosure of the threat to the relevant parties and obtaining their consent to proceed with the valuation assignment. Other safeguards are discussed in these appendices.

A2.6 Examples of situations that could potentially impose a threat, and which should prompt a professional valuer to consider either declining an assignment, or adopting safeguards to eliminate or avoid any threat or perception of bias include:

- requests to produce valuations for the buyer and the seller of an asset in a transaction
- requests to produce valuations for two or more parties competing for an opportunity
- requests to value for a lender where advice is also being provided to the borrower
- undertaking a valuation for third-party consumption where the professional valuer's firm has other substantial fee-earning relationships with the commissioning client
- providing recurring valuations of the same asset unless controls are in place to minimise the risk of self-review
- requests for a professional valuer to act as an advocate and as an expert in relation to the same matter.

A2.7 The extent to which any of the preceding examples will compromise the professional valuer's objectivity will depend upon the circumstances of each case – for example, the purpose of the valuation, the client's objectives and the practicality of eliminating or reducing the threat to an acceptable level by putting in place appropriate procedural safeguards. In many cases previous involvement with an asset presents no threat to objectivity and the knowledge it provides may actually enhance the ability of the professional valuer to provide an objective opinion.

A2.8 In considering whether a situation creates a threat to their objectivity, a professional valuer should recognise that it is often the perception of possible bias by others that creates the threat to the credibility of the valuation. There will be situations where some past or current involvement with either the asset to be valued or a party interested in that asset creates no material threat to objectivity but which could give rise to a perception of bias if subsequently discovered by a party who has relied on the valuation. Disclosure of any such involvement in the scope of work and report can be an effective means of avoiding any perception of bias.

A2.9 Examples of other safeguards to prevent or minimise bias or the perception of bias can include:

- ensuring that the professional valuer and all those assisting with the valuation are operationally separate from departments providing potentially conflicting services within the same firm

- disclosure of other fee-earning relationships with the commissioning client where the valuation may be relied upon by a third party.

A2.10 Where regular recurring valuations are provided of the same asset, possible safeguards against the threat to objectivity arising from self-review include:

- providing for periodic peer review by a valuer or valuers unconnected with the assignment or
- periodically changing the professional valuer responsible for the assignment.

A2.11 If a professional valuer considers that a threat to objectivity can be eliminated or effectively mitigated by disclosure of the cause of the threat and any other safeguards taken or proposed, care should be taken not to breach the principle of confidentiality. If past involvement with an asset or a party interested in the asset cannot be disclosed without breaching the continuing duty of confidentiality to another client the assignment should be declined.

A2.12 If a professional valuer considers that a threat to objectivity can be eliminated or effectively managed by reaching an agreement that they may proceed with two or more parties with potentially conflicting interests in either the outcome of the valuation or the subject asset, care should be taken to ensure the parties are properly informed and aware of the potential consequences for their interest in consenting to the professional valuer being appointed. Obtaining agreement from two or more interested parties that a valuation assignment can be accepted does not absolve the professional valuer from the duty to comply with the Fundamental Principles.

A2.13 If no satisfactory safeguards to eliminate or minimise the threat to objectivity can be identified the professional valuer should decline the assignment.

Competence

A2.14 The principle of competence requires a professional valuer to

a) to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

b) to act in accordance with applicable technical and professional standards when providing professional services.

A2.15 Competent professional service requires the exercise of sound judgement in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

a) attainment of professional competence; and

b) maintenance of professional competence.

A2.16 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional valuer to develop and maintain the capabilities to perform competently within the professional environment.

A2.17 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

A2.18 A professional valuer should take reasonable steps to ensure that those working under the professional valuer's authority in a professional capacity have appropriate training and supervision.

A2.19 If a professional valuer does not have the professional knowledge and necessary experience to competently undertake a valuation assignment that is offered, the professional valuer should decline that assignment.

Confidentiality

A2.20 The principle of confidentiality imposes an obligation on all professional valuers to refrain from:

a) disclosing outside the firm or employing organisation confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

b) using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

A2.21 A professional valuer should maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.

A2.22 A professional valuer should maintain confidentiality of information disclosed by a prospective client or employer.

A2.23 A professional valuer should maintain confidentiality of information within the firm or employing organisation.

A2.24 A professional valuer should take reasonable steps to ensure that staff under the professional valuer's control and persons from whom advice and assistance is obtained respect the professional valuer's duty of confidentiality.

A2.25 The need to comply with the principle of confidentiality continues even after the end of a relationship between a professional valuer and a client or employer. When a professional valuer changes employment or acquires a new client, the professional valuer is entitled to use prior experience. The professional valuer should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

A2.26 The following are examples of circumstances where professional valuers are or may be required to disclose confidential information or when such disclosure may be appropriate:

- disclosure is permitted by law and is authorized by the client or the employer
- disclosure is required by law, for example:
  - (i) the production of documents or other provision of evidence in the course of legal proceedings; or
  - (ii) disclosure to the appropriate public authorities of infringements of the law that come to light.
- There is a professional duty or right to disclose, when not prohibited by law:
  - (i) to comply with the quality review of a Valuation Professional Organisation or other professional body;
  - (ii) to respond to an inquiry or investigation by a Valuation Professional Organisation or regulatory body;

(iii) to protect the professional interests of a professional valuer in legal proceedings; or

(iv) to comply with technical standards and ethical requirements.

A2.27 In deciding whether to disclose confidential information, relevant factors to consider include:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional valuer.
- Whether all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any.
- The type of communication that is expected and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

Professional behaviour

A2.28 The principle of professional behaviour imposes an obligation on all professional valuers to act diligently in the service of their clients and to ensure that the service provided is in accordance with all legal, technical and professional standards that are applicable to either the subject of the valuation, the purpose of the valuation or both.

A2.29 Professional behaviour includes acceptance of a responsibility to act in the public interest. A professional valuer's duty is not limited to satisfying the needs of a particular client or employer. There is also a need to consider if professional decisions have a wider impact on unidentified third parties. For example, valuations are frequently undertaken that can directly impact upon third parties such as stockholders in a company or investors in a fund. While the client's needs are normally paramount, a professional valuer should avoid knowingly accepting any instruction that appears to be prejudicial to the interests of the wider public, and which could discredit their own reputation and that of the profession generally.

A2.30 In marketing and promoting themselves and their work, professional valuers should not bring the profession into disrepute. Professional valuers should be honest and truthful and not:

a) make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or

b) make disparaging references or unsubstantiated comparisons to the work of others.

A2.31 Professional behaviour involves acting responsibly and courteously in all dealings with clients and the public at large and responding promptly and effectively to all reasonable instructions or complaints.

A2.32 A professional valuer should avoid any action that may discredit the profession. Apart from the examples provided in this discussion this includes any action that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional valuer at that time, would be likely to conclude adversely affects the good reputation of the profession.

A Competency Framework for Professional Valuers

Professional Valuers

A professional valuer for the purpose of this Framework is a member of a Valuation Professional Organisation in membership of IVSC. In some countries or markets Valuation Professional Organisations have yet to develop. Where there is no relevant organisation that an individual may apply to join, individuals or firms are encouraged to adopt and comply with the requirements of this Framework.

Professional Competence

To demonstrate competence in a role, a professional valuer must be able to demonstrate:

a) professional knowledge,

b) professional skills, and

c) professional values, ethics, and behaviour.

Competencies are gained by Initial Professional Development (IPD) and by Continuing Professional Development (CPD). A professional valuer will have undertaken IPD and will be undertaking CPD on a regular basis.

The competencies identified in this paper are presented as a framework designed to identify broad principles. The detailed knowledge and skills required by the professional valuer will change over time due to the evolution of the markets and disciplines in which they operate.

Most competencies apply to all professional valuers, although some may be dependent upon the role or seniority of the individual. The degree of competency of a professional valuer will vary according to their career progression.

Professional Values, Ethics, and Behaviour

Character: Before being recognised as a professional valuer through admission to membership of a Valuation Professional Organisation or otherwise, an individual shall be able to demonstrate that they are of good character and reputation.

Conduct: A professional valuer will conduct themselves in accordance with ethical principles as identified in the IVSC Code of Ethical Principles for Professional Valuers or any equivalent rules or code issued by a Valuation Professional Organisation.

Accountability: A professional valuer will be accountable for any failure to comply with the ethical principles of conduct or the competent application of professional knowledge and skills. Such accountability may be to a self-regulatory body such as a Valuation Professional Organisation or to a government sanctioned licensing body. In the absence of such bodies, accountability may be achieved through an employer's internal disciplinary procedures or by the professional valuer subjecting themselves to a system of peer review. To achieve the objective of accountability any system for reviewing the conduct of professional valuers should be easily accessible by any interested party wishing to make a complaint about a professional valuer's conduct.

Legal Compliance: A professional valuer will comply with the conditions of any statutory system of licensing or other regulatory requirements relating to the market or sector in which they operate.

ICAEW[7]- Institute of Chartered Accountants in England and Wales

Valuation issues

Introduction

Valuation is critical to most aspects of corporate finance. This guideline looks at certain key valuation issues which corporate finance practitioners will encounter in their work.

The guideline assumes a basic understanding of valuation principles and methodologies, in particular as they impact on business and share valuations; for instance, as detailed in the *Corporate Finance Guideline: Business Valuations* (Issue 4 1997).

This guideline covers the following:

- selection of appropriate valuation methodologies: advantages, disadvantages and pitfalls
- fair value issues in mergers and acquisitions – intangible assets
- fair value issues in mergers and acquisitions – tangible assets
- valuation issues relating to joint ventures
- valuing minority shareholdings including valuation clauses in shareholder agreements and articles of association
- international cost of capital and other issues in valuing overseas investments
- valuing loss-making businesses
- valuing share options

Selection of appropriate valuation methodologies: advantages, disadvantages and pitfalls

When valuing entire businesses or majority shareholdings, the principal approaches to valuation are:

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7 https://www.icaew.com/~/media/corporate/archive/files/technical/corporate%20finance/guidelines/valuations.ashx?bcsi-ac-B194DA7BADE34C82=262B19F900000003pJ4a6FK7LTAFIx4DNb35dVXb0JcLBgAAAwAAANoJWwAQDgAAEAAAAPQMAgA= (accessed on 12.10.2021 at IST 11:23 pm)

- discounted cash flow;
- capitalised earnings; and
- asset based.

In addition, particularly when valuing non-controlling interests, the dividend yield approach may be used.

Discounted cash flow

Overview of DCF methodology

The discounted cash flow ("DCF") methodology values a business by discounting the expected future free cash flows to the firm, to arrive at the net present value ("NPV") of those cash flows. The relevant cash flows are the residual cash amounts after deducting all operating expenses and taxes, but prior to deducting debt and equity financing payments. The NPV is computed as follows:

$$NPV = \frac{FCFF_1}{(1+K)} + \frac{FCFF_2}{(1+K)^2} + \frac{FCFF_3}{(1+K)^3} + \cdots + \frac{FCFF_n}{(1+K)^n}$$

where:

FCFF = free cash flows to the firm

K = discount rate (cost of capital)

n = number of periods

Discount rate

The appropriate discount rate used to calculate NPV reflects the risks associated with the cash flows and the time value of money. This provides the rate of return required by an investor. The usual method for determining the discount rate is the weighted average cost of capital ("WACC").

The rationale for using the WACC is that the assets of a business are financed through a combination of debt and equity. All the providers of this capital require a return and the WACC can be calculated as follows:

$$WACC = \left(\frac{D}{D+E} \times K_d(1-t) \right) + \left(\frac{E}{D+E} \times K_e \right)$$

where:

D = market value of debt

E = market value of equity

Kd = cost of debt (rate of return required by debt financiers)

Ke = cost of equity (rate of return required by equity providers)

t = applicable tax rate

Estimating the cost of debt is relatively straightforward for bank financing as it represents the market interest rate charged to the business on bank debt. For traded corporate debt, the required return is the yield and this will fluctuate with market prices. It is important to remember that a tax shield is available on interest payments and this benefit should be included in the WACC calculation.

The cost of equity is usually estimated using the capital asset pricing model ("CAPM"), which can be presented in a formula as follows:

$$K_e = R_f + \beta\ (R_m - R_f)$$

where:

Rf = current return on risk-free assets (usually the yield on government bonds)

β = beta factor, the measure of systematic risk of a particular security relative to the market (this can be obtained for quoted companies from sources including London Business School, Datastream and Bloomberg)

Rm = expected average return of the market

Rm - Rf = average risk premium above the risk-free rate for a market portfolio of assets

Discount rate

In calculating the cost of equity, some corporate finance practitioners include an additional risk premium known as the 'alpha factor'. This is added to calculate a discount rate which incorporates additional risks considered to be inherent within the business being valued but which are not present in the comparable companies used as benchmarks for the beta factor.

This may be to reflect small company size, a country risk premium or other business risks. There are public sources of information available to assist in this further analysis and these include:

- Damodaran's website for country risk premiums and country default spreads; and
- Ibbotson Associates for small company risk premiums

Practical application of DCF

In practice, the relevant cash flows tend to be estimated for the first five or ten years and discounted to their present value. After this period, a terminal value is computed, if applicable, incorporating the estimated long-term growth rate that applies to the cash flows of the business. For example the valuation of a business with estimated cash flows available for three years would be calculated as follows:

$$NPV = \frac{FCFF_1}{(1+K)} + \frac{FCFF_2}{(1+K)^2} + \frac{FCFF_3}{(1+K)^3} + \frac{FCFF_3(1+g)}{[(K-g)(1+K)^3]}$$

where:

FCFF = free cash flows to the firm

K = discount rate (cost of capital)

1, 2, 3 = number of periods

g = the ongoing growth rate

The choice of perpetuity growth (g) is of particular importance and need to reflect the long-term, stable growth of the business being valued.

In many instances, the terminal value of a DCF calculation can represent a significant portion of overall value. As such, the assumptions upon which this terminal value is calculated need to be carefully reviewed (eg, terminal year cash flows, which need to be reflective of maintainable earnings, perpetuity growth assumptions, applied exit multiples etc.).

The above DCF methodology calculates the value to the firm (enterprise value) which is the value to all investors (debt and equity) who have a claim on the business. Deducting the value of debt from the enterprise value gives the value of equity.

Advantages of DCF

- the DCF methodology is based on asset fundamentals and therefore the valuation methodology is less impacted by market sentiment;
- it values a business based on future cash flows and not reported profit and therefore excludes the effects of accounting conventions and estimates;
- the DCF approach forces the valuer to consider the underlying characteristics of the firm and to understand its business. The forecast cash flows, growth rates and risks associated with the business must be incorporated into the valuation separately; and
- the impact on value from the separate components of value both within the cash flows and growth rates and risks can be separately quantified and analysed through scenario and sensitivity analysis.

Box 1: Points to watch out for when using discounted cash flow

- **capital expenditure and depreciation:** In the long run these amounts would normally converge to equate to each other; that is, it is assumed that the business is acquiring new assets at that same rate that it is utilising its existing ones. If, in the terminal value cash flow, capital expenditure does not equal depreciation, this assumption should be reviewed and consideration given as to whether the business has in fact reached steady state; if not, the annual cash flows may need to be extended further before the terminal value is calculated.
- **long-term growth rates:** The terminal growth rate assumed for a business would normally equal the average long-term growth rate forecast for the relevant economy or market. Rates above the average long-term growth rate imply that the business can continue to outperform the market and its competitors which in most cases will not be realistic. A method of dealing with a business which is forecast to have above average growth rates for a period beyond the explicit cash flow forecast is to extrapolate the forecasts for an appropriate period using a higher growth rate but then at the end of this period apply a perpetuity terminal value calculation based on an average long-term rate.
- **forecast cash flow assumptions:** Cash flow assumptions can be tested for reasonableness by comparing them to historical results

and also against other benchmarks; for example, what does the assumed forecast sales growth in year 5 mean in terms of implied market share for the business and is this realistic?

- **sensitivity and scenario analysis:** This can be performed to determine the impact on value of changes in assumptions.
- **cross check using other methods:** Finally, given that small changes in key assumptions (including the discount rate and terminal value growth rate) can have a material impact on value, it is generally a good idea to cross check the DCF valuation to values derived from other methods; for instance, to the implied prospective EBIT and EBITDA multiples.

Valuation issues

Disadvantages of DCF

- DCF requires more inputs and information than other valuation methods. These inputs may be difficult to estimate with any degree of certainty and can therefore make the resulting values highly subjective;
- small changes in the discount rate and other assumptions (eg, terminal growth rates) can have material effects on the valuation;
- the DCF method analyses a company at a point in time and therefore the inputs and assumptions require constant review and modification to ensure the valuation is up to date;
- the DCF method is based on one estimated outcome without consideration of where that outcome sits within the range of possible outcomes. This weakness can be overcome through, for instance, the use of techniques such as Monte Carlo simulation which can look at the probability of outcomes and the resulting impact on value; and
- the WACC applied in the valuation of a firm assumes a constant capital structure. This is simplistic and does not cater for changes in leverage of a company over time. Alternative discounted cash flow approaches such as Adjusted Present Value can overcome this shortcoming if it is a material issue for the valuation.

Capitalised earnings

Overview of capitalised earnings Methodology

The capitalised earnings methodology is a valuation methodology that applies a multiple to the earnings of a business to capitalise those earnings into a value for the business.

The earnings multiples applied are typically based on multiples of companies which are comparable in terms of activities, size, financial performance etc to the business being valued. The multiples of the comparator companies are publicly available as the companies are either publicly quoted or have been the subject of a takeover where the transaction details were disclosed.

The capitalisation multiple can be applied to revenues or earnings including Earnings before interest, tax, depreciation and amortisation (EBITDA), Earnings before interest and tax (EBIT) and Profit after tax.

It is important to bear in mind which value each of these financial measures generate Enterprise value or Equity value (i.e., market capitalisation). Revenue, EBITDA and EBIT are financial results which are shared by the providers of both debt and equity. Therefore:

Box 2: Points to watch out for when using capitalised earnings

- **maintainable earnings:** Take care to analyse the earnings and in particular exclude nonrecurring items such as profits (or losses) from discontinued businesses and/or disposal of fixed assets, exceptional bad debts, costs of litigation etc.
- **characteristics of comparable companies:** Market sector and the nature of traded products or services are not the only factors to consider when identifying comparable companies. Other considerations include the level of gearing, accounting policies, size and the diversification of the entities. These elements ultimately affect the future cash flows and risk of the investment.
- **EBITDA, EBIT or PE ratio?** Think carefully about the selection of the earnings multiple which is to be applied. The advantage of EBIT is that it excludes the impact of different gearing levels between comparator companies and EBITDA extends this and also excludes differences due to financing arrangements for fixed assets and growth through acquisition or organic growth by stripping out the effects of depreciation and amortisation. The PE ratio on the other

hand focuses directly on profits available to equity holders; albeit that care must be taken to reflect differences in gearing and/ or depreciation and amortisation policy. In many circumstances, different types of earnings multiples can be applied to act as a cross check to each other.

