



# GOVERNANCE ON VALUERS AND STATUTORY TRIGGERS FOR VALUATION

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# GOVERNANCE ON VALUERS



# EVOLUTION OF VALUATION REGULATIONS

## Since 1992

SEBI Act was introduced wherein Cos. were free to price their issues in consultation with the Merchant Bankers

## Prior 1992

CCI Guidelines for issue of shares at premium

## 1957-1989

Wealth Tax Rules, 1957 prescribed valuation of unquoted shares

## 2010

FEMA - DCF for valuations in case of issue / transfer of shares of Indian company which was subsequently changed to internationally accepted valuation methodology

## 2017 & 2018

The MCA notified Companies (Registered Valuers and Valuation) Rules, 2017 ('Rules') w.e.f. 18 Oct 2017

ICAI issues Valuation Standards w.e.f. 01 Jul 2018

## 2020

The MCA notified Draft Valuers Bill as on April 02, 2020 (Circulated for Public Comments)





# VALUATION – COMPANIES ACT 2013 & RULES



# REGISTERED VALUER

- Section 247 of the Companies Act, 2013 ('Act') provides:
  - Valuation of property, stocks, shares, debentures, securities, goodwill or other assets / liabilities / networth of a company under the Act
  - To be done by a Registered Valuer (RV)
  - Appointed by Audit Committee or in its absence the Board of Directors of that company
- Further, as per Section 247(2) of the Act, RV shall
  - make an **impartial, true** and **fair** valuation of assets;
  - **exercise due diligence** while performing the functions as valuer;
  - make the valuation in accordance with such rules as may be prescribed; and
  - 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.

# REGISTERED VALUER RULES

On 18 Oct 2017, MCA notified the Companies (Registered Valuers and Valuation) Rules, 2017

IBBI

Authority to administer & perform the functions under these Rules

Registered Valuer Organization ('RVO')

Organisation to regulate and impart training to the Registered Valuers

Registered Valuer ('RV')

Individual, Firm, LLP or Company  
Member of a RVO  
Registered with IBBI

# TO BE A REGISTERED VALUER



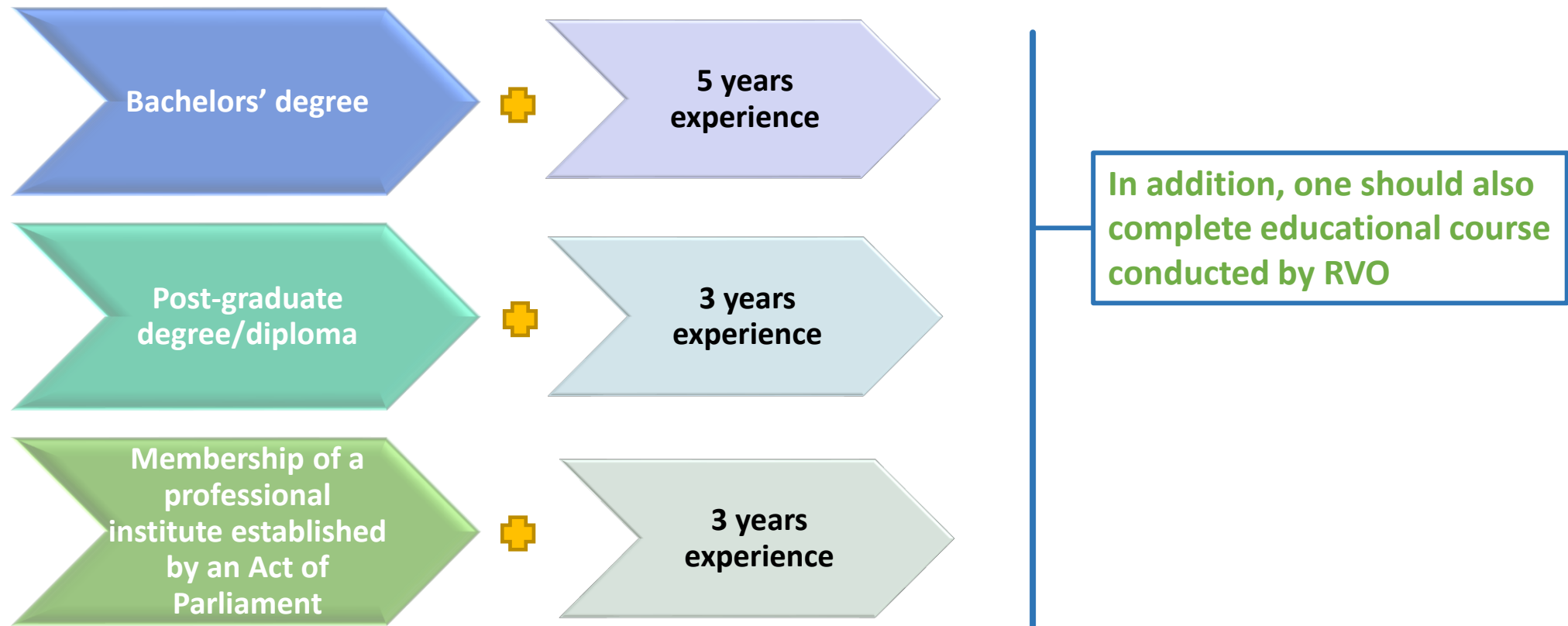
Obtain Educational Qualifications and Experience