- **which generally accepted accounting principles (GAAP)?** Take into account the accounting standards upon which the earnings have been prepared and make adjustments for material differences that result from the application of different accounting policies. That said, the introduction of International Financial Reporting Standards has improved comparability of financial information, particularly when looking a quoted company comparables.
- **accounting periods:** It is important that consideration is given to the accounting periods which apply to comparator companies and the business being valued. If material, adjust to achieve coterminous year ends and take care not to apply multiples based on historic earnings to prospective ones.
- **PEG ratio:** While not a valuation methodology, this is a metric which considers the relationship between a company's PE ratio and its expected future growth and can be a useful analytical tool. It is calculated as follows:

$$\text{PEG ratio} = \frac{\text{Price / annual earnings}}{\text{\% annual growth}}$$

EBITDA x EBITDA multiple = Enterprise value

Enterprise value – Value of debt = Equity value

In contrast, Profit after tax is available only to the equity providers as interest payable, the return to debt providers, has already been deducted. Therefore:

Profit after tax x Price /earnings ratio = Equity value

Advantages of capitalised earnings

- the methodology is relatively straight forward to apply and is widely understood;

- it reflects current market sentiment;
- if the comparator companies used to derive the multiples closely resemble the business being valued, this method provides values based on direct market evidence of what investors are paying in the market; and
- the methodology can be applied to both historic and prospective earnings. It has the advantage of being applied to earnings which have been achieved and also to prospective earnings which reflect future performance. It is not therefore solely reliant on estimates of future performance.

Disadvantages of capitalised earnings

- the methodology is based on earnings rather than cash flow and it is cash which ultimately drives value. Earnings include estimates based on applying accounting principles whereas cash is cash;
- the approach requires the valuer to condense a number of important assumptions into one multiple; drivers of value including annual forecast earnings, growth rates, and investor required rate of return cannot be analysed separately;
- market P/E ratios typically reflect the price for transactions involving small parcels of shares, not the premium generally needed to gain control, whereas transaction data would normally incorporate such a control premium – the valuer needs to distinguish these and also be aware of whether the required valuation should include a control premium or not;
- earnings are not always comparable across industries or countries;
- information on comparable transactions is often limited to multiples based on historic performance with little transparency on the expectations of future performance for a business which is privately owned; and
- unique companies in niche markets are difficult to value using the capitalised earning approach as comparators are limited.

Asset Based

Overview of asset based methodology

The asset based methodology values the individual assets and liabilities of a business or company and aggregates them to arrive at a value. There are several variants to the asset based valuation models. These include:

- the historical cost net assets approach: This values the business using the historical cost of net assets of the firm;
- the adjusted historical cost approach: This values the business using the revised net assets of the firm that have been restated to the current market values. Intangible assets are also identified and measured and included in the business valuation;
- the replacement cost approach: This values the business based on the amount it would cost to replace all assets and liabilities of the firm today; and
- the net realisable value approach: This values the business by aggregating the estimated sales proceeds of the assets and liabilities owned by the firm. This is also known as the liquidation value.

Advantages of the asset based Methodology

- the asset based approaches are easy to understand by the investor; and
- the capital at risk is identified.

Disadvantages of the asset based Methodology

- the value of a business is usually greater than the identified separable net assets;
- asset based approaches exclude internally generated intangible assets and goodwill; and
- the asset based valuation generally excludes future income generation from operating the assets owned by the firm.

Box 3: Points to watch out for when using asset based

- **the type of firm being valued:** The asset-based approach is most commonly used in business valuations where the underlying assets, as opposed to the ongoing operations, are responsible for a significant proportion of the value of the firm. These include property companies or investment trusts; the approach would not, for instance, normally be suitable for firms in the services sector which typically have a low level of tangible assets. In many cases, the asset based valuations will be derived from earnings and cash flow based methodologies eg, a hotel valuation is likely to take into account the future earnings potential of the hotel.

- **market premiums:** The valuation of the business should be cross checked with market-based approaches (comparable companies' analysis) as a test of reasonableness and to identify any premiums applied in transactions.
- **liquidation value:** In certain circumstances, including the liquidation of a company, an asset-based approach will be the most appropriate method. In these circumstances, the going concern assumption is unlikely to apply and in determining the asset values, account would normally be taken of the impact on value of a 'fire sale' situation.

Valuation Issues

Dividend yield

Overview of the dividend yield Methodology

The dividend yield is calculated by dividing the declared dividend in the last financial year by the current share price.

The value of the investment can therefore be calculated through manipulating the dividend yield formula. This is known as the dividend discount model:

$$\text{Value} = \frac{\text{Dividend}}{[\text{Dividend yield \% / 100}]}$$

When calculating the value of an investment through the dividend yield approach, the denominator is the required return by an investor as opposed to the actual dividend policy of the company. The required return can be estimated through comparable company analysis from information available in the market.

The Gordon's growth model is a variation of the discounted dividend approach. This methodology incorporates a growth rate to the dividend and can be expressed as follows:

$$\text{Value} = \frac{\text{Expected dividend}}{[\text{Required return} - \text{expected growth rate}]}$$

The above methodology provides a valuation based on perpetual dividend payments. This valuation approach is appropriate particularly for non-controlling interests, where the holder receives a stream of dividends, and less so for a majority investor. The latter has a controlling interest and has greater influence over company strategy, operating cash flows and capital realisation.

1. International Financial Reporting Standard 3: Business Combinations and International Accounting Standard 38: Intangible Assets

Advantages of the dividend yield methodology

- it is a simple model to use, with relatively few inputs; and
- the method bases the valuation of the investment on the expected cash flows that will be distributed to the shareholders, and not the earnings generated by the firm and therefore is suitable for non-controlling interests.

Disadvantages of the dividend yield methodology

- the valuation model requires one perpetual growth rate which may not reflect the expected dividend policy of the firm. Dividends declared are based on the company's ability to support the payment and this results from the financial performance. Therefore, the dividend payments could have a varied growth rate each year; and
- if a stock does not pay a dividend, like many growth companies, this valuation model cannot easily be applied.

Fair value issues in mergers and acquisitions – intangible assets

Under International Accounting and Financial Reporting Standards 1, an intangible asset acquired as part of a business combination must be recognised separately from goodwill on the acquirer's balance sheet, if it meets the following criteria:

- it is separately identifiable;
- it is controlled by an entity;
- it is a probable source of economic benefits; and

- its fair value can be reliably measured.

The identification and valuation of intangible assets are usually performed for disclosure in the acquirer's accounts post deal. However, this work is also performed during the acquisition phase at a high level to give acquirers a clearer picture of the intangibles they are buying, what they are worth, and the impact on the financial results (eg, impact on EPS), with the detailed work then performed post acquisition.

Examples of commonly recognised intangibles include trademarks/ brands, customer relationships, customer lists and technology. Other intangible assets such as workforce, technical expertise and geographic presence are subsumed into goodwill.

Valuation methodologies

There are three conventional approaches adopted by valuation practitioners to value the intangible assets identified as part of an acquisition.

Income approach

This approach is predicated upon the value of the future cash flows that an asset will generate over its remaining useful life. The income approach entails:

- an estimation of the future cash flows the asset is expected to generate over its useful life; and
- discounting the cash flows to a present value equivalent by applying a discount rate commensurate with the level of risk associated with the asset.

Cost approach

This approach estimates the fair value of an asset to be the current cost to purchase or replace the asset. It is based on the principle of substitution, assuming that a prudent investor would pay no more than the amount necessary to replace the asset.

Market approach

This approach assumes that the fair value of an asset reflects the price at which comparable assets have been purchased in transactions under similar circumstances. The market approach requires that comparable transactions for individual intangible assets are readily available.

Comparable transactions may include the recent sales price of the same or similar asset in an arm's length transaction or the market price for the license of the same or similar asset to an independent third party. The valuation methodology ultimately selected, is a matter of professional judgement, based on the nature of the asset and the quality of the information available. Summarised below are the valuation methodologies which would typically apply in the context of a brand and customer relationships.

Illustrative example 1 – valuation of a brand

There are two traditional approaches to brand valuations, which are outlined below.

Multi-Period Excess Earnings Method ("MEEM")

This approach assumes the value of the brand reflects the gains realised by the premium on price associated with the brand. Comparative business valuations are performed firstly by assuming the existence of the brand, and then assuming there is no brand. The difference in value is attributable to the value of the brand.

Relief from Royalty ("RFR")

This approach assumes the value of the brand reflects the savings realised by owning the brand. The underlying premise is that if the brand was licensed to an unrelated party, the unrelated party would pay a percentage of revenue for its use. The brand owner is, however, spared this cost. This cost saving or relief from royalty represents the value of the brand. The value of the brand is a function of the following factors:

- the concluded royalty rate (as a percentage of revenues) that an unrelated party would pay for use of the brand;
- the projected revenues (sales net of returns) generated by the brand being valued;
- estimated useful economic life of the brand; and
- the appropriate risk adjusted discount rate used to present value the stream of anticipated royalty payments.

Illustrative example 2 – valuation of customer relationships

Under IFRS, customer contracts and related customer relationships are two distinct intangible assets, and are usually valued separately.

A discounted cash flow method is typically the most appropriate method used to value customer relationships as it reflects the present value of the operating cash flows generated by the customer relationships over their term, including the probability of renewal. The value of the customer relationships would normally take into account the following:

- the estimated level of revenue which will be generated from the customer relationships over the estimated useful life of those relationships;
- the estimated operating cash flows by charging appropriate costs or margins to the revenue stream;
- customer churn rates or the length of time customers have transacted with the business;
- the estimated attrition rate that will apply to the customer relationships;
- the estimated useful economic life of the customer relationships;
- the estimated income tax payable, based on the effective tax rate applicable to valuing the asset;
- the estimated charges for the use of other contributory assets by the customer relationships including working capital, fixed assets, brands and the assembled workforce. The premise underlying this charge is the use of all these assets is necessary for the realisation of the cash flows generated by customer relationships, and as such a charge should be made for all the assets that contribute to the cash flows; and
- an appropriate risk-adjusted discount rate is applied to present value the stream of cash flows attributable to the customer relationship.

Key issues for corporate finance practitioners to consider

In valuing intangible assets acquired, consideration must be given to intangible assets with finite and indefinite lives. Intangible assets with finite lives are amortised, whereas intangible assets with indefinite lives (and goodwill) are not amortised but tested for impairment at least annually.

The level of amortisation charge will impact on the level of earnings per share post transaction.

As noted above, all intangible assets with indefinite lives and goodwill must be tested for impairment at least annually. The disclosure requirements for impairment include providing information such as key drivers, sensitivities of valuation and discount rates to the market, which will therefore come under scrutiny by shareholders and potential investors.

Ultimately a good deal is still a good deal and the accounting implications should not hinder this. However, management teams that undertake poor deals will increasingly come under the spotlight from the increased transparency in the market place, in particular from impairment losses taken relatively soon after an acquisition. Purchasers must focus on what they are really buying and whether paying large deal premiums where the intangibles have short lives, for example customer relationships and technology, creates shareholder value.

Fair value issues in mergers and acquisitions – tangible assets

Under IFRS, tangible assets acquired as part of a business combination must also be stated at fair value. The conventional approaches applied to valuing tangible fixed assets are the same as those for intangible assets: the Income approach, the Cost approach, and the Market approach.

Guideline

Income approach

The Income approach, as for intangible assets, is estimated based upon the cash flows that the subject asset can be expected to generate over its remaining useful life and is typically applied using the Discounted Cash Flow ("DCF") method.

Cost approach

The Cost approach is a valuation approach that uses the concept of replacement cost as an indicator of fair value. The premise of the Cost approach is that a prudent investor would pay no more for the tangible fixed asset than the amount for which the asset could be replaced.

Replacement Cost New ("RCN") which refers to the cost to replace the assets with like utility assets using current material and labour rates, establishes the highest amount a prudent investor would pay. To the extent that an existing asset will provide less utility than a new one, the value of that asset is less. Accordingly, RCN is typically adjusted for loss in value due to physical deterioration, functional obsolescence and economic obsolescence:

- physical deterioration is the loss in value brought about by wear and tear, action of the elements, disintegration, use in service and all physical factors that reduce the life of an asset;

- functional obsolescence is the loss in value due to changes in technology, discovery of new materials and improved manufacturing processes; and
- economic obsolescence is the loss in value caused by external forces such as legislative enactments, overcapacity in the industry, changes in supply and demand relationships in the market, etc.

Obsolescence is typically measured by identifying excess operating costs, overcapacities or inadequacies of an asset. Considerations such as location, time of sale, physical characteristics, and conditions of sale are analysed for comparable assets and are adjusted to indicate a current value of the subject asset.

Market approach

The Market approach, as for intangible assets, estimates the fair value of a tangible fixed asset based on market prices in actual transactions and on asking prices for assets currently available for sale. The valuation process is essentially that of comparison and correlation between the subject asset and other similar assets.

"The Cost approach is a valuation approach that uses the concept of replacement cost as an indicator of fair value"

Valuation issues relating to joint ventures

Weighing up the merits of going it alone or forming a JV are major strategic decisions and at the heart of that decision process is valuation – not just at the outset, but at every stage, from initial discussions and due diligence right through to considering what would be the most effective exit route and tax issues.

Valuation Issues

In this section, some of the key valuation issues relating to JVs are considered.

Establishing what is to be valued based on what the partners are contributing to the JV

The strategic reasons for a JV may make sense, but does the valuation of the contributed assets?

Do you know what you are contributing to a JV? Do you know what your partner is putting in? Are you fully aware of what both parties aim to get out of the venture?

Once a company decides to undertake a JV, it is crucial to understand what it and its partner are going to contribute to the venture and what each partner is looking to leverage from it. The type of assets to be contributed to a JV can be wide-ranging, from individual tangible and intangible assets such as machinery, property or a trade name to the contribution of an entire business and it is vital that prior to entry the stand-alone value of these contributions be established.

However, this is only one part of the equation. The aim of the JV has to be to derive, in whole, greater value for the contributing partners than the sum of its individual parts. As such, as well as understanding stand-alone value it is vital to establish and quantify the operational and financial efficiencies that the venture will unlock and which party is driving these efficiencies. Then the true relative contributions by both parties can be understood, which, in turn, can be used to form the basis of an equalisation payment from one party to the other in order to deliver equitable JV ownership.

An appreciation of the importance of such valuation issues at an early stage is critical to the success of a JV and often inability to agree on the value of the contributed assets leads to a failed venture.

Valuation issues and financial structure

Companies need to identify the operational and financial structure that best suits the stated objectives of the JV

Depending on the strategic requirements of the venture, there are many operational and financial forms of JV or alliance.

Within this spectrum, there are two general types of JV or alliance:

- equity-based alliances, which include minority and majority stake investments; and
- non-equity based alliances, which are more often governed by contractual arrangement specifying the responsibilities of each party, the fundamental operation of the venture and exit considerations.

Whether entering an equity or non-equity based JV, there are many valuation issues to consider, including:

- the value of an equity to be issued to new partners entering the venture or existing shareholders;
- supporting evidence required in raising additional equity or debt finance;

- minority interest valuation issues (eg, under articles of association/ shareholder agreement); and
- tax compliance issues (eg, share schemes or stamp duty).

Factoring into the valuation what the parties aim to get out of the JV

It's not just what you put in that counts it's also what you take out

Of course, the relative "go-in" value is only part of the matter. The true value of a JV to each partner will be based upon the strategic reasons for each entering the JV and the synergistic value the JV achieves, including:

- operational factors (eg, spread operational risks, capture economies of scale, support core competencies, access to resources or networks of other JV partners);
- financial factors (eg, spread financial risks, boost revenues/ reduce costs, protect value created by JV partners and encourage new joiners (value creation));
- expansion/future growth (eg, potential to be spun-off as independent entities (eg, as an Initial Public Offering), improve market position or expand into new markets); and
- regulatory/competition (eg, circumnavigate regulatory barriers facing mergers or entry into emerging markets).

It is vital to the success of the JV that there is no unintended value shift between the partners due to this synergistic value. As such, it is important that the key drivers of synergies be identified early on and be sensitised in order to understand the impact on the value of the JV and relative contributions of the parents. This not only helps to ensure that the "go-in" relative values are appropriate, but that the ongoing combined value of the JV is understood so that ultimately the value of any achieved synergies is apportioned to the parents in a manner that reflects the contributions of each.

Guideline

Dealing with the value of Intellectual Property

There's value in what you can't see as well as in what you can

Intellectual Property (IP) is increasingly key in making a JV successful, particularly where shared assets, such as trade marks, databases or patented technology are employed. As such, recognising the need to value IP is also crucial in a JV.

Partners need to consider whether existing IP should be included in a JV or used under a licence agreement, with the venture paying royalties. If the JV is developing or using new IP, partners should be clear about ownership rights at the outset and understand the need to review its value throughout the life of the JV. As a result, there are a number of instances in which the dealing with the value of IP in a JV may be crucial, for example:

- tax planning purposes (eg, transfer ownership of IP): IP valuations will assist in determining appropriate tax strategies to maximise tax savings for the joint venture participants;
- transfer pricing: IP valuations may be necessary to justify that fees payable to JV partners are at arm's length and comply with the appropriate tax regulations;
- licensing of IP from a partner to the JV: IP valuations can ensure that partners contributing IP to a JV get a fair return in the form of appropriate royalty payments;
- determining strategic options to enhance exit values: IP valuations on entry into a joint venture will serve as a starting point for desired target IP valuations on exit and help concentrate management efforts onto accomplishing those targets; and
- monitoring and controlling Returns on Investment: IP valuations can result in more realistic appraisals of total invested capital in the JV and serve as a more appropriate basis for measurement and control of management performance.

Further, to the extent that the JV is to be fair value accounted, there may well be a requirement to value the intangible assets arising on the formation of the JV in accordance with the accounting pronouncements such as IFRS 3.

Valuation issues and exit

Parting need not be such sweet sorrow

As with all businesses, JVs evolve and rarely remain confined to the initial rubric upon which they were established. The strategic aims of JV partners may change requiring the exit of one or more parties, the direction of the JV may mean it becomes more valuable to one partner ahead of another, or additional parties may join the JV. Whilst such future occurrences are hard to predict, likely changes in the nature and construct of the JV should be factored into the ongoing valuation of the venture.

Further, at the outset of the JV the partners should establish clear valuation definitions for when one partner exits the venture and these should be documented in the articles of association or shareholder agreement of the JV. This is most commonly achieved through an agreement whereby the exiting partner is paid either a market value or fair value for its shareholding, whereby market value represents the effective price attainable for the shareholding being sold in the open market between a hypothetical willing buyer and a hypothetical willing seller and fair value represents value where there is a desire to treat the interests of both parties in a balanced way.

Issues around defining valuation clauses in shareholder agreements are dealt with further in the section below on minority shareholdings.

Conclusion

In summary, whilst a joint venture can be value accretive and deliver the strategic goals of the parents, unlocking its potential is based upon overcoming a number of obstacles throughout the JV lifecycle and in most instances, valuation is at its heart.

Valuation issues

Valuing minority shareholdings including valuation clauses in shareholder agreements and articles of association

The value of a minority shareholding is, like any other asset or majority shareholding, based on the future cash flows which the owner of the shares expects to receive. This return may be in the form of income, typically dividends, or a realisation of capital, through for instance participating in a sale or IPO of the whole company.

A key issue with a minority shareholding, however, is the extent to which the shareholder is able to influence the returns he or she receives.

In most minority shareholding valuations, part of the valuation process will include valuing the whole company; however will the purchaser of a minority shareholding in a private company be willing to pay the same price per share as that which they would pay to acquire a controlling stake in that company? The answer, typically, is no.

As a result, a discount is normally applied to the whole company value when determining the market value of a minority shareholding but the question of how much discount should be applied is a matter of careful judgement on the part of the valuer and is based on a number of factors.

Legal and/or regulatory framework for the valuation

One of the first things to ask for when valuing a minority stake is the legal documentation including the articles of association, the shareholder agreement and any other document which sets out the rights, obligations and protections which apply to the shares being valued.

Most Articles of Association and/or shareholder agreements will contain provision for the sale of shares by the company's shareholders and will typically contain pre-emption rights and a mechanism for share transfers. There will often be some direction as to how the shares are to be valued. This direction may include:

- definition of value: eg, 'market value' or 'fair value'. Market value is defined as effectively the price of a shareholding being sold in the open market by a willing seller to a willing buyer whereas fair value allows the valuer to move away from market value if this is appropriate and to determine a value which is fair having regard to the circumstances of the valuation and the parties involved;
- whether a discount is to be applied by virtue of the shareholding being a minority stake or whether the valuation is to be based on the pro rata share of the value of the whole company – that is, no discount applied;
- sometimes a discount is to be applied to take into account certain factors: eg, income and capital rights but not others: eg, restrictions on the sale of the shares;
- the assumption that the company or business will carry on as a going concern;
- a list of certain matters which the valuation should take into account; for instance, historical financials, future prospects etc; and
- occasionally there may be a stated formula; for instance, a specified multiple is to be applied to the average levels of earnings over a given number of years.

When drafting a valuation clause in a shareholder agreement (or articles of association, joint venture or similar agreement) the basis of valuation should be considered carefully and defined clearly.

Guideline

Control issues – shareholder rights

The rights attaching to the minority shareholding will be an important factor which reflects the level of control the shareholder has; in particular as regards voting rights, the right to veto certain actions or the right to have a director on the board.

Control issues – split of other Shareholdings

The division of ownership of the shares among the other shareholders will also have an impact on the level of control a minority shareholder can exert.

For example, if Shareholder A owns 20% of a business where there is one other shareholder owning the residual stake of 80%, Shareholder A may be able to exercise some 'nuisance value' but will not be in a strong position to have a significant influence on the running of the business.

If, however, Shareholder A owns 20%, and there are four other shareholders also each owning 20% stakes, then the ability to have more influence; albeit still without control, may increase the value of the stake.

Future income potential

A minority shareholder with little control over the operating and financial policies of a company will typically be reliant on the distribution policy of the company and the value of the shareholding will be determined by the expected future dividends to be received through the ownership of the shares.

Therefore, a valuation methodology based on dividend income is a common method applied in the valuation of uninfluential minority stakes as detailed in an earlier section.

Prospect of trade sale/IPO

In most circumstances, the capital realised for a minority shareholding will be based on the future dividend stream which will typically result in a value per share at a discount, often significant, to the value of the whole company.

However, in a situation where a trade sale or IPO is contemplated or imminent, this could have a material effect on the price a purchaser would pay for a minority shareholding. The prospect of participating in such a sale or IPO will increase the value; though in most circumstances there will remain some discount to the whole company value to reflect the risk that the sale or IPO may not happen or at least not at the price anticipated.

Marketability/illiquidity

The availability of a liquid market for the minority shareholder to sell his or her stake is a distinct advantage. As such a small shareholding in a publicly quoted company or a private company where there is an active internal market for shares will enable the minority shareholder to exit more readily. Conversely the holder of a small shareholding in a private company with no internal market mechanism may have more difficulty realising value for those shares and this is likely to lead to the value of the shares being discounted.

Strategic value

There may be circumstances where there are strategic reasons why a purchaser wishes to acquire a minority stake in a business; for instance to get access to a customer base or to prevent a takeover by a competitor. This may result in a premium. However, the ability of a shareholder to sell shares to an external investor for strategic reasons will depend on the share transfer provisions in the articles of association or shareholder agreement. In addition, the assumption of a 'special purchaser' may not be permitted by the valuation definition in such agreements.

Valuation issues

International Cost of Capital and other issues in valuing overseas investments

With the continuing globalisation of companies, markets and investors and the rapid development of emerging markets such as China and India, most corporate finance practitioners find they need to consider international cost of capital and other issues relating to the valuation of investments in overseas markets.

The international cost of capital (ICC) should reflect the specific risks of investing and operating in international markets. These risks are considered later in this section. First, this section considers briefly the different models used in arriving at the international cost of capital. This is a complex area of valuation with many approaches and methodologies presented and debated. This guideline summarises some of the key models used in deriving ICC but directs the reader to the references for additional sources of information in this area.

International Cost of Capital Models

Country Risk Rating Model

This model is based on country credit ratings. The rationale behind this approach is that the relationship between risk ratings and financial returns of developed market economies can be used to make inferences about expected returns in developing or non-market- based economies.

The Institutional Investor publishes country risk ratings biannually based on a survey of lenders around the world. The results represent a good measure of consensus opinion of the world's lenders on country risk levels worldwide. These are used by banks, mutual funds and similar institutions as reliable measures of country risk.

Using a regression model equating historic returns with risk ratings, expected returns are estimated for the prospective risk ratings.

"The international cost of capital should reflect the specific risks of investing and operating in international markets"

For practical purposes, expected returns from a developed country (eg, US) can be taken as a starting point and it can then be reasonably adjusted for the differences in credit ratings between the developed country and the target country.

This model offers the following features:

- broad coverage: Credit ratings can be obtained for over 170 countries
- lending risk as a proxy of equity risk: Lending risk may be argued to provide a good proxy to equity risk. Further, it avoids nonsensical results that are obtained by other statistical models due to the lack of good data
- stable results: Erratic underlying data can affect the stability of market-based models or macroeconomic based models. Therefore, higher volatility in developing markets and/or lower correlation with international markets can impact the stability of a country's computed cost of capital that is not necessarily representative of country-specific risk

International CAPM

The principles of CAPM summarised in an earlier section can be applied directly to the international market.

When calculating the equity risk premium, account should be taken of the risk associated with investing in a particular country.

The country-spread model is one mechanism for doing this.

Country-Spread Model

This extends the CAPM model by adding a country-specific spread, which is normally computed as the spread between the yield on dollar-denominated foreign bonds and the yield on the US Treasury bonds.

Combination of Models

There are several other models available to compute ICC. References are made to these in the Bibliography. A combination of the above approaches is recommended to arrive at sensible computations for ICC.

Other considerations when valuing international investments

When valuing international investments, the following factors may be taken into account either through applying a higher risk factor to the cost of capital or through adjusting the forecast cash flows:

Political instability

Operations in countries with a higher risk of political instability must be accorded higher risk premiums due to the uncertainty of future economic policies that may have an adverse impact on business operations.

Exchange rates

Operations in countries with prospectively weak currencies must be accorded higher risk premiums due to exchange rate losses that may arise on remittance of profits. This can also be evaluated through adjusting the cash flows.

Repatriation of profits

The ability of the investor to repatriate profits is an important consideration which will require the investor to give careful thought to the appropriate structure for the transaction. Tax considerations will also be important.

Transparency culture

A country's culture of information transparency (or lack of it) may require cost of capital adjustments due to the resulting ease or difficulty in all aspects of executive decision-making based on the available information.

Guideline

Regulation & investor protection

This point is a subset of the culture of transparency (discussed above). A country with an under-developed culture for information transparency may warrant a higher risk premium regardless of the level of regulation and investor protection. In other cases, effective regulations for investor protection may warrant a reduction in risk premiums and vice versa.

GAAP differences

The transparency of the country specific GAAP and degree of difficulty of GAAP conversions may be considered in determining risk premiums. If the country has not adopted IFRS and if its GAAP is not internationally recognised, the risk premium may be revised upwards to reflect difficulties in assessing true economic performance or the accounting information analysed and adjusted to an IFRS basis. Further, the cost and time required for GAAP conversion should also reflected in the cash flow forecasts.

Labour practices

Countries with a higher risk of labour unrest or restrictive labour practices may be accorded higher risk premiums due to the risk of disruption to business operations.

Market liquidity

The level of liquidity in a country's stock market will impact the ease or difficulty of executing entry and exit strategies in the country. A relatively illiquid market may warrant higher risk premiums or alternatively the application of a discount to value.

Dependence on local markets

This relates to the proportion of domestic sales to exports within the business' sales mix. The country risk premium will be more relevant to an operation with a higher proportion of domestic sales than to one with a comparatively lower proportion. In businesses with a greater proportion of export sales, exchange rate considerations (discussed above) will be more important.

This list of factors is by no means exhaustive but serves as an illustration of issues which may need to be taken into account when valuing overseas investments.

Valuing loss-making businesses

The valuation of a business which is loss-making is a specific area of valuation which requires careful consideration.

As stated above, a key determinant of value for any business is the future earnings and cash flow that the owner of the business can reasonably expect to receive through the ownership of that business.

Therefore, when faced with the challenge of valuing a loss-making business, the first question the valuer should ask him or herself is: 'Why is the business loss-making?'

The second question which follows on quickly from this is 'Can anything be done to make the business profitable and to get it into a positive cash flow position in the future'?

A third issue, relevant if the purpose of the valuation is to advise on a possible transaction, is whether there are other parties capable of similar, or greater, changes (eg, competitors with excess capacity, who could cut more costs).

Reasons why a business is loss-making

There are many reasons why a business may be loss-making–positive and negative. These include:

- cyclicality in the industry sector or economy;
- long-term decline: eg, through product obsolescence;
- poor management;
- a short-term problem: eg, a bad debt, litigation, management illness;
- lack of available investment; and
- start-ups and early-stage businesses.

This section considers each situation and based on the specific circumstances, provides guidance on the issues and methodologies that should be applied in the business valuation.

Cyclical businesses

When valuing a cyclical business, it is important to obtain historical earnings information back a sufficient number of years to cover a whole cycle. This will provide an understanding of the sales and profitability that arise over the cycle, critical in valuing the business.

The valuation must though be forward-looking, so any changes from one cycle to the other must be taken into account. Capitalised earnings and discounted cash flow valuation methodologies can both be applied.

If the business is currently loss-making, then a discounted cash flow approach is well suited to allowing the improvement in performance to the peak of the cycle to be analysed, assessed for risk and reflected in the valuation. The calculation of the terminal value needs particular attention in a cyclical business to ensure that the earnings figure used as the basis for an 'into perpetuity' terminal value calculation is based on earnings at the mid point in the cycle.

Capitalised earnings can also be applied to years (either historical or prospective) which show some profitability. Clearly it is very important to ensure that the multiples based on comparable company data are based on the same year in the trading cycle as the earnings of the valued business to which that multiple is being applied.

Valuation Issues

Long-term decline

When valuing a business that is loss-making through long-term decline in the sector, a key consideration will be whether, at least in the short term, actions can be taken to return the business to profitability: eg, through consolidation with other businesses in the sector or through rationalisation of the cost base. In both cases, the cost and risk associated with these actions must be taken into account in addition to the improved profitability.

Forecast cash flows (for DCF) or earnings (for capitalised earnings approach) can be adjusted to reflect the financial impact of these actions.

For a business which is expected to continue to be loss-making, then the business is likely to have to be valued on the basis of the liquidation value of its net assets.

Poor management or other short-term problems

The effect on the value of taking corrective action to solve these issues should be taken into account in the valuation including the cost and risk associated with these actions.

Start-ups and early stage businesses

These businesses are unlikely to have a historic track record of making profits so discounted cash flow based on forecast future earnings is likely to be the most appropriate approach.

The forecast cash flows will need to be analysed carefully and the discount rate applied adjusted to reflect the risk of the start-up or early stage nature of the business.

Valuing share options

IFRS 2 and FRS 20 on Share-Based Payments require companies who provide share-based payment to employees or suppliers to account for the value of these payments. In relation to the grant of share options to its employees, a company will be required to estimate the fair value of these options and to make a charge through the profit and loss account thereby recognising the value as an expense to the company over the vesting period of the option, if it is equity-settled.

The principal techniques used to value share options are as follows:

- Black-Scholes-Merton option pricing model;
- Binomial (and trinomial) lattice option pricing models; and
- Monte-Carlo simulation.

It is important to recognise that this is a complex area and this section summarises the principal methods used to value options but depending on the nature of the option being valued, the models can be complex and combine methods and techniques.

It is also important to recognise that there is a complex interaction between the accounting standards and the valuation methods employed. The type of option and performance conditions that may apply will play a key role in deciding which approach to take.

Black-Scholes-Merton option pricing model

The Black-Scholes-Merton method is designed to value commercially traded stock options. The advantage of the model is that it is relatively straightforward to use; valuing an option using the formula overleaf:

$$P = Se^{-qT} N(d1) - Xe^{-rT} N(d2)$$

$$\text{Where : } d1 = \frac{\ln(S/X) + (r - q + \sigma^2/2)T}{\sigma\sqrt{T}}$$

$$d2 = d1 - \sigma\sqrt{T}$$

where:

P = call option price

S = market price of the underlying share

X = exercise price

r = risk-free interest rate

q = dividend yield, if applicable, based on the expected dividends from the underlying share during the expected term of the option expressed with continuous compounding

T = time to expiry of the option

s = volatility of share price

N = normal distribution

e = exponential

In terms of the inputs and the value of the option:

- the higher the market price of the underlying share, the higher the value of the option as the option holder has a claim on a more valuable asset;
- the value of a call option also increases the higher the rate of volatility. Volatility measures how much the share price of the underlying stock varies in comparison to the market. The more volatile the share price, the greater the likelihood of an upward swing in the price which increases the value of the option;
- the value of the option also increases the greater the time to expiry. The longer the period in which the owner of the option has the right to exercise that option, the greater the opportunity for the market price of the underlying share to exceed the exercise price;
- the risk-free interest rate is included as an input to take into account that one of the benefits of owning an option rather than the underlying share is the time value of money saved from not having to purchase the share until the option is exercised; and
- conversely, one of the disadvantages of owning an option, is that the option holder will not receive any dividends paid out on the underlying share until the option is exercised.

Volatility can be estimated based on the historic volatility of the underlying share or the volatility of comparable quoted traded options or convertible type financial instruments. However, this is a measure of volatility only in known conditions; there may also be the possibility of more extreme events, such as takeover speculation in the future. Alternatively, in the case of a privately owned company, it can be estimated based on historical or implied future volatility of comparable quoted shares or traded options of comparable quoted companies or instruments of companies in a comparable sector.

In terms of the underlying share price, clearly if the shares are quoted, there is a readily available market price. However, if the shares are in a privately owned company, a valuation of the shares will have to be undertaken as part of the process of valuing the share options.

As stated, the Black-Scholes model was designed to value commercially traded options. It does, however, have some important limitations which mean that it cannot be used to value shares options in certain types of share-based incentive schemes.

For certain share schemes, the following will apply:

- the option cannot be sold, it can only be exercised;
- the ability of the employee to exercise the option depends on the achievement of given performance conditions;
- the employee can exercise the option at any time once any performance conditions are fulfilled or the vesting period has ended and is not restricted to exercising the option on one given date;
- the employee may leave the company before the options vest; and
- variables including expected volatility, the risk-free interest rate and dividends may vary over the option term; Black-Scholes assumes that these variables remain constant during the option term.

Binomial or lattice option pricing model

The use of a Binomial pricing model can overcome some of these limitations. This model is based on a binomial probability distribution. It breaks down the total option exercise period into discrete trading periods. At each step the value of the shares may go up or down. Accordingly, early exercise of the option can be modelled and the model can accommodate changes in assumptions during the option term, for instance as regards volatility, dividends and the risk-free interest rate.

Monte-Carlo simulation

Many employee share option schemes award an employee options which are dependent on the achievement of future performance criteria. These may be market or non-market related. Non-market related conditions are ignored in the valuation of the options (but are taken into account in the actual accounting) whereas market-related conditions require to be included in the valuation (but then generally won't affect the accounting afterwards).

If market conditions apply one would generally use Monte-Carlo simulation to statistically analyse the probability of outcomes relating to the performance criteria and arrive at the valuation of share options taking into account the conditions.

Bibliography

SPECIFIC REFERENCES

Introduction

Institute of Chartered Accountants in England and Wales (1997) Corporate Finance Guideline: Business Valuations. Issue 4

Selection of appropriate valuation methodologies

London Business School (2008) Risk Measurement Service, London, London Business School.

Thomson Datastream (2008) Datastream Betas. [online]. Available from: http://www.datastream.com/

Bloomberg (2008) Bloomberg Betas. [online]. Available from: http://www.bloomberg.com/

Damodaran (2008) Country Default Spreads and Risk Premiums. [online]. Available from:http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/ctryprem.html

Ibbotson Associates (2006) SBBI Valuation Edition, 2006 Yearbook. Chicago, Ibbotson Associates.

International cost of capital

Institutional Investor (2008) Country Credit. US, Institutional Investor.

Campbell, H. (1993) The International Cost of Capital and Risk Calculator, National Bureau of Economic Research.

Campbell, H. (2005) 12 Ways To Calculate The International Cost of Capital, National Bureau of Economic Research.

Campbell, H. (2005) 12 Ways To Calculate The International Cost of Capital. Available from: www.faculty. fuqua.duke.edu/~charvey/Teaching/

BA456_2006/Harvey_12_ways_to.pdf Campbell, H. (1993) The International Cost of Capital and Risk Calculator. [online]. Available from: faculty. fuqua.duke.edu/~charvey/Research/Working_Papers/W35_The_international _cost.pdf

Valuing share options

Options, Futures and Other Derivatives, John C. Hull (6th edition, Pearson International Edition)

GENERAL REFERENCES

International Accounting Standards Board (2007) International Financial Reporting Standards. 2007 edition. London, International Accounting Standards Board.

Brearley, Richard and Myers, Stewart (2003) Principles of Corporate Finance. 7th Edition. US, McGraw Hill.

Copeland, Tom et al. (2000) Valuation: Measuring and Managing the Value of Companies, 3rd Edition. US, McKinsey & Company, Inc.

Annexures

ANNEXURE-1
THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

In exercise of the powers conferred by section 247 read with sections 458 and 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Rules, namely:-

CHAPTER I
PRELIMINARY

1. [8]**Short title, commencement and Application.—** (1) These rules may be called the Companies (Registered Valuers and Valuation) Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

[9](3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

2. **Definitions**.— (1) In these rules, unless the context otherwise requires—

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;

(c) "asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

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[8] Subs. by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018. Before substitution, it stood as under:
"Short title and commencement"

[9] Inserted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.

(d) "certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

(e) "certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

(f) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(g) "Annexure" means an annexure to these rules;

(h) "registered valuers organisation" means a registered valuers organisation recognised under sub-rule (5) of rule 13;

(i) "valuation standards" means the standards on valuation referred to in rule 18; and

(j) "valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

(2) Words and expressions used but not defined in these rules, and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

CHAPTER II
ELIGIBILITY, QUALIFICATIONS AND REGISTRATION OF VALUERS

3. Eligibility for registered valuers.— (1) A person shall be eligible to be a registered valuer if he-

(a) is a valuer member of a registered valuers organisation;

Explanation.— For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) possesses the qualifications and experience as specified in rule 4;

(e) is not a minor;

(f) has not been declared to be of unsound mind;

(g) is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) is a person resident in India;

Explanation.— For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(k) is a fit and proper person:

Explanation.— For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence and financial solvency.

(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is [10]~~not~~ a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), [11](f), (g), (h), (i), (j) and (k) of sub-rule (1);

(d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience.— An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

~~(c)~~ membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession

[10] Omitted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018. Before omission, it stood as : "not".

[11] Inserted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.

with at least three years' experience after such membership [12]~~and having qualification mentioned at clause (a) or (b).~~

Explanation-I.— For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.— Qualifying education and experience [13]~~and examination or training~~ for various asset classes, is given in an indicative manner in **Annexure–IV** of these rules.

[14][Explanation III – for the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.]

5. **Valuation Examination.—** (1) The authority shall, either on its own or through a designated agency, conduct valuation examination for one or more asset classes, for individuals, who possess the qualifications and experience as specified in rule 4, and have completed their educational courses as member of a registered valuers organisation, to test their professional knowledge, skills, values and ethics in respect of valuation:

Provided that the authority may recognise an educational course conducted by a registered valuers organisation before its recognition as adequate for the purpose of appearing for valuation examination:

Provided also that the authority may recognise an examination conducted as part of a master's or post graduate degree course conducted by a University which is equivalent to the valuation examination.

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[12] Omitted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018. Before omission, it stood as : "and having qualification mentioned at clause (a) or (b)"

[13] Omitted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018. Before omission, it stood as : "and examination or training".

[14] Inserted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018

(2) The authority shall determine the syllabus for various valuation specific subjects or assets classes for the valuation examination on the recommendation of one or more Committee of experts constituted by the authority in this regard.

(3) The syllabus, format and frequency of the valuation examination, including qualifying marks, shall be published on the website of the authority at least three months before the examination.

(4) An individual who passes the valuation examination, shall receive acknowledgement of passing the examination.

(5) An individual may appear for the valuation examination any number of times.

6. Application for certificate of registration.—

(1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in **Form-A** of **Annexure-II** along with a non-refundable application fee of five thousand rupees in favour of the authority.

(2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in **Form-B** of **Annexure-II** along with a non-refundable application fee of ten thousand rupees in favour of the authority.

(3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.

(4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.

(5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.

(6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in **Form-C** of the **Annexure-II** within sixty days of receipt of the application, excluding the time given by the authority for presenting

additional documents, information or clarification, or appearing in person, as the case may be.

(7) If, after considering an application made under this rule, the authority is of the *prima facie* opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

(8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.

(9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either –

(a) accept the application and grant the certificate of registration; or

(b) reject the application by an order, giving reasons thereof.

(10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration.— The registration granted under rule 6 shall be subject to the conditions that the valuer shall –

(a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;

(b) at all times comply with the provisions of the Act , these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

(c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;

(d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;

(e) take adequate steps for redressal of grievances;

(f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;

(g) comply with the Code of Conduct (as per Annexure-I of these rules) of the registered valuers organisation of which he is a member;

(h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;

(i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;

(j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;

(k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;

(l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and

(m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation.— (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

(a) internationally accepted valuation standards;

(b) valuation standards adopted by any registered valuers organisation.

(2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

(3) The valuer shall, in his report, state the following:-

(a) background information of the asset being valued;

(b) purpose of valuation and appointing authority;

(c) identity of the valuer and any other experts involved in the valuation;

(d) disclosure of valuer interest or conflict, if any;

(e) date of appointment, valuation date and date of report;

(f) inspections and/or investigations undertaken;

(g) nature and sources of the information used or relied upon;

(h) procedures adopted in carrying out the valuation and valuation standards followed;

(i) restrictions on use of the report, if any;

(j) major factors that were taken into account during the valuation;

(k) conclusion; and

(l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender.— (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.

(2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/her membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

(3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

~~10.~~ **Functions of a Valuer.—** A valuer shall conduct valuation required under the Act as per these rules [15]~~and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.~~

11. Transitional Arrangement.— Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 30th September, [16]2019 ~~2018~~:

Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st March, 2019 [17]~~2018~~, the valuer shall complete such valuation or such part within three months thereafter.

~~*Explanation.*— It is hereby clarified that conduct of valuation by any person under any law other than the Act, or these rules shall not be effected by virtue of coming into effect of these rules unless the relevant other laws or other regulatory bodies require valuation by such person in accordance with these rules in which case these rules shall apply for such valuation also from the date specified under the laws or by the regulatory bodies.~~ [18]

CHAPTER III
RECOGNITION OF REGISTERED VALUERS ORGANISATIONS

12. Eligibility for registered valuers organisations.— (1) An organisation that meets requirements under sub-rule (2) may be

[15] Omitted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018. Before omission, it stood as: "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority".
[16] Substituted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.
[17] Substituted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.
[18] Omitted by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.

recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if —

(i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;

(ii) it is a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

(a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;

(b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

(2) The organisation referred to in sub-rule (1) shall be recognised if it –

(a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;

(b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation;

(c) conducts training for the individual members before a certificate of practice is issued to them;

(d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;

(e) provides for continuing education of individuals who are its members;

(f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and

(g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.

(3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013 (18 of 2013), and include in its bye laws the requirements specified in **Annexure-III,** within one year from the date of commencement of these rules.

13. Application for recognition— (1) An eligible organisation which meets the conditions specified in rule 12 may make an application for recognition as a registered valuers organisation for asset class or classes to the authority in **Form-D** of the **Annexure-II** along with a non-refundable application fee of rupees one lakh in favour of the authority.

(2) The authority shall examine the application, and may grant twenty-one days to the applicant to remove the deficiencies, if any, in the application.

(3) The authority may require the applicant to submit additional documents or clarification within twenty-one days.

(4) The authority may require the applicant to appear, within twenty-one days, before the Authority through its authorised representative for explanation or clarifications required for processing the application.

(5) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary that the applicant is eligible under these rules, it may grant a certificate of recognition as a registered valuers organisation in **Form-E** of **Annexure-II.**

(6) If, after considering an application made under sub-rule (1), the authority is of the *prima facie* opinion that recognition ought not to be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing through authorised representative, as the case may be.

(7) The applicant shall submit an explanation as to why its application should be accepted within fifteen days of the receipt of the

communication under sub- rule (6), to enable the authority to form a final opinion.

(8) After considering the explanation, if any, given by the applicant under sub- rule (7), the authority shall either –

(a) accept the application and grant the certificate of recognition; or

(b) reject the application by an order, giving reasons thereof.

(9) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

14. Conditions of Recognition.— The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

(a) at all times continue to satisfy the eligibility requirements specified under rule 12;

(b) maintain a register of members who are registered valuers, which shall be publicly available;

(c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;

(d) make such reports to the authority as may be required by it;

(e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;

(f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of ~~one year~~ [19](two years) from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;

(g) shall have the governance structure and incorporate in its bye laws the requirements specified in Annexure-III within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;

[19] Subs. by the Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018, rule 3 (w.e.f. 25-09-2018).

(h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and

(i) comply with such other conditions as may be specified by authority.

CHAPTER IV
CANCELLATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION OR RECOGNITION

15. Cancellation or suspension of certificate of registration or recognition.- The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation.- A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

17. Procedure to be followed for cancellation or suspension of registration or recognition certificate.— (1) Based on the findings of an inspection or investigation, or a complaint received or on material otherwise available on record, if the authorised officer is of the prima facie opinion that sufficient cause exists to cancel or suspend the registration of a valuer or cancel or suspend the recognition of a registered valuers organisation, it shall issue a show-cause notice to the valuer or registered valuers organisation,:

Provided that in case of an organisation referred to in clause (ii) of sub-rule (1) of rule 12 which has been granted recognition, the authorised officer shall, instead of carrying out inspection or investigation, seek the information required from the registered valuers organisation within the time specified therein and in the case of a default, give one more opportunity to provide the information within specified time failing which or in the absence of sufficient or satisfactory information provided, either initiate the process under this rule or refer the matter to the Central Government for appropriate directions.

(2) The show-cause notice shall be in writing and shall state-

(a) the provisions of the Act and rules under which it has been issued;

(b) the details of the alleged facts;

(c) the details of the evidence in support of the alleged facts;

(d) the provisions of the Act or rules or certificate of registration or recognition allegedly violated, or the manner in which the public interest has allegedly been affected;

(e) the actions or directions that the authority proposes to take or issue if the allegations are established;

(f) the manner in which the person is required to respond to the show-cause notice;

(g) consequences of failure to respond to the show-cause notice within the given time; and

(h) procedure to be followed for disposal of the show-cause notice.

(3) The show-cause notice shall be served in the following manner by-

(a) sending it to the valuer or registered valuers organisation at its registered address by registered post with acknowledgment due; or

(b) an appropriate electronic means to the email address provided by the valuer or registered valuers organisation to the authority.

(4) The authorised officer shall dispose of the show-cause notice by reasoned order in adherence to the principles of natural justice.

(5) The order in disposal of a show-cause notice may provide for-

(a) no action;

(b) warning; or

(c) suspension or cancellation of the registration or recognition; or

(d) change in any one or more partner or director or the governing board of the registered valuers organisation.

(6) An order passed under sub-rule (5) cancelling the recognition of a registered valuers organisation, shall specify the time within which its members may take membership of another registered valuers organisation recognised for valuation of relevant asset class without prejudice to their registration.

(7) The order passed under sub-rule (5) shall be issued to the concerned person immediately, and published on the website of the authority.

(8) The order passed under sub-rule (5) shall not become effective until thirty days have elapsed from the date of issue of the order unless stated otherwise.

(9) Any person aggrieved by an order of the authorised officer under sub-rule (5) may prefer an appeal before the authority.

Explanation.— For the purposes of this rule, the authorised officer shall be an officer as may be specified by the authority.

CHAPTER V
VALUATION STANDARDS

18. Valuation Standards.— The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

19. Committee to advise on valuation matters.— (1) The Central Government may constitute a Committee to be known as "Committee to advise on valuation matters" to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

(2) The Committee shall comprise of-

(a) a Chairperson who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics;

(b) one member nominated by the Ministry of Corporate Affairs;

(c) one member nominated by the Insolvency and Bankruptcy Board of India;

(d) one member nominated by the Legislative Department;

(e) up to four members nominated by Central Government representing authorities which are allowing valuations by registered valuers;

(f) up to four members who are representatives of registered valuers organisations, nominated by Central Government.

(g) Up to two members to represent industry and other stakeholder nominated by the Central Government in consultation with the authority;

(h) [20]Presidents of the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.

(3) The Chairperson and Members of the Committee shall have a tenure of three years and they shall not have more than two tenures.

CHAPTER VI
MISCELLANEOUS

20. Punishment for contravention.- Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement.— If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 448 of the Act.

[20] Inserted by the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018, (w.e.f. 14-06-2018).

ANNEXURE-I

MODEL CODE OF CONDUCT FOR REGISTERED VALUERS

[See clause (g) of rule 7 and clause (d) of sub-rule (2) of rule 12]

Integrity and Fairness

1. A valuer shall, in the conduct of his/its business, follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.
2. A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.
3. A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.
4. A valuer shall refrain from being involved in any action that would bring disrepute to the profession.
5. A valuer shall keep public interest foremost while delivering his services.

Professional Competence and Due Care

6. A valuer shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.
7. A valuer shall carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time
8. A valuer shall continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.
9. In the preparation of a valuation report, the valuer shall not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are based on statements of fact provided by the company or its auditors or consultants or information available in public domain and not generated by the valuer.

10. A valuer shall not carry out any instruction of the client insofar as they are incompatible with the requirements of integrity, objectivity and independence.

11. A valuer shall clearly state to his client the services that he would be competent to provide and the services for which he would be relying on other valuers or professionals or for which the client can have a separate arrangement with other valuers.

Independence and Disclosure of Interest

12. A valuer shall act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.

13. A valuer shall not take up an assignment if he/it or any of his/its relatives or associates is not independent in terms of association to the company.

14. A valuer shall maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.

15. A valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services.

16. A valuer shall not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or till the time the valuation report becomes public, whichever is earlier.

17. A valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs.

18. As an independent valuer, the valuer shall not charge success fee.

19. In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer shall declare the association with the company during the last five years.

Confidentiality

20. A valuer shall not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.

Information Management

21. A valuer shall ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.

22. A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the registered valuers organisation with which he/it is registered or any other statutory regulatory body.

23. A valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the registered valuers organisation with which he/it is registered, or any other statutory regulatory body.

24. A valuer while respecting the confidentiality of information acquired during the course of performing professional services, shall maintain proper working papers for a period of three years or such longer period as required in its contract for a specific valuation, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case.

Gifts and hospitality

25. A valuer or his/its relative shall not accept gifts or hospitality which undermines or affects his independence as a valuer.

    Explanation.— For the purposes of this code the term 'relative' shall have the same meaning as defined in clause (77) of Section 2 of the Companies Act, 2013 (18 of 2013).

26. A valuer shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person with a view to obtain

or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

Remuneration and Costs

27. A valuer shall provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.

28. A valuer shall not accept any fees or charges other than those which are disclosed in a written contract with the person to whom he would be rendering service.

Occupation, employability and restrictions

29. A valuer shall refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.

30. A valuer shall not conduct business which in the opinion of the authority or the registered valuer organisation discredits the profession.

ANNEXURE-II

FORM-A

[See sub-rule (1) of rule 6)]

Application for registration as a valuer by an individual

To

The Authority

[Insert address]

From

[Name and address]

Subject: Application for registration as a valuer

Sir/Madam,

I, having been enrolled as a member with the (please write the name of the Registered valuers organisation), hereby apply for registration as a valuer under section 247 of the Companies Act, 2013 read with sub-rule (1) of rule 6 of the Companies (Registered Valuers and Valuation) Rules, 2017 for the following class(es) of assets:-

(a) ________

(b) ________

My details are as under:

A. PERSONAL DETAILS

1. Title (Mr/Mrs/Ms):
2. Name:
3. Father's Name:
4. Mother's Name:
5. Date of Birth:
6. PAN No.:
7. AADHAAR No.:
8. Passport No.:
9. Address for Correspondence:

10. Permanent Address:

11. E-Mail Address

12. Mobile No:

B. EDUCATIONAL, PROFESSIONAL AND VALUATION EXAMINATION QUALIFICATIONS

1. Educational Qualifications

[Please provide educational qualifications from Bachelor's degree onwards]

Educational Qualification	Year of Passing	Marks (Per cent.)	Grade/Class	University/College	Remarks, if any

2. Professional Qualifications [excluding valuation specific courses]

Professional Qualification [excluding valuation specific education /courses]	Institute/ Professional Body	Membership No. (if applicable)	Date of enrolment	Remarks, if any

3. (a) Details of valuation examination passed

Date of examination	Asset class, if any	Marks secured	Percentage

(b) Valuation Qualifications

Valuation specific qualification/course	Recognised Registered Valuers Organisation		Asset class	Membership No. in Registered Valuers Organisation	Remarks, if any.
	Name	Recognition No			

C. WORK EXPERIENCE

1. Are you presently in practice / employment? (Yes or No)
2. Number of years in practice or of work experience in the relevant profession or in valuation (in years and months):
3. If in practice, address for professional correspondence:
4. Number of years in employment (in years and months):
5. Experience Details

Sl No.	From Date	To Date	Employment / Practice	If employed, Name of Employer and Designation	If in practice, experience in the relevant profession/ valuation	Area of work

D. REGISTERED VALUERS ORGANISATION

1. Please give details of the registered valuers organisation of which you are a member.
2. Please state your membership number.

E. ADDITIONAL INFORMATION

1. Have you ever been convicted for an offence? Yes or No.

   If yes, please give details.

2. Are any criminal proceedings pending against you? (Yes or No)

   If yes, please give details.

3. Have you ever been declared as an undischarged bankrupt, or applied to be adjudged as Bankrupt? (Yes or No)

   If yes, please give details.

4. Please provide any additional information that may be relevant for your application.

F. ATTACHMENTS

1. Copy of proof of residence.
2. Copies of documents in support of educational qualifications, professional qualifications and Registered Valuation Examination qualifications.
3. Copies of documents demonstrating practice or work experience for the relevant period.
4. Copies of certificate of employment by the relevant employer(s), specifying the period of such employment.
5. Income Tax Returns for the last three years.
6. Copy of proof of membership with a registered valuers organisation.
7. Passport-size photo.
8. Evidence of deposit / payment of five thousand rupees.

G. AFFIRMATIONS

1. Copies of documents, as listed in section F of this application form have been attached/ uploaded. The documents attached/ uploaded are ……

   I undertake to furnish any additional information as and when called for.

2. I am not disqualified from being registered as a valuer under the Companies (Registered Valuers and Valuation) Rules, 2017.

3. This application and the information furnished by me along with this application is true and complete. If found false or misleading at any stage, my registration shall be summarily cancelled.

I hereby undertake to comply with the requirements of the Companies Act, 2013, the rules made thereunder, the directions given by the authority, and the bye-laws, directions and guidelines issued or the resolutions passed in accordance with the bye-laws by the registered valuers organisation with which I am enrolled.

4. The applicable fee has been paid.

Name and Signature of applicant

Place:

Date:

VERIFICATION BY THE REGISTERED VALUERS ORGANISATION

We have verified the above details submitted by … who is our member with membership no. …and confirm these to be true and correct.

We recommend registration of … as a valuer.

(Name and Signature)

Authorised Representative of the Registered Valuers Organisation

Seal of the Registered Valuers Organisation

Place:

Date:

FORM-B

(See sub-rule (2) of rule 6)

Application for registration as a valuer by a partnership entity/Company

To

The Authority,

[Insert address]

From

[Name and address]

Subject: Application for registration as a valuer

Sir/Madam,

I, being a partner/director (strike off whichever is not applicable), being duly authorised for the purpose by the partnership entity/company through a resolution/deed (strike out whichever is not applicable) apply on behalf of [name and address of applicant partnership entity/company], and on behalf of its partners/directors, for registration as a valuer under section 247 of the Companies Act, 2013 read with sub-rule (2) of rule 6 of the Companies (Registered Valuers and Valuation) Rules, 2017 for the following class(es) of assets :-

(a) ___________

____

The details are as under:

A. DETAILS OF THE PARTNERSHIP ENTITY/COMPANY

1. Name:
2. Registration Number/ LLP Number/CIN Number:
3. PAN No.:
4. Address for Correspondence or registered office:
5. Permanent Address:
6. E-Mail Address
7. Telephone No.:
8. Others:

B. PERSONAL DETAILS OF EACH PARTNER/DIRECTOR

Title (Mr/Mrs/Ms):

1. Name:
2. Father's Name:
3. Mother's Name:
4. Date of Birth:
5. PAN No.:
6. AADHAAR No.:
7. Passport No.:
8. Address for Correspondence:
9. Permanent Address:
10. E-Mail Address
11. Mobile No.:
12. Others:

C. EDUCATIONAL, PROFESSIONAL AND VALUATION EXAMINATION QUALIFICATIONS OF PARTNERS/DIRECTORS

1. Educational Qualifications

[Please provide educational qualifications from Bachelor's degree onwards for each partner/director]

Educational Qualification	Year of Passing	Marks (per cent.)	Grade/ Class	University/College	Remarks, if any

2. **Professional Qualifications** for each partner/director

Professional Qualification	Institute/ Professional Body/ registered valuers organisation	Membership No. (If applicable)	Membership No. (if applicable)	Remarks, if any

3. (a) Details of valuation examination passed (for all partners/directors who are registered valuers)

Date of examination	Asset class, if any	Asset class, if any	Percentage

(b) Valuation Qualifications (for all partners/directors who are registered valuers)

Valuation specific qualification/course	Recognised Registered Valuers Organisation		Asset class	Membership No. in Registered Valuers Organisation	Remarks, if any.
	Name	Recognition No			

D. REGISTERED VALUERS ORGANISATION

1. Please give details of the registered valuers organisation of which you are a member. Please state your membership number.

2. Please give details of the registered valuers organisations of which your partners are members. Please state your membership number.

E. ADDITIONAL INFORMATION

1. Have you or any of your partners/directors ever been convicted for an offence? (Yes or No).

   If yes, please give details.

2. Are any criminal proceedings pending against you or your partners/directors? (Yes or No)

   If yes, please give details.

3. Are you or any of your partners/directors undischarged bankrupt, or have applied to be adjudged as a bankrupt? (Yes or No)

   If yes, please give details.

4. Please provide any additional information that may be relevant for your application.

F. ATTACHMENTS

1. Copy of proof of residence of itself and its partners/directors.
2. Copies of documents in support of educational qualifications, professional qualifications and valuation qualifications of partners/directors.
3. Financial statements/ Income Tax Returns for the last three years.
4. Copy of proof of membership with a registered valuers organisation .
5. Passport-size photo.
6. Evidence of deposit / payment of ten thousand rupees.

G. AFFIRMATIONS

1. Copies of documents, as listed in section F of this application form have been attached/ uploaded. The documents attached/ uploaded are ……

   I undertake to furnish any additional information as and when called for.

2. I am not disqualified from being registered as a valuer under the Companies (Registered Valuers and Valuation) Rules, 2017.
3. This application and the information furnished by me along with this application is true and complete. If found false or misleading at any stage, the registration of the applicant shall be summarily cancelled.
4. I hereby undertake that the partnership entity/company and its partners/directors shall comply with the requirements of the Companies Act, 2013, the rules made thereunder, the directions given by the authority, and the bye-laws, directions and

guidelines issued or the resolutions passed in accordance with the bye-laws by the registered valuers organisation with which I am enrolled.

5. The applicable fee has been paid.

Place: Name and Signature of applicant's representative

Date:

VERIFICATION BY THE REGISTERED VALUERS ORGANISATION

We have verified the above details submitted by … who is our member with membership no. …and confirm these to be true and correct. We recommend registration of … as a valuer.

(Name and Signature)

Authorised Representative of the Registered Valuers Organisation

Seal of the Registered Valuers Organisation

Place:

Date:

FORM-C

(See sub-rule (6) of rule 6)

CERTIFICATE OF REGISTRATION

VALUER REGISTRATION NO.

1. In exercise of the powers conferred by Section 247 of the Companies Act, 2013 read with sub-rule (6) of rule 6 of the Companies (Registered Valuers and Valuation) Rules, 2017 the Authority hereby grants a certificate of registration to *[insert name],* to act as a valuer in respect of *[insert asset class]* in accordance with these rules.

2. This certificate shall be valid from [insert start date].

Date:

(Name and Designation)

Place: For and on behalf of the Authority

APPENDIX
FORM-D

(See sub-rule (1) of rule 13)

APPLICATION FOR RECOGNITION

To

The Authority

[Insert address]

From

[Name and address]

Subject: Application for grant of certificate of recognition as a registered valuers organisation

Madam/Sir,

1. I, being duly authorised for the purpose, hereby apply on behalf of [*name and address of the applicant*] for grant of certificate of recognition as a registered valuers organisation in respect of the following class(es) of assets:

   (a)

   (b)

   and enclose a copy of the board resolution authorising me to make this application and correspond with the authority in this respect.

2. Copies of the articles of association, memorandum of association, trust deed, bye-laws and code of conduct, as applicable, of the applicant are enclosed.

3. I, on behalf of [insert name], affirm that the applicant is eligible to be recognised as a registered valuers organisation for the abovementioned class(es) of assets.

4. I, on behalf of [insert name], hereby affirm that –

   (a) all information contained in this application is true and correct in all material respects,

   (b) no material information relevant for the purpose of this application has been suppressed, and

(c) recognition granted in pursuance of this application may be cancelled summarily if any information submitted is found to be false or misleading in material respects at any stage.

5. If granted recognition, I, on behalf of [insert name], undertake to comply with the requirements of the Act, the rules, directions or guidelines issued by the authority, and such other conditions and terms as may be contained in the certificate of recognition or be specified or imposed by the authority subsequently, including the requirement to convert into a company registered under section 8 of the Companies Act, 2013 within the required period, if applicable.

Yours faithfully, Authorised Signatory

(Name)

(Designation)

Date:

Place:

APPENDIX TO FORM-D

PART
GENERAL

1. Name of the applicant.
2. Address of registered office and principal place of business of the applicant.
3. Corporate Identification Number (CIN)/ PAN/ Other Identification Number.
4. Name, designation and contact details of the person authorised to make this application and correspond with the authority in this respect.

PART II
STRUCTURE AND GOVERNANCE

1. Please provide brief details of the applicant's-
   (i) form of establishment
   (ii) ownership structure
   (iii) governance structure

PART III
MEMBERSHIP AND EXAMINATION

1. Please provide brief details of the
   (i) number of members who practice valuation and are already registered with the applicant
   (ii) specific discipline (in terms of rule 4):
   (iii) other criteria/ qualifications for and manner of registration with the applicant

   Note: In case of organisations referred to in clause (ii) of sub-rule (1) of rule 12, in lieu of information at (i), they may provide brief details of the number of members who have passed the valuation specific course conducted by the organisation.
2. Please provide brief details of any examination conducted for registration of members with the applicant.
3. Please provide brief details of the requirements of continuous education of the applicant's members.

PART IV
CODE OF CONDUCT

1. Please state if the Code of Conduct of the applicant is in compliance with the Companies (Registered Valuers and Valuation) Rules, 2017.
2. Please specify the clause number of the provisions of the Code of Conduct which are in addition to the provisions of the model Code of Conduct specified in the Companies (Registered Valuers and Valuation) Rules, 2017 (if any).

PART V
MONITORING AND DISCIPLINE

1. Please provide details mechanisms employed by the applicant to monitor its members.
2. Please provide details of mechanisms employed by the applicant to redress grievances against its members and itself.
3. Please provide details of disciplinary mechanisms employed by the applicant.

Please provide any other details you consider relevant in support of the application.

Authorised Signatory.

(Name)

(Designation)

Date:

Place:

FORM-E

(See sub-rule (5) of rule 13)

CERTIFICATE OF RECOGNITION REGISTERED VALUERS ORGANISATION RECOGNITION NO.

1. In exercise of the powers conferred by sub-rule (5) of rule 13 of the Companies (Registered Valuers and Valuation) Rules, 2017 the Registration hereby grants a certificate recognising *[insert name],* as a registered valuers organisation for the valuation of *[insert class(es) of assets]*.

   Conditions of Recognition

2. [Insert Name] shall admit as members who possess the educational qualifications and experience as specified herein under:
3. Conditions as laid down in rule 14 [give in detail]
4. This certificate of recognition shall be valid from [*insert start date*].

(Name and Designation)

For and on behalf of the Authority

Date:

Place:

ANNEXURE - III

(See sub-rule (3) of rule 12 and clauses (f) and (g) of rule 14)

Governance Structure and Model Bye Laws for Registered Valuers Organisation

Part I

1. Governance Structure

No person shall be eligible to be recognised as an registered valuers organisation unless it is a company registered under section 8 of the Companies Act, 2013 with share capital, and –

(a) its sole object is to carry on the functions of a registered valuers organisation under the Companies Act, 2013;

(b) it is not under the control of person(s) resident outside India,

(c) not more than forty-nine per cent. of its share capital is held, directly or indirectly, by persons resident outside India; and

(d) it is not a subsidiary of a body corporate through more than one layer:

(e) Explanation: "layer" in relation to a body corporate means its subsidiary;

(f) itself, its promoters, its directors and persons holding more than ten percent. of its share capital are fit and proper persons.

2. Registered Valuers Organisation to Have Bye-Laws

1. The registered valuers organisation shall submit to the authority its bye-laws along with the application for its registration as a registered valuers organisation.

2. The bye-laws shall provide for all matters specified in the model bye-laws in Part II.

3. The bye-laws shall at all times be consistent with the model bye-laws.

4. The registered valuers organisation shall publish its bye-laws, the composition of all committees formed, and all policies created under the bye-laws on its website.

3. Amendment of Bye-Laws

1. The Governing Board may amend the bye-laws by a resolution passed by votes in favour being not less than three times the number of the votes, if any, cast against the resolution, by the directors.
2. A resolution passed in accordance with sub-bye law (1) shall be filed with the authority within seven days from the date of its passing, for its approval.
3. The amendments to the bye-laws shall come into effect on the seventh day of the receipt of the approval, unless otherwise specified by the authority.
4. The registered valuers organisation shall file a printed copy of the amended bye-laws with the authority within fifteen days from the date when such amendment is made effective.

4. Composition of the Governing Board.

1. The Governing Board shall have a minimum of ____ [Insert number] directors.
2. More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.
3. Not more than one fourth of the directors shall be registered valuers.
4. More than half of the directors shall be independent directors at the time of their appointment, and at all times during their tenure as directors:

Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

5. An independent director shall be an individual –

(a) who has expertise in the field of finance, law, management or valuation;

(b) who is not a registered valuer;

(c) who is not a shareholder of the registered valuers organisation; and

(d) who fulfils the requirements under sub-section (6) of section 149 of the Companies Act, 2013.

6. The directors shall elect an independent director as the Chairperson of the Governing Board.

Explanation - For the purposes of bye laws, any fraction contained in

(a) 'more than half' shall be rounded off to the next higher number; and

(b) 'not more than one- fourth' shall be rounded down to the next lower number.

Part II
MODEL BYE-LAWS OF A REGISTERED VALUERS ORGANISATION

I. GENERAL

1. The name of the registered valuers organisation is "____" (hereinafter referred to as the 'Organisation').

2. The 'Organisation' is registered as a company under section 8 of the Companies Act, 2013 (18 of 2013) with its registered office situated at ______ [provide full address].

3. These bye-laws may not be amended, except in accordance with this Annexure.

II. DEFINITIONS

4. (1) In these bye-laws, unless the context otherwise requires -

(a) "certificate of membership" means the certificate of membership of the Organisation granted under bye-law 10;

(b) "Act" means the Companies Act, 2013 (18 of 2013);

(c) "Governing Board" means the Board of Directors or Board of the Organisation as defined under clause (10) of section 2 of Companies Act, 2013 (18 of 2013);

(d) "relative" shall have the same meaning as assigned to it in clause (77) of section 2 of the Companies Act, 2013 (18 of 2013);

(2) Unless the context otherwise requires, words and expressions used and not defined in these bye-laws shall have the meanings assigned to them in the Companies Act, 2013 (18 of 2013).

III. OBJECTIVES

5. (1) The Organisation shall carry on the functions of the registered valuers organisation under the Companies (Registered Valuers and Valuation) Rules, 2017, and functions incidental thereto.

(2) The Organisation shall not carry on any function other than those specified in sub-clause (1), or which is inconsistent with the discharge of its functions as a registered valuers organisation .

IV. DUTIES OF THE ORGANISATION

6. (1) The Organisation shall maintain high ethical and professional standards in the regulation of its members.

(2) The Organisation shall –

(a) ensure compliance with the Companies Act, 2013 and rules, regulations and guidelines issued thereunder governing the conduct of registered valuers organisation and registered valuers;

(b) employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation of its members;

(c) be accountable to the authority in relation to all bye-laws and directions issued to its members;

(d) develop the profession of registered valuers;

(e) promote continuous professional development of its members;

(f) continuously improve upon its internal regulations and guidelines to ensure that high standards of professional and ethical conduct are maintained by its members; and

(g) provide information about its activities to the authority.

V. Committees of the Organisation

Advisory Committee of Members.

7. (1) The Governing Board may form an Advisory Committee of members of the Organisation to advise it on any matters pertaining to-

(a) the development of the profession;

(b) standards of professional and ethical conduct; and

(c) best practices in respect of Valuation.

(2) The Advisory Committee may meet at such places and times as the Governing Board may provide.

Other Committees of the Organisation.

8. (1) The Governing Board shall constitute-

(a) one or more Membership Committee(s) consisting of such members as it deems fit;

(b) a Monitoring Committee consisting of such members as it deems fit;

(c) one or more Grievance Redressal Committee(s), with not less than three members,;

(d) one or more Disciplinary Committee(s) consisting of at least one member nominated by the authority.

(2) The Chairperson of each of these Committees shall be an independent director of the Organisation.

VI. Membership

Eligibility for Enrolment.

9. No individual shall be enrolled as a member if he is not eligible to be registered as a registered valuer with the authority:

Provided that the Governing Board may provide additional eligibility requirements for enrolment:

Provided further that such additional requirements shall not discriminate on the grounds of religion, race, caste, gender, place of birth or professional affiliation.

Process of Enrolment as Member.

10. (1) An individual may apply for enrolment as a member by submitting an application in such form, in such manner and with such fees as may be specified by the Organisation.

(2) The Organisation shall examine the application in accordance with the applicable provisions of the rules, regulations and guidelines thereunder.

(3) On examination of the application, the Organisation shall give an opportunity to the applicant to remove the deficiencies, if any, in the application.

(4) The Organisation may require an applicant to submit additional documents, information or clarification that it deems fit, within reasonable time.

(5) The Organisation may reject an application if the applicant does not satisfy the criteria for enrolment or does not remove the deficiencies or submit additional documents or information to its satisfaction, for reasons recorded in writing.

(6) The rejection of the application shall be communicated to the applicant stating the reasons for such rejection, within thirty days of the receipt of the application, excluding the time given for removing the deficiencies or presenting additional documents or clarification by the Organisation, as the case may be.

(7) The acceptance of the application shall be communicated to the applicant, along with a certificate of membership.

(8) An applicant aggrieved of a decision rejecting his application may appeal to the Membership Committee of the Organisation within thirty days from the receipt of such decision.

(9) The Membership Committee shall pass an order disposing of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

Membership Fee

11. The Organisation may require the members to pay a fixed sum of money as its annual membership fee.

Register of Members

12. (1) The Organisation shall maintain a register of its professional members, containing their-

(a) name;

(b) proof of identity;

(c) contact details;

(d) address;

(e) date of enrolment and membership number;

(f) date of registration with the authority and registration number;

(g) details of grievances pending against him with the Organisation;

(h) details of disciplinary proceedings pending against him with the Organisation; and

(i) details of orders passed against him by the authority or Disciplinary Committee of the Organisation.

(2) The records relating to a member shall be made available for inspection to-

(a) the authority,

(b) any other person who has obtained the consent of the member for such inspection.

VII. DUTIES OF MEMBERS

13. (1) In the performance of his functions, a member shall-

(a) act in good faith in discharge of his duties as a registered valuer;

(b) discharge his functions with utmost integrity and objectivity;

(c) be independent and impartial;

(d) discharge his functions with the highest standards of professional competence and professional ethics;

(e) continuously upgrade his professional expertise;

(f) comply with applicable laws in the performance of his functions; and

(g) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

14. The Organisation shall have a Code of Conduct that shall be consistent with, and that shall provide for all matters in the Code of Conduct as specified in the Annexure-I.

VIII. MONITORING OF MEMBERS

15. The Organisation shall have a Monitoring Policy to monitor the professional activities and conduct of members for their adherence to the provisions of the Act, rules, regulations and guidelines issued

thereunder, these bye-laws, the Code of Conduct and directions given by the Governing Board.

16. A member shall submit information about ongoing and concluded engagements as a registered valuer, in the manner and format specified by the Organisation, at least twice a year stating inter alia, the date of assignment, date of completion and reference number of valuation assignment and valuation report.

17. The Monitoring Committee shall review the information and records submitted by the members in accordance with the Monitoring Policy.

18. The Monitoring Policy shall provide for the following -

    (a) the frequency of monitoring;

    (b) the manner and format of submission or collection of information and records of the members, including by way of inspection;

    (c) the obligations of members to comply with the Monitoring Policy;

    (d) the use, analysis and storage of information and records;

    (e) evaluation of performance of members; and

    (f) any other matters that may be specified by the Governing Board.

19. The Monitoring Policy shall –

    (a) have due regard for the privacy of members,

    (b) provide for confidentiality of information received, except when disclosure of information is required by the authority or by law, and

    (c) be non-discriminatory.

20. The Organisation shall submit a report to the authority in the manner specified by the authority with information collected during monitoring, including information pertaining to -

    (a) the details of the appointments made under the Act/these Rules,

    (b) the transactions conducted with stakeholders during the period of his appointment;

    (c) the transactions conducted with third parties during the period of his appointment; and

    (d) the outcome of each appointment.

IX. Grievance Redressal Mechanism

21. (1) The Organisation shall have a Grievance Redressal Policy providing the procedure for receiving, processing, redressing and disclosing grievances against the Organisation or any member of the Organisation by-

    (a) any member of the Organisation;

    (b) any person who has engaged the services of the concerned members of the Organisation; or

    (c) any other person or class of persons as may be provided by the Governing Board.

(2) The Grievance Redressal Committee, after examining the grievance, may-

    (a) dismiss the grievance if it is devoid of merit; or

    (b) initiate a mediation between parties for redressal of grievance.

(3) The Grievance Redressal Committee shall refer the matter to the Disciplinary Committee, wherever the grievance warrants disciplinary action.

22. The Grievance Redressal Policy shall provide for-

    (a) the format and manner for filing grievances;

    (b) maximum time and format for acknowledging receipt of a grievance;

    (c) maximum time for the disposal of the grievance by way of dismissal, reference to the Disciplinary Committee or the initiation of mediation;

    (d) details of the mediation mechanism

    (e) provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;

    (f) action to be taken in case of malicious or false complaints;

    (g) maintenance of a register of grievances made and resolutions arrived at; and

    (h) periodic review of the Grievance Redressal Mechanism.

X. DISCIPLINARY PROCEEDINGS

23. The Organisation may initiate disciplinary proceedings by issuing a show-cause notice against members-

    (a) based on a reference made by the Grievances Redressal Committee;

    (b) based on monitoring of members;

    (c) following the directions given by the authority or any court of law; or

    (d) *suo moto*, based on any information received by it.

24. (1) The Organisation shall have a Disciplinary Policy, which shall provide for the following -

    (a) the manner in which the Disciplinary Committee may ascertain facts;

    (b) the issue of show-cause notice based on the facts;

    (c) disposal of show-cause notice by a reasoned order, following principles of natural justice;

    (d) timelines for different stages of disposal of show cause notice; and

    (e) rights and obligations of the parties to the proceedings.

(2) The orders that may be passed by the Disciplinary Committee shall include-

    (a) expulsion of the member;

    (b) suspension of the member for a certain period of time;

    (c) admonishment of the member;

    (d) imposition of monetary penalty;

    (e) reference of the matter to the authority, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by the authority; and

    (f) directions relating to costs.

(3) The Disciplinary Committee may pass an order for expulsion of a member if it has found that the member has committed-

(a) an offence under any law for the time being in force, punishable with imprisonment for a term exceeding six months, or an offence involving moral turpitude;

(b) a gross violation of the Act, rules, regulations and guidelines issued thereunder, bye-laws or directions given by the Governing Board which renders him not a fit and proper person to continue acting as a registered valuer.

(4) Any order passed by the Disciplinary Committee shall be placed on the website of the Organisation within seven days from passing of the said order, with one copy each being provided to each of the parties to the proceeding.

(5) Monetary penalty received by the Organisation under the orders of the Disciplinary Committee shall be used for the professional development.

25. (1) The Governing Board shall constitute an Appellate Panel consisting of one independent director of the Organisation, one member each from amongst the persons of eminence having experience in the field of law and field of valuation, and one member nominated by the authority.

(2) Any person aggrieved of an order of the Disciplinary Committee may prefer an appeal before the Appellate Panel within thirty days from the receipt of a copy of the final order.

(3) The Appellate Panel shall dispose of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

XI. SURRENDER OF MEMBERSHIP AND EXPULSION FROM MEMBERSHIP

Temporary Surrender of Membership.

26. (1) A member shall make an application for temporary surrender of his membership of the Organisation at least thirty days before he-

(a) becomes a person not resident in India;

(b) takes up employment; or

(c) starts any business, except as specifically permitted under the Code of Conduct;

(d) and upon acceptance of such temporary surrender and on completion of thirty days from the date of application for temporary surrender, the name of the member shall be temporarily struck from the registers of the Organisation, and the same shall be intimated to the authority.

(2) No application for temporarily surrender of membership of the Organisation shall be accepted if -

(a) there is a grievance or disciplinary proceeding pending against the member before the Organisation or the authority, and he has not given an undertaking to cooperate in such proceeding; or

(b) the member has been appointed as a registered valuer for a process under the Companies Act, 2013, and the appointment of another registered valuer may be detrimental to such process.

(3) A member may make an application to revive his temporarily surrendered membership when the conditions for temporary surrender as provided in sub-clause (1) cease to be applicable, and upon acceptance of the application for revival, the name of the member shall be re-inserted in the register of the Organisation, and the same shall be intimated to the authority.

Surrender of Membership

27. (1) A member who wishes to surrender his membership of the Organisation may do so by submitting an application for surrender of his membership.

(2) Upon acceptance of such surrender of his membership, and completion of thirty days from the date of such acceptance, the name of the member shall be struck from the registers of the Organisation, and the same shall be intimated to the authority.

28. Any fee that is due to the Organisation from a member surrendering his membership shall be cleared prior to his name being struck from the registers of the Organisation.

29. The Organisation may refuse to accept the surrender of membership by any member if -

(a) there is any grievance or disciplinary proceeding pending against the member before the Organisation or the authority; or

(b) the member has been appointed as a registered valuer process under the Companies Act, 2013, and the appointment of another registered valuer may be detrimental to such process.

Expulsion from Membership.

30. A member shall be expelled by the Organisation–

(a) if he becomes ineligible to be enrolled under bye-law 9;

(b) on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;

(c) upon non-payment of membership fee despite at least two notices served in writing;

(d) upon the cancellation of his certificate of registration by the authority;

(e) upon the order of any court of law.

[21]ANNEXURE-IV

Indicative Matrix on requisite qualifications/experience in specified discipline

(See Explanation II to rule 4)

Asset Class	Eligibility Qualification	Experience in specified discipline
(I)	**(IV)**	**(V)**
Land and Building	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	Five years
	(ii) Post Graduate on above courses.	Three years
Plant and Machinery	(i) Graduate in Civil Engineering, Architecture, or Town Planning or equivalent;	Five years
	(ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course)	Three years
Securities or Financial Assets	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance). (ii) Post Graduate in Finance	Three years

Note.- The eligibility qualification means qualification obtained from a recognised Indian University or equivalent whether in India or abroad.

[21] Subs. by the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, w.e.f. 13-11-2018.

Annexure-2

THE COMPANIES ACT, 2013

CODE OF CONDUCT FOR REGISTERED VALUERS

(See clause (g) of rule 7 and clause (d) of sub-rule (2) of rule 12)

OF

ICAI REGISTERED VALUERS ORGANISATION

COMPANY LIMITED BY SHARES

NOT FOR PROFIT U/S 8 OF THE COMPANIES ACT, 2013

ICAI Registered Valuers Organisation lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in Annexure – I of Companies (Registered Valuers and valuation) Rules, 2017

The member shall comply with the Code of Conduct as given below:

Integrity and Fairness

1. A valuer shall, in the conduct of his/its business, follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.

2. A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships.

3. A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.

4. A valuer shall refrain from being involved in any action that would bring disrepute to the profession.

5. A valuer shall keep public interest foremost while delivering his services.

Professional Competence and Due Care

6. A valuer shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.

7. A valuer shall carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time

8. A valuer shall continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.

9. In the preparation of a valuation report, the valuer shall not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are based on statements of fact provided by the company or its auditors or consultants or information available in public domain and not generated by the valuer.

10. A valuer shall not carry out any instruction of the client insofar as they are incompatible with the requirements of integrity, objectivity and independence.

11. A valuer shall clearly state to his client the services that he would be competent to provide and the services for which he would be relying on other valuers or professionals or for which the client can have a separate arrangement with other valuers.

Independence and Disclosure of Interest

12. A valuer shall act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.

13. A valuer shall not take up an assignment if he/it or any of his/its relatives or associates is not independent in terms of association to the company.

14. A valuer shall maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.

15. A valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services.

16. A valuer shall not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or till the time the valuation report becomes public, whichever is earlier.

17. A valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs.

18. As an independent valuer, the valuer shall not charge success fee.

19. In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer shall declare the association with the company during the last five years.

Confidentiality

20. A valuer shall not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.

Information Management

21. A valuer shall ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.

22. A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the Registered Valuers Organisation with which he/it is registered or any other statutory regulatory body.

23. A valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the registered valuers organisation with which he/it is registered, or any other statutory regulatory body.

24. A valuer while respecting the confidentiality of information acquired during the course of performing professional services, shall maintain proper working papers for a period of three years or such longer period as required in its contract for a specific valuation, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case.

Gifts and hospitality.

25. A valuer or his/its relative shall not accept gifts or hospitality which undermines or affects his independence as a valuer.

    Explanation.— For the purposes of this code the term 'relative' shall have the same meaning as defined in clause (77) of Section 2 of the Companies Act, 2013 (18 of 2013).

26. A valuer shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person with a view to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

Remuneration and Costs.

27. A valuer shall provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.

28. A valuer shall not accept any fees or charges other than those which are disclosed in a written contract with the person to whom he would be rendering service.

Occupation, employability and restrictions.

29. A valuer shall refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.

30. A valuer shall not conduct business which in the opinion of the authority or the Registered Valuer Organisation discredits the profession.

Annexure-3

Guidelines on Use of Caveats, Limitations and Disclaimers by the Registered Valuers in Valuation Reports

1. **Short title and commencement.**

a. These Guidelines may be called the Insolvency and Bankruptcy Board of India (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020.

b. These Guidelines shall come into force in respect of valuation reports in respect of valuations completed by Registered Valuers (RVs) on or after 1st October, 2020.

2. Background

a. The Companies (Registered Valuers and Valuation) Rules, 2017 (Rules) provides a comprehensive framework for development and regulation of the profession of valuers. These Rules set standards of professional conduct and performance for the valuation profession in the interest of stakeholders.

b. Rule 8 of the Rules mandates that the Registered Valuers (RVs) shall state "caveats, limitations and disclaimers" to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report. This Rule aims to ensure that a valuation report does not carry a disclaimer, which has the potential to dilute the responsibility of the RV or make the valuation unsuitable for the purpose for which the valuation was conducted. However, the scope of "caveats, limitations and disclaimers" is not clear to everyone, including users and RVs, and consequently, the RVs are having different practices in presentation of caveats, limitations and disclaimers in valuation reports.

c. The Authority constituted a Committee of Experts comprising Mr. Rajan Wadhawan, Mr. Sunil Agarwal and Mr. Jigesh Mehta to develop a standard template for disclaimers. The secretarial support to the committee was provided by Mr. Harish C. Dhamija, member ICSI RVO. The Committee of Experts submitted its report to the Authority on 07th April, 2020, which was considered by the Authority in consultation with the Registered Valuers Organisations (RVOs) for finalisation of these Guidelines.

3. Objective

These Guidelines provide guidance to the RVs in the use of Caveats, Limitations, and Disclaimers in the interest of credibility of the valuation reports. These also provide an illustrative list of the Caveats, Limitations, and Disclaimers which shall not be used in a valuation report.

4. Adherence

a. An RV shall prepare valuations reports under rule 8 of the Rules in adherence to these Guidelines.

b. An RVO shall monitor adherence to these Guidelines through scrutiny of the valuation reports.

5. Structure

These Guidelines are divided into three sections, as presented in the annexure. The first section elaborates on the need for Caveats, Limitations, and Disclaimers in a valuation report. The second section provides a guidance note on the use of Caveats, Limitations, and Disclaimers, while the third section provides an illustrative list of Caveats, Limitations, and Disclaimers for each asset class provided in the Rules.

6. These Guidelines have been prepared in consultation with the RVOs.

7. These Guidelines are issued in exercise of the powers under Rule 14(i) of the Companies (Registered Valuers and Valuation) Rules, 2017.

8. These Guidelines will be reviewed by the Authority from time to time.

Annexure

I. Need for Caveats, Limitations, and Disclaimers

1. The valuation of an asset is an estimate of the worth of that asset which is arrived at after factoring in multiple parameters and externalities. This may not be the actual price of that asset and the market may discover a different price for that asset. Sometimes different RVs arrive at different estimates of value for the same asset. While this may be possible when the purposes of valuation are different, such variance is often observed even when the purposes as also the circumstances in which the valuation is undertaken are the same. In such a situation, the market may question the ability of the RVs and the integrity of the valuation process. This is not in the interest of the stakeholders where crucial economic and commercial decisions are taken on the basis of the valuation reports.

2. A limitation arises if the RV is unable to obtain sufficient information and explanations considered necessary for the purpose of the valuation. Where such limitation results in the RV being unable to carry out the valuation in accordance with the normal approach to valuation, the valuation report shall be modified with a paragraph setting out the nature of circumstances, giving rise to the limitation.

3. A disclaimer is required in a valuation report to mitigate the potential risk of the RV. The reasons for providing disclaimers in a valuation report are as under:

   a. A disclaimer protects the rights of a RV by cautioning and dissuading others when using the contents of a valuation report.

   b. A disclaimer limits the liability of a RV since it serves both as a warning and a way to mitigate risk, a disclaimer protects a RV from liability. Anyone who reads the disclaimers should understand the risks involved in using the valuation report or acting upon the information that it contains.

   c. A disclaimer protects the RV from incurring liability or limits the liability of the RV from the actions of the company or management or insolvency professional at whose instructions the valuation has been carried out.

4. A valuation report should not carry a disclaimer, which has potential to dilute the responsibility of the RV or makes the valuation unsuitable for the purpose for which the valuation was conducted. The valuation reports should be capable of being tested through the crucible of legal evidence in judicial proceedings. The following points may be considered while providing disclaimers in a valuation report. An RV may:

   a. identify the rights he/she wants to protect;

   b. identify the areas where he/she might be subject to liability;

   c. clarify that the contents of the valuation report pertain to specific use by the company; and

   d. caution the reader of the potential risks.

   However, a disclaimer will not, by itself, be able to exclude an RV"s liability in respect of negligence in performance of his duties.

5. The Rules notified under the Companies Act, 2013 designates IBBI as the authority for development and regulation of the valuation profession. Rule 7 (m) provides that a RV shall comply with such other conditions as may be imposed by the authority. Rule 8 (3) (l) provides that the RV shall include caveats, limitations and disclaimers in the valuation report, to the extent that they explain or elucidate the limitations faced by the RV, which shall not be for the purpose of limiting his responsibility for the valuation report.

II. Guidance Note on Caveats, Limitations, and Disclaimers

1. In general, valuation is required in the context of the following:

   a) Consummation of certain transactions like acquisition, disposal, merger, amalgamation;

   b) Internal decision-making/Corporate Governance;

   c) Regulatory Compliance: Companies Act, SEBI Regulations, Income Tax, Wealth Tax, FEMA, etc;

   d) Fund Mobilisation - both equity and debt;

   e) Disputes (within and outside the courts);

   f) Borrowing and lending decisions; and

   g) Insolvency and Bankruptcy proceedings.

   Rule 10 read with section 247 of the Companies Act, 2013 (Act) require that a RV shall conduct valuations required under the Act. The Insolvency and Bankruptcy Code (Code) read with the regulations mandates that the valuations required under the Code or any of the regulations made thereunder shall be conducted by a registered valuer.

2. In the recent past there has been public concern on valuation and its impact on company's shareholders, creditors and other stakeholders. Fund providers, both equity and debt, have been active in asking for enquiries into valuations submitted by companies for mobilizing funds and restructuring. Regulators have also been raising questions on the valuations submitted in the context of transactions entailing purchase/sale, income tax assessment, fund mobilization and corporate restructurings. Banks and financial institutions are concerned at the sharp dip in valuation of the assets of the borrower when the borrowers" accounts are stressed and become a nonperforming asset in their books. In the context of the Code, the Adjudicating Authority has on

several occasions raised concern about the sharp difference between the valuations arrived at by two different RVs or the variation between the amount offered by a successful resolution applicant and the amount stated in the valuation report.

3. A detailed and fully reasoned valuation report should be prepared in every case of valuation done in respect of both mandatory and discretionary valuation, where an RV is appointed. The following aspects need to be considered during the preparation of a valuation report.

3.1. Contents of a Valuation Report

Considering the interests of stakeholders and the need for transparency and principles of good corporate governance, the under noted matters should compulsorily be covered in the Valuation Report, in a clear, unambiguous and non-misleading manner, consistent with the need to maintain confidentiality:

a. Background Information of the asset being valued;

b. Purpose of valuation and appointing authority;

c. Bases of Value;

d. Premise of Value;

e. Identity of the RV and any other experts involved in the valuation;

f. Intended Users of the Valuation;

g. Disclosure of RV interest or conflict, if any;

h. Date of appointment, valuation date and date of report;

i. Inspections and /or investigations undertaken;

j. Business interest, ownership characteristics;

k. Nature and sources of information;

l. Significant Assumptions, if any;

m. Procedures adopted in carrying out the valuation and valuation standards followed;

n. Restrictions on use of report, if any;

o. Major factors that were taken into account during valuation;

p. Conclusion; and

q. Caveats, limitations and disclaimers.

3.2. Procedures involved in preparation of a valuation report

i. The procedures adopted in carrying out a valuation may vary with circumstances, nature and purpose of valuation as well as information and time available. The principal procedures adopted by the RV in carrying out the valuation should be set out briefly in the report. Such procedures may typically include:

- Review of past financials;
- Review and analysis of financial projections;
- Industry analysis;
- SWOT analysis;
- Comparison with similar transactions;
- Comparison with other similar listed companies;
- Discussions with the management;
- Review of principal agreements/documents etc.;
- Site visit (external, internal or both) or desktop valuation;
- Any assumption made for internal condition must be stated like in case of desktop valuation, a RV must state that the basis of the report is photographs and documents provided and secondary research only; and
- Process of site identification, i.e., self-identified or with the help of clients representative or client itself.

ii. The RV should also include in his report:

- an affirmative statement that information provided and assumptions used by management/others in developing projections have been appropriately reviewed, enquiries made regarding basis of key assumptions in context of business being valued and the industry/economy; and
- an affirmative statement on adequacy of information and time for carrying out the valuations;

iii. The RV should mention any key factors which have a material impact on the valuation, including inter alia the size or number of the assets or shares of the company, its/their materiality or significance, minority or majority holding and changes on account of the transaction, any impacts on controlling interest, diminution or augmentation therein and marketability or lack thereof; prevailing market conditions and government policy in the specified industry as a disclaimer depending upon the factor.

iv. In case of valuation of tangible assets, there may be impact on the value due to faulty structural design or contamination. Based on the individual circumstances, the RV may decide on how to use such information in the valuation report.

3.3. Caveats, Limitations and Disclaimers

i. Caveats are warnings or cautions to the client/user of services.

ii. Limitation is a restriction on the scope of the RV"s work including inspection or investigation of the data available for analysis that may be present and known to the RV at the outset of the valuation engagement or that may arise during the course of a valuation assignment.

iii. A disclaimer is a statement intended to specify or delimit the scope of rights and obligations that may be exercised and enforced by parties in a legally recognized relationship. It is a statement denying responsibility intended to prevent civil liability arising for particular acts or omissions.

iv. While caveat, limitations and disclaimers have different connotation, in the context of a valuation, the clauses may get used in an interchangeable manner as limitation or a disclaimer by a RV could be caveat for the user of the report. Hence it is imperative that the users of the report are familiarized about the same to enable them to assess the impact of the disclaimer/caveat/limitation on the credibility and reliability of the report.

v. Any caveats, limiting condition or other disclaimers to the report must be clearly stated with appropriate specificity.

vi. In the preparation of a valuation report, the RV shall not disclaim liability for his expertise or deny his duty of "due care". However, it is recognized that a RV, shall prepare the valuation report of the company based on information and records concerned as provided by the management. The management remains liable for the correctness and veracity thereof. However, significant inputs provided to the RV by the management/owners should be considered, investigated and /or corroborated. In cases where credibility of information supplied cannot be supported, consideration should be given as to whether or how such information is used.

vii. The RV does not make or calibrate the projections but factors his response and the valuation assessment on the reliability and credibility of the information. The various projections of business growth, profitability, and cash flows etc., which are used in the valuation report are the company's estimates. The RV should consider the reliability and credibility of projections after testing the assumptions made by the management / owners / company in given market conditions and after sufficient inspection, enquiry, computation and analysis. The extent of evidence requires professional judgements and RV has to ensure that it is adequate for the purpose of valuation. The RV may disagree with the projections if they are conjectural or bordering on the unreal and accordingly make necessary modifications.

viii. A RV has the right to demand relevant information and basis of the projections before commenting thereon. It is the duty of the entity being valued to be fair and to provide accurate information about the subject asset.

ix. In a valuation report, the RV can state that the assumptions are statements of fact provided by the company and not generated by the RV. This warning statement is necessary as data provided by the company is often construed be a part of the valuation report. Notwithstanding this, the RV has to carry out sufficient inspection, enquiry, computations and analysis to ensure that valuation is properly supported.

x. All valuations are to be carried out in sufficient detail to comply with the requirements of "due care". However, it can be reasonably expected that circumstances may place certain limitations regarding access to information or the time available. Hence, one has to recognize limitations of time and context in valuations, as it cannot constrain business need and flexibility.

xi. Keeping in view business needs and circumstances and, in the interest of transparency, any significant concerns regarding the justification, the information or the time available to complete the valuation be stated in the valuation report, together with appropriate explanation and implications.

xii. The effort, diligence and level of expertise applied by the relevant Registered Valuer, need to be stated in the valuation report.

3.4. Illustrative Caveats, Limitations and Disclaimers in a Valuation Report

An illustrative list, which is common for all types of assets, is provided below:

i. Restriction on use of Valuation Report

This document has been prepared for the purposes stated herein and should not be relied upon for any other purpose. Our client is the only authorized user of this report and is restricted for the purpose indicated in the engagement letter. This restriction does not preclude the client from providing a copy of the report to third-party advisors whose review would be consistent with the intended use. I/we do not take any responsibility for the unauthorized use of this report.

ii. Responsibility of RV

I/We owe responsibility to only to the authority/client that has appointed me/us under the terms of the engagement letters. We will not be liable for any losses, claims, damages or liabilities arising out of the actions taken, omissions or advice given by any other person. In no event shall we be liable for any loss, damages, cost or expenses arising in any way from fraudulent acts, misrepresentations or wilful default on part of the client or companies, their directors, employees or agents.

iii. Accuracy of Information

While our work has involved an analysis of financial information and accounting records, our engagement does not include an audit in accordance with generally accepted auditing standards of the clients existing business records. Accordingly, we express no audit opinion or any other form of assurance on this information.

iv. Achievability of the forecast results

We do not provide assurance on the achievability of the results forecast by the management/owners as events and circumstances do not occur as expected; differences between actual and expected results may be material. We express no opinion as to how closely the actual results will correspond to those projected/forecast as the achievement of the forecast results is dependent on actions, plans and assumptions of management.

v. Post Valuation Date Events (This should be disclosed while defining valuation date)

The user to which this valuation is addressed should read the basis upon which the valuation has been done and be aware of the potential for later variations in value due to factors that are unforeseen at the valuation date. Due to possible changes in market forces and circumstances, this valuation report can only be regarded as relevant as at the valuation date.

vi. Range of Value Estimate

The valuation of companies and assets is made based on the available facts and circumstances and the conclusions arrived at in many cases will be subjective and dependent on the exercise of individual judgment. Although every scientific method has been employed in systematically arriving at the value, there is no indisputable single value and the estimate of the value is normally expressed as falling within a likely range. To comply with the client/RP"s request, I/we have provided a single value for the overall Liquidation Value and Fair Value of the assets of [company], derived as an arithmetic average of the range of Liquidation and Fair Values. Whilst, I / we consider the valuation to be both reasonable and defensible based on the information available, others may place a different value.

vii. No Responsibility to the Actual Price of the subject asset if sold or transferred/ exchanged

The actual market price achieved may be higher or lower than our estimate of value (or range of value) depending upon the circumstances of the transaction (for example the competitive bidding environment), the nature of the business (for example the purchaser's perception of potential synergies). The knowledge, negotiating ability and motivation of the buyers and sellers and the applicability of a discount or premium for control will also affect actual market price achieved. Accordingly, our valuation conclusion will not necessarily be the price at which actual transaction will take place.

viii. Reliance on the representations of the owners/clients, their management and other third parties

The client/owner and its management/representatives warranted to us that the information they supplied was complete, accurate and true and correct to the best of their knowledge. We have relied upon the representations of the owners/clients, their management and other third parties concerning the financial data, operational data and maintenance schedule of all plant-machinery-equipment-tools-vehicles, real estate investments and any other investments in tangible assets except as specifically stated to the contrary in the report. I/We shall not be liable for any loss, damages, cost or expenses arising from fraudulent acts, misrepresentations, or wilful default on part of the companies, their directors, employee or agents.

ix. No procedure performed to corroborate information taken from reliable external sources

We have relied on data from external sources also to conclude the valuation. These sources are believed to be reliable and therefore, we assume no liability for the truth or accuracy of any data, opinions or estimates furnished by others that have been used in this analysis. Where we have relied on data, opinions or estimates from external sources, reasonable care has been taken to ensure that such data has been correctly extracted from those sources and /or reproduced in its proper form and context.

x. Compliance with relevant laws

The report assumes that the company/business/asset complies fully with relevant laws and regulations applicable in its area of operations and usage unless otherwise stated, and that the companies/business/assets will be managed in a competent and responsible manner. Further, as specifically stated to the contrary, this report has given no consideration to matters of a legal nature, including issues of legal title and compliance with local laws, and litigations and other contingent liabilities that are not recorded/reflected in the balance sheet/fixed assets register provided to us.

xi. Multiple factors affecting the Valuation Report:

The valuation report is tempered by the exercise of judicious discretion by the RV, taking into account the relevant factors. There will always be several factors, e.g. management capability, present and prospective competition, yield on comparable securities, market sentiment, etc. which may not be apparent from the Balance Sheet but could strongly influence the value.

xii. Future services including but not limited to Testimony or attendance in courts/ tribunals/ authorities for the opinion of value in the Valuation Report

I/We are fully aware that based on the opinion of value expressed in this report, I/we may be required to give testimony or attend court / judicial proceedings with regard to the subject assets, although it is out of scope of the assignment, unless specific arrangements to do so have been made in advance, or as otherwise required by law. In such event, the party seeking our evidence in the proceedings shall bear the cost/professional fee of attending court / judicial proceedings and my / our tendering evidence before such authority shall be under the applicable laws.

xiii. Unavailability of information as on Valuation Date

The Liquidation Value and Fair Value of assets of the company have been performed on the provisional unaudited standalone balance sheet of [company] provided by management/the RP as of the valuation date. On the other hand, no financial information as of the valuation date was available for subsidiaries and associates, hence we have relied on the latest available financial statements. The management / RP has also confirmed that there has not been any material change in the financials of subsidiaries and associates since the last available financial statements. Hence, due to the lack of financials as of the valuation date and based on representation given by the RP, I /we have considered financials as on the last available financial statements as the proxy for the financial position as of the valuation date, valuation report may change post availability of such information.

3.5. Illustrative Limitations in a Valuation Report specific to Tangible Assets

i. Title deeds of properties

We have not verified the title deeds of the properties with the records of registrar's office as this is beyond the agreed scope of our services stated in our engagement letter.

ii. Legal and other issues

Our valuation is primarily from a business perspective and has not considered various legal and other corporate structures beyond the limited information made available. The scope of work has been limited both in terms of the areas of the business and operations which have been reviewed. There may be matters, other than those noted in this report, which might be relevant in the context of the transaction and which a wider scope might uncover.

iii. Sketch plans and photographs

The RV has endeavoured to visually identify the land boundaries and dimensions; however, he is not a surveyor. So, where there is a doubt about the precise position of the structures, it is recommended that a Licensed Surveyor be contacted.

iv. Latent defects affecting the Value

Physical condition in most instances has been determined by observation or indication by others. Any unknown conditions existing at the time of inspection could alter the value. No responsibility is assumed for latent defects of any nature whatsoever, which may affect value, or for any expertise required to disclose such conditions.

v. RVs observations are not a warranty

We have examined the assets described herein exclusively for the purposes of identification and description of the property. The RV's observations and reporting of the subject improvements are for the valuation process and purposes only and should not be considered as a warranty of any component of the property. This valuation assumes unless otherwise specifically stated, that the subject is structurally sound and all components are in working condition.

vi. Hazardous conditions/material

In the absence of a statement to the contrary, we have assumed that no hazardous conditions or materials exist which could affect the subject business or the assets. We are not qualified to establish the absence of such conditions or materials, nor do we assume the responsibility for discovering the same. Our valuation takes no such liabilities into account, except as they have been reported to the RV by the client or by an environmental consultant of the client, and then only to the extent that the liability was reported to us in an actual or estimated amount. To the extent such information has been reported to us, the RV has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

vii. Accuracy of architectural plans

Where a sketched plan is attached to this report, it does not purport to represent accurate architectural plans. Sketch plans and photographs are provided as general illustrations only.

viii. Validity of permits and licenses:

Unless otherwise stated as part of the terms of engagement, the RV has not made a specific compliance survey or analysis of the various permits and licenses under central, state and local laws / regulations applicable to the operation and use of the subject property, and this valuation does not consider the effect, if any, of non-compliance.

ix. Continuation of subject business

We have assumed that the business continues normally without any disruptions due to statutory or other external/internal occurrences.

x. Independent Third Party

We have acted as an independent third party and, as such, shall not be considered an advocate for any concerned party for any dispute. The valuation has been carried out independently to assess the valuation services. We have no present or planned future interest in [company] or any of its group companies and the fee for this report is not contingent upon outcome of the transaction. Our valuation should not be construed as investment advice; specifically, we do not express any opinion on the suitability or otherwise of entering into any transaction with [company].

xi. Valuation assumptions made by us:

We have made certain assumptions in relation to facts, conditions or situations affecting the subject of, or approach to, this exercise that has not been verified as part of the engagement rather, treated as “a supposition taken to be true”. If any of these assumptions prove to be incorrect then our estimate on value will need to be reviewed.

3.6. Illustrative Caveats, Limitations, and Disclaimers in a Valuation Report not to be used

i. **Business Plan/forecasts received from client:** RV giving a disclaimer for the business plan/forecasts received from client without applying test of reasonability and due diligence.

ii. **Physical Verification:** RV giving a disclaimer that he has not physically verified the tangible assets in case where engagement is for providing liquidation value.

iii. **Market related data:** RV giving disclaimer for the market related data employed in his reports e.g. beta, discounting factor, comparable companies, comparable transactions, valuation metrices without testing appropriateness of the same.

iv. **Historical analysis:** RV giving disclaimer that he has not done any historical analysis while conducting valuation exercise of listed/unlisted entities although the historical data could have been arranged with reasonable effort.

   i. **One approach:** RV giving valuation conclusion based on only one approach without giving any reasoning as to why the other two approaches were not considered in his valuation.

ii. **Another expert:** RV giving disclaimer for work done by any other expert and the findings of the same does not form part of report of RV.

3.7. Examples specific to difficult situations in valuation of land and building

Some examples of qualification statements which may be relevant to situations commonly encountered by RVs are provided below. These examples are designed to address limitations in the RV's role, instructions or expertise. They may assist to draft specific disclaimer statements to address particular circumstances or reports; however they should be used only as a guide.

i. **Site Survey:** RVs are generally not qualified as surveyors. The RV is often expected to state that the improvements on a property are located within the boundaries of the site. Generally, the RV is not qualified to make that certification, unless also qualified and registered as a Surveyor

ii. **Survey Qualification:** If a RV was not provided a land survey report, the RV may state that the valuation is made on the basis that there are no encroachments by or upon the property and this should be confirmed by a current survey report and/or advice from a Registered Surveyor. If any encroachments are noted subsequently by the survey report, the RV should be consulted to reassess any effect on the value stated in this report.

iii. **Town Planning/Resource Management:** In most instances a RV will only make verbal enquiries of the Local Authority or the State Planning Department as to the zoning or planning area of a property. In some locations it is not possible to obtain a „zoning or planning area certificate" and obtaining written confirmation of zoning can take considerably more time than is generally available to the RV and/or the user of valuation services.

iv. **Extent and Nature of Enquiries:** It is necessary to set out the extent and nature of the enquiries made in ascertaining the zoning and development requirements of the subject property. For example: Town planning information was verbally obtained from offices of the Town

Planning Department, however, we recommend that this zoning or planning area should be verified by application to appropriate authority for the issue of a zoning certificate.

v. **Environmental / Contamination Issues:** An increased awareness of environmental issues in the community today has brought about a need for the valuation report to take cognisance of environmental issues that may affect the value of a particular property at the time of reporting or at some time in the future. Those issues may include:

- contamination - through petroleum or chemical products;
- impact of flooding for properties adjacent to rivers/ streams or over underground water supply sources;
- conservation - including rare flora and fauna species; and
- title claims in case of conversion of agricultural land.

Examples- Some examples of clauses relevant to this issue include the following:

a. Environmental Issues Our enquiries at the town planning department/authority indicate that the site has not previously been utilised for any industrial or manufacturing use or for the storage (either above ground or underground) of any chemical substance. Our verbal enquiries indicate that the town planning department/authority is unaware of the existence of any site contamination. Whilst our inspection of the site surface confirms the results of these enquiries, we have not investigated the site beneath the surface or undertaken vegetation or soil sampling. This valuation is, therefore, subject to a satisfactory contaminated site assessment report from environmental consultants.

   Or

   The site is (or has been) occupied by an undertaking which, having regard to the nature of process or chemicals used or stored, has a potential to cause soil contamination. Whilst our enquiries indicate that the Town Planning Department/Authority is unaware of contamination, we recommend a site inspection by an Environmental Consultant.

b. Petroleum products: The subject property is operated as a service station and workshop and therefore, fuels, oils and other products capable of causing contamination are used on the site as part of the operation. There are no visible signs of any pollution on the property; however, we are unable to certify that there is no contamination of the property beneath the surface of the soil.

c. Asbestos: Inspection of the improvements showed the use of asbestos products in the building. We must point out that we are not experts in this area and therefore, in the absence of an environmental consultant's report concerning the presence of any asbestos fibre within the subject property, this valuation is made on the assumption that there is no health risk from asbestos within the property. Should it subsequently transpire that an expert report establishes that there is an asbestos related health risk we reserve the right to review this valuation.

d. Cost of Decontamination: The cost of removing the contaminations or environmental hazards have not been incorporated in the report. An environmental consultant's report concerning such costs may be separately obtained. This valuation is made on the assumption that there are no such costs involved in the property.

e. Pest Affectation: The subject property is located in an area considered susceptible to termite infestation. Inspection of the site did not reveal any apparent termite infestation. This should, however, be confirmed by a certified pest control firm.

f. Right to Review: The right is reserved to review and, if necessary, vary, the valuation figure if any contamination or other environmental hazard is found to exist.

vi. **Extent of Investigations in respect of structural integrity:** It is important to highlight in the report the extent of the RV's investigation as to the structural integrity of the building and its plant and equipment. For example:

a. An inspection of all readily accessible parts of the property has been carried out by the RV.

b. The RV did not have access to a qualified engineer's structural survey of the property, or its plant and equipment. The RV is not a building construction and/or structural expert and is, therefore, unable to certify as to structural soundness of the property. Users of the report would need to make their own enquiries in this regard.

c. We do not have access to a structural report on the property nor have we inspected unexposed or inaccessible portions of the premises. We, therefore, cannot comment on the structural integrity, defect, or infestation of the improvements nor can we comment on any knowledge of the use in construction of material such as asbestos or other materials now considered hazardous.

vii. **Tenancy Details:** Extent of Investigation of Lease Details- In reporting the specific lease details of a property it is important to advise the extent of the investigation of lease documents and other supporting documentation undertaken by the RV. When the lease negotiations or preparation of documentation may not have been concluded, it is necessary to specify in the report that the valuation is subject to satisfactory conclusion of those lease negotiations and the taking on record of a stamped lease agreement by the parties. For example: This assessment of Market Value is based on the assumption that the proposed lease agreements outlined earlier in this report are all executed, signed and stamped. Upon being stamped those documents should be referred to the RV to confirm that the particulars of the document concur with those set out in this report.

viii. Valuation of under construction properties: This requires a variety of assumptions-In valuing a under construction property to assess the market value for security purposes, the RV should also take into consideration the market value when the construction is completed. Such a process requires a variety of assumptions to be made, which may include:

a. construction and development costs in accordance with plans and specifications at the time of valuation;

b. the impact of existing and future competition;

c. the level of sale prices; and

d. in the case of income properties, the likely level of rents, the lease-up period, rental concessions and commissions, capitalisation rates, discount rates, etc.

ix. **Set out in detail the assumptions made and qualifying clauses:** It is, therefore, imperative that the RV undertaking valuation of an under construction property sets out in detail the assumptions made and inserts a qualifying clause in the valuation report stating that the valuation is subject to the assumptions outlined in the report, particularly where those assumptions are based on purported lease negotiations or pre-sale contracts. These qualifying clauses could include:

a. Satisfactory completion of the construction in accordance with the plans, specifications and details as provided.

b. An inspection by the RV following completion of construction.

c. Confirmation or variation of the original valuation figure relevant to the original valuation date, following an inspection of the project and any leases after completion of construction.

d. Issue of all relevant approvals including a satisfactory building completion certificate under the appropriate legislation.

e. Reports from other experts who have provided advice in aspects of the construction of the buildings like that on sewage and plumbing, electrical and fire safety issues etc.

f. Such other matters/issues that the RV is of the opinion should be drawn to the attention of the user.

g. The right to review and, if necessary, vary the valuation if there are changes in the project itself or leasing. An example of what could be stated "The value of an under-construction property is the market value of the proposed improvements as detailed in the report on the assumption that all construction had been satisfactorily completed in all respects at the date of this report. The valuation reflects the RV"s view of the market conditions existing at the date of the report and does not purport to predict the market conditions and the value at the actual completion of the project because of time lag. Accordingly, the „under construction" valuation must be confirmed by a further inspection by the RV, initiated and instructed by the user, on completion of project. The right is reserved to review and if necessary, vary the valuation in this report if there are any changes in relation to the project itself or in property market conditions and prices".

III. Asset-class wise sample of Caveats, Limitations, and Disclaimers

The Rules provide for three asset classes of land and building, plant and machinery and securities or financial assets. In this section a few samples of

Caveats, Limitations, and Disclaimers have been provided for each asset class.

A. Land and Building

i. I/We have not verified the title deeds of the properties with the records of registrar's office as this is beyond the agreed scope of our services stated in our engagement letter.

ii. I/We assume no responsibility for the legal matters including, but not limited to, legal or title concerns. The assets and interests therein have been valued free and clear of any liens or encumbrances unless stated otherwise. No hidden or apparent conditions regarding the subject assets or their ownership are assumed to exist. No opinion of title is rendered by this report and a good title is assumed.

iii. The RV has endeavoured to visually identify the land boundaries and dimensions; however, he is not a surveyor. So where there is a doubt about the precise position of the structures, it is recommended that a Licensed Surveyor be contacted.

iv. The physical condition of the improvements was based on visual inspection. No liability is assumed for the soundness of the structure since no engineering tests were made at the site. Any unknown conditions existing at the time of inspection could alter the value. No responsibility is assumed for latent defects of any nature whatsoever, which may affect value, nor for any expertise required to disclose such conditions.

v. Where a sketched plan is attached to this report, it does not purport to represent accurate architectural plans. Sketch plans and photographs are provided as general illustrations only.

vi. Unless otherwise stated as part of the terms of engagement, the RV has not made a specific compliance survey or analysis of the various permits and licenses under central, state and local laws / regulations applicable to the operation and use of the subject property, and this valuation does not consider the effect, if any, of non-compliance.

vii. The sale of the subject property is assumed to be on an all cash basis. Financial arrangements would affect the price at which the property may sell for if placed on the market.

viii. Value varies with the purpose and date. This report is not to be referred if the purpose is different other than mentioned.

ix. The actual realizable value that is likely to be fetched upon sale of the property under consideration shall entirely depend on the demand and supply of the same in the market at the time of sale.

x. In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

xi. We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

xii. Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

B. Plant and Machinery

i. The client/owner and its management/representatives warranted to us that the information they supplied was complete, accurate and true and correct to the best of their knowledge. We have relied upon the representations of the owners/clients, their management and other third parties concerning the financial data, operational data and maintenance schedule of all plant-machinery-equipment-tools-vehicles, real estate investments and any other investments in tangible assets except as specifically stated to the contrary in the report. In no event shall we be liable for any loss, damages, cost or expenses arising any way from fraudulent acts, misrepresentations, or wilful default on part of the companies, their directors, employee or agents.

ii. **Definition and Premise of Value:** It should be noted that Liquidation Value could be significantly different from Fair Value or fair market value. Further, Liquidation Value in an orderly sale can be very different from Liquidation Value in a fire sale transaction and Liquidation Value of a single machine or any individual asset on a standalone basis could be very different from Liquidation Value of a single machine or any individual asset as part of the entire plant and machinery. As such, the premise of Liquidation Value for the said purpose in this report is Liquidation Value of the assets on a standalone basis (in most cases) or in some cases group of assets in an orderly sale.

iii. I/We have examined the assets described herein exclusively for the purposes of identification and description of the property. The RV's observations and reporting of the subject improvements are for the valuation process and purposes only, and should not be considered as a warranty of any component of the property. This valuation assumes (unless otherwise specifically stated) that the subject is structurally sound and all components are in working condition.

iv. In the absence of a statement to the contrary, we have assumed that no hazardous conditions or materials exist which could affect the subject business or the assets. We are not qualified to establish the absence of such conditions or materials, nor do we assume the responsibility for discovering the same. Our valuation takes no such liabilities into account, except as they have been reported to the RV by the client or by an environmental consultant of the client. To the extent such information has been reported to us, the RV has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

v. I/We express no opinion as to how closely the actual results will correspond to those projected/forecast because budgets/projections/ forecasts relate to future events and are based on assumptions which may not remain valid for the whole of the relevant period.

vi. The sale of the subject assets is assumed to be on an all cash basis. Financial arrangements would affect the price at which the property may sell for if placed on the market.

vii. Value is an estimated worth equivalent of an asset on a particular date based on certain facts and findings varies with its purpose. The value that is likely to be realised upon sale shall entirely depend on the demand and supply of the same at the time of sale. The report is not to be referred if the purpose is different other than the mentioned one.

viii. In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

ix. We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

x. Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

C. Securities or Financial Assets

i. While our work has involved an analysis of financial information and accounting records, our engagement does not include an audit in accordance with generally accepted auditing standards of the client existing business records. Accordingly, we assume no responsibility and make no representations with respect to the accuracy or completeness of any information provided by and on behalf of you and the client. Our report is subject to the scope and limitations detailed hereinafter. As such the report is to be read in totality, and not in parts, in conjunction with the relevant documents referred to herein and in the context of the purpose for which it is made.

ii. The valuation of companies and businesses is not a precise science and the conclusions arrived at in many cases will be subjective and dependent on the exercise of individual judgment. There is, therefore, no indisputable single value and we normally express our opinion on the value as falling within a likely range. However, as [purpose] requires the expression of a single value, we have adopted a value at the mid-point of our valuation range. Whilst we consider our value/range of values to be both reasonable and defensible based on the information available to us, others may place a different value on the [company/business]

iii. The actual market price achieved may be higher or lower than our estimate of [value/value range] depending upon the circumstances of the transaction (for example the competitive bidding environment), the nature of the business (for example the purchaser's perception of potential synergies). The knowledge, negotiating ability and motivation of the buyers and sellers and the applicability of a discount or premium for control will also affect actual market price achieved. Accordingly, our valuation conclusion will not necessarily be the price at which any agreement proceeds. The final transaction price is something on which the parties themselves have to agree. We also emphasize that our opinion is not the only factor that should be considered by the parties in agreeing the transaction price.

iv. An analysis of such nature is necessarily based on the prevailing stock market, financial, economic and other conditions in general and industry trends in particular as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this report and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this Report.

v. The ultimate analysis will have to be tempered by the exercise of judicious discretion by the RV and judgment taking into account the relevant factors. There will always be several factors, e.g. management capability, present and prospective competition, yield on comparable securities, market sentiment, etc. which may not be apparent from the face of the Balance Sheet but could strongly influence the value.

vi. Unavailability of information as of valuation date: Please note that the Liquidation Value and Fair Value of assets of the company have been performed as of an earlier date based on the provisional unaudited standalone balance sheet of [company] provided by management (the RP) as of the valuation date. On the other hand, no financial information as of the valuation date was available for subsidiaries and associates; hence we have relied on the latest available financial statements. The management / RP has also confirmed that there has not been any material change in the financials of subsidiaries and associates since the last available financial statements. Hence, due to the lack of financials as of the valuation date and based on representation given by the RP, I /we have considered financials as of XXX as the proxy for the financial position as of the valuation date, valuation report may change post availability of such information.

vii. In the course of the valuation, we were provided with both written and verbal information. We have however, evaluated the information provided to us by the Company through broad inquiry, analysis and review but have not carried out a due diligence or audit of the information provided for the purpose of this engagement. Our conclusions are based on the assumptions, forecasts and other information given by/on behalf of the Company.

viii. We are independent of the client/company and have no current or expected interest in the Company or its assets. The fee paid for our services in no way influenced the results of our analysis.

ix. Our report is meant for the purpose mentioned above and should not be used for any purpose other than the purpose mentioned therein. The Report should not be copied or reproduced without obtaining our prior written approval for any purpose other than the purpose for which it is prepared.

Annexure-4

Sample Engagement Letter for accepting Assignments as a Registered Valuer

[The following letter is for use as a guide to the Valuer and will need to be varied according to individual requirements and circumstances relevant to the engagement.]

The Board of Directors

XXX Private Limited/ Public Limited

Address

Date

For the kind attention of: Mr A– Managing Director

Dear Sirs

BUSINESS VALUATION ANALYSIS

With reference to our recent discussions to value the company XXX Private Limited/ Public Limited, we are pleased to confirm our acceptance and our understanding of this engagement by means of this letter.

1. INTRODUCTION

Based on discussions with the Management, we understand that the Company is engaged in the ……………. [Business of the company]. Headquartered in the ……..and XXX is a ……years old company.

2. SCOPE OF WORK

Based on discussions with the Management, we understand that the promoters of the Company are evaluating the possibility of selling their stake in XXX. In this context, you require our assistance to carry out the Valuation of the Company.

Valuation of a company is not an exact science and ultimately depends upon what it is worth to a serious investor or buyer who for his or her own reasons may be prepared to pay substantial goodwill.

This exercise may be carried out using various methodologies, the relative emphasis of each often varying with:

i. industry to which the company belongs

ii. ease with which the growth rate in cash flows to perpetuity can be estimated

iii. extent to which industry and comparable company information is available

iv. Need for an independent fixed asset valuation/ revaluation.

Having arrived at an assessment of fair value, some adjustments that are typically considered in such an exercise are:

i. Whether there is change of control and therefore a control premium is justified for a particular purchaser, if any.

ii. Whether the shares are marketable and frequently traded or there is a case for discounting on account of illiquidity, if applicable.

Our assessment of the valuation of the Company will be on the basic assumption of a going concern entity and would be based on some or all of these popular methodologies:

Income Approach

The Income Approach indicates the value of a business based on the value of the cash flows that a business is expected to generate in future. This approach is appropriate in most going concern situations as the worth of a business is generally a function of its ability to earn income/cash flow and to provide an appropriate return on investment.

Market Approach

Compared to the Income Approach that incorporates company-specific estimates to arrive at the firm's intrinsic value, the Market Approach relies on relative valuation to arrive at the value of a business, based upon how similar assets are priced in the market.

The Market Approach provides a reasonable basis for valuation and is relatively a quick approach in its application, but it suffers from a number of limitations

Cost Approach

Valuation on Net Assets is computed by taking the net value of a business's assets, subtracting therefrom the amount of the liabilities and preferred shareholders' claims and dividing the remainder among the equity shareholders according to their individual rights.

It is generally used as the minimum break-up value for the transaction since this methodology ignores the future return the assets can produce and is calculated using historical accounting data that does not reflect how much the business is worth to someone who may buy it as a going concern.

Maintainable Profit Method or Discounted Cash Flows Method ('DCF')

DCF uses the future free cash flows of the company discounted by the firm's weighted average cost of capital (the average cost of all the capital used in the business, including debt and equity), plus a risk factor measured by beta.

Beta is an adjustment that uses historic data to measure the sensitivity of the company's cash flow, for example, through business cycles. This means that companies in highly cyclical businesses will have a high beta to reflect the volatile nature of their cash flow. The DCF method is a strong valuation tool, as it concentrates on cash generation potential of a business.

Comparable Company Market Multiple

Under this methodology, market multiples of comparable listed companies are computed and applied to the Company being valued to arrive at a multiple based valuation. The difficulty here is in the selection of a comparable company, since it is rare to find two or more companies with the same product portfolio, size, capital structure, business strategy, profitability and accounting practices.

Price/Earnings multiple

This is a popular method due to its simplicity. However, it has limited acceptability due to the results being influenced by differences in accounting methods (i.e. treatment of intangible assets) or an artificially boosted PE ratio due to an atypical drop in earnings. Earnings before interest, depreciation and tax is usually preferred over net earnings in order to even out differences caused by capital structure, tax benefits, etc.

Market Cap/Sales Multiple

This method is sometimes used to value the SME sector by multiplying a year's gross/net profit or sales by a certain number, determined as the appropriate multiple for the type of business. This approach particularly with the small and medium sized business has little or no scientific methodology behind it, as it assumes automatically that what has gone before will continue in the future.

Industry Valuation Benchmarks

A number of industries have industry-specific valuation benchmarks such as 'EV per MW' for power generation companies, 'EV per subscriber' for telecom companies, etc. which can be applied as rule of thumb for business valuation. Other industries where long term contracts are a key feature, multiples of revenues can be used as a valuation benchmark. These industry norms are based on the assumption that investors are willing to pay for turnover or market share and that the normal profitability of businesses in the industry does not vary much. This methodology is more useful as a sensecheck of values produced using other methodologies.

As a result of the work set out above, should you wish us to act for you in any other aspects concerning the future strategy of the Company, or adopt any other method of valuation we would be pleased to discuss your requirements. Clearly, any additional work will be the subject of a separate fee arrangement.

Please note that the Services described above do not constitute an audit of the books and records of the Company under the Companies Act. Further, in carrying out our work we shall rely upon the information and clarifications provided to us by the Management of the Company. We will not accept any responsibility for the accuracy or authenticity of the records or information provided to us.

3. DURATION OF THE ASSIGNMENT

Based on our initial estimate of the time required to complete our engagement fieldwork relating to scope of work detailed in this letter, we expect to deliver our draft report within ………… days of commencement of fieldwork. Fieldwork would be commenced after receiving your confirmation to start the work and after receiving the basic information relating to the Company. The final report shall be issued subsequent to clearance of your comments on the draft report.

4. CONFIDENTIALITY

Our report will be addressed to XXX. We stress that our reports and letters are confidential and prepared for the addressees only. They should not be used, reproduced or circulated for any other purpose, whether in whole or in part without our prior written consent, which consent will only be given after full consideration of the circumstances at the time.

6. FEES

Our fees will be based on the degree of skill involved, the seniority of the staff engaged and the time necessarily occupied on the work. Our fees will be paid by XXX as and when due and it will be due as follows:

- XX% on acceptance of this engagement letter
- XX% on submission of draft report

The fee for the engagement would include:

- INR XXXX (Indian Rupees XXXX only) plus taxes as applicable for the Valuation Analysis of the Company. This fee does not include any other services such as post valuation follow up, negotiation, valuation justification, updating and other support services for the valuation engagement. Such services can be taken up separately based on mutually agreeable terms.
- In case of any unforeseen event or circumstances arise which require us to do more work, it would be charged in addition of above as may be decided in writing.
- In addition, expenses incurred directly in connection with the assignment would be reimbursable.

Please note that payment is due on submission of our invoice. Invoices outstanding for more than X days post the invoice date shall attract a simple interest of XX% per month.

7. TERMINATION

After commencement of engagement and before the final report is issued, if at any stage the assignment is called off by the company, then the company will be liable to pay a compensation of …% of the fee quoted above or …………(Some another basis), whichever is higher.

8. LIMITATION OF LIABILITY

Our liability in respect of this assignment will be limited to that part of any loss suffered which is proportional to our responsibility or due to negligence at our part and at no time shall exceed the fee that we have received from this assignment.

9. ADDITIONAL TERMS AND CONDITIONS OF ENGAGEMENT

The additional terms and conditions included in ANNEXURE 1 to this letter apply to this engagement as if they were set out in this letter. They should be read and understood in conjunction with this letter as they form an important and integral part of the overall terms of engagement.

10. ACCEPTANCE OF TERMS

We would be grateful if you would confirm our understanding of your instructions and your agreement to the terms of this letter, including those contained in Appendix I, by signing and returning the enclosed copy of this letter.

We are keen to work with you and look forward to your confirmation.

Meanwhile, please feel free to contact us for any clarifications.

Yours faithfully

ABC VALUER

____

For and on behalf of XXX Private Limited/ Public Limited

Terms of engagement acknowledged and agreed by:

NAME... REGISTRATION No ....

SIGNATURE .... DATE ……………...................................

ANNEXURE I: ADDITIONAL TERMS AND CONDITIONS OF ENGAGEMENT

These additional terms and conditions of engagement should be read together with the accompanying engagement letter from ABC Valuer which identifies the engagement to which they relate (the 'engagement letter').

1. VERIFICATION OF RESPONSIBILITIES

1.1 The scope of our work is as set out in the engagement letter above. We will provide the services set out in the scope with reasonable skill and care, in accordance with the professional standard expected of us, and in a timely manner. We will not normally verify or check any information provided to us by you or by others on your behalf, and you acknowledge that we shall be entitled to rely on such information when performing our obligations under this engagement as it is not designed to investigate nor interrogate for fraud and/or dishonesty (actual or possible) and is not costed accordingly.

1.2 Our review of the affairs of the Company will not constitute an audit in accordance with Auditing Standards and we will carry out no verification work. Consequently we will not express an opinion on the financial statements and management accounts, which we may discuss in our reports, except where required by statute or regulations.

1.3 In relation to all our work for you, it is the responsibility of your staff to provide us with complete, accurate, timely and relevant information and to carry out any other obligations required to be undertaken by you or others under your control. In addition, you agree to keep us informed of any material developments relating to the business or operations which may have a bearing on our engagement.

2. LIMITATION OF LIABILITY

2.1 The aggregate liability of our firm, its partners, agents and employees or any of them (together referred to in this and subsequent clauses as the "Firm") for damage shall be limited to the fee that we have received from this assignment, as set out in our engagement letter.

2.2 For the purposes of this engagement letter "damage" shall mean the aggregate of all losses or damages (including interest thereon if any) and costs suffered or incurred, directly or indirectly, by the addressee of this letter ("Addressee") under or in connection with this engagement including as a result of breach of contract, breach of statutory duty, tort (including negligence), or other act or omission by the Firm but excluding any such losses, damages or costs arising from the fraud or dishonesty of the Firm or in respect of liabilities which cannot lawfully be limited or excluded.

2.3 Subject always to the aggregate limit of liability specified in paragraph 2.1 above, the liability of the Firm to the addressee of this letter (the "Addressee") in connection to this engagement shall be limited to the proportion of the total damage which may justly and equitably be attributed to the Firm, after taking into account contributory negligence (if any) of the Addressee.

2.4 Adressee shall hold harmless the Firm, its directors and employees free from all actions, claims, proceedings, losses, damages, costs and expenses, whatsoever and however caused, incurred, sustained or arising, which Firm, its directors and employees may suffer, arising from, or in connection with, the provision of the services. This provision shall survive the termination of the engagement for any reason.

3. OWNERSHIP OF BOOKS AND PAPERS

3.1 All documents in whatever form, paper, electronic or otherwise such as (for example, but without being an exhaustive list) working papers, letters (including without limitation e-mails), memoranda, file notes of meetings and telephone calls, draft computations and returns etc and copies of other original documents which we create or which we receive either as principal or in our own right or as agent for you belong to ABC Valuer. For the avoidance of doubt, we do not assert such ownership rights to documents such as, for example, title documents, original invoices and other original primary accounting records, tax deduction certificates etc belonging to you, but we may retain possession of them by exercising a lien because our fees remain outstanding after becoming due for payment.

3.2 The valuation worksheets prepared for the exercise are proprietary to ABC Valuer and cannot be shared. Any clarifications on the workings will be provided on request, prior to finalising the report, as per the terms of our engagement.

4. CONFIDENTIALITY

4.1 Where we receive confidential information, our only obligation is to take such steps as we in good faith think fit to preserve such confidential information from unauthorized disclosure or other misuse both during and after termination of this engagement. If, despite taking such steps, we disclose without authorization or otherwise misuse the confidential information, causing you loss, we shall be liable to you in accordance with law but subject to the other terms of the engagement. Subject to our duty of confidentiality, you agree we may act for your competitors or for other clients, whose interests are or may be opposed to yours.

We will not be prevented from disclosing confidential information:

a) which is or becomes public knowledge other than by way of breach of an obligation of confidentiality;

b) which is or becomes known from other sources without restriction on disclosure; or

c) which is required to be disclosed by law or any professional or regulatory obligation.

5. OUR SERVICE

5.1 If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the services you are receiving, please let us know by contacting our ………………, Mr B. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we have given you a less than satisfactory service, we undertake to do everything reasonable to put it right.

6. GOVERNING LAW

6.1 These terms of business shall be governed by and construed in accordance with the laws of India and any dispute arising out of this engagement or these terms shall be subject to the exclusive jurisdiction of Indian courts.

The Institute of Chartered Accountants of India
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Valuation Standards Board
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