Pass Valuation Examination

Satisfy other specified Eligibility Criteria

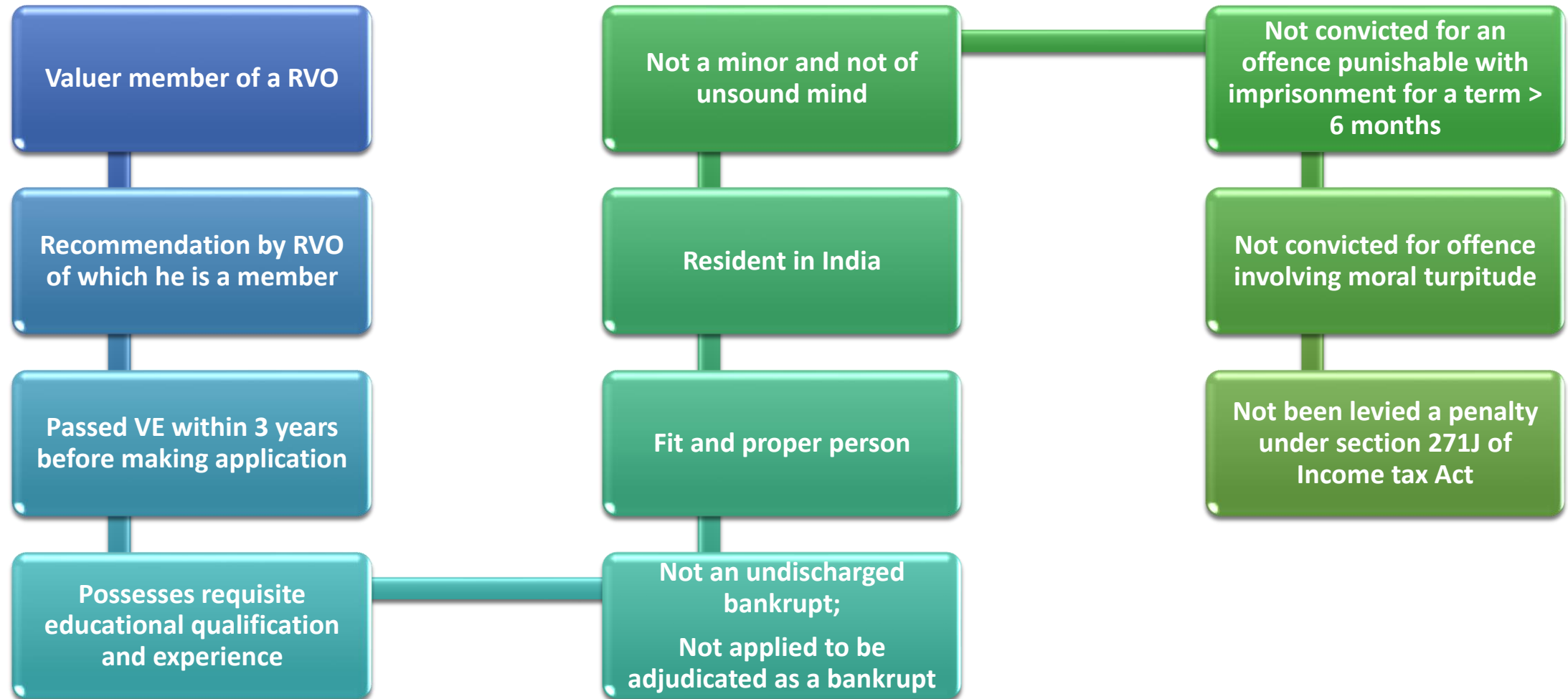
# EDUCATIONAL QUALIFICATIONS AND EXPERIENCE

To be a RV, an individual must have the following educational qualifications and experience:





# OTHER ELIGIBILITY CRITERIA - INDIVIDUALS



# OTHER ELIGIBILITY CRITERIA – FIRMS/COMPANIES/LLP

Set up for rendering professional / financial services

Not an undischarged bankrupt; or undergoing insolvency

At least 3 or all partners / directors, whichever is lower are RVs

At least 1 partner is RV for asset class, for valuation of which it seeks registration

Co not a subsidiary / JV / associate of another company

None of the partners possess disqualification as specified for Individual

# CONDUCT OF VALUATION

- RV shall, while conducting valuation, comply with valuation standards notified or modified by Central Government
- Until valuation standards are notified by CG, a valuer shall make valuations as per:
  - Internationally accepted valuation standards;
  - Valuation standards adopted by any RVO(ICAI RVO has adopted ICAI valuation standards 2018)



# ICAI VALUATION STANDARDS 2018

ISSUED BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

# ICAI VALUATION STANDARDS ('ICAI VS') 2018

- ICAI issued Valuation Standards to address the need for consistent, uniform and transparent valuation policies.
- Valuation Standards lay down a framework to ensure:
  - uniformity in approach; and
  - quality of valuation output
- Applicability for Chartered Accountants
  - On mandatory basis for valuation reports issued under the Companies Act, 2013 on or after **01 Jul 2018**
  - On recommendatory basis for valuation under other statutes like Income tax, FEMA, SEBI
- ICAI RVO has adopted the valuation standards issued by ICAI

# ICAI VS 2018

## Framework for Preparation of valuation report in accordance with ICAI VS

ICAI VS 101

Definitions

ICAI VS 102

Valuation Bases

ICAI VS 103

Valuation Approaches and Methods

ICAI VS 201

Scope of Work, Analyses and Evaluation

ICAI VS 202

Reporting and Documentation

ICAI VS 301

Business Valuation

ICAI VS 302

Intangible Assets

ICAI VS 303

Financial Instruments



# DRAFT VALUERS BILL 2020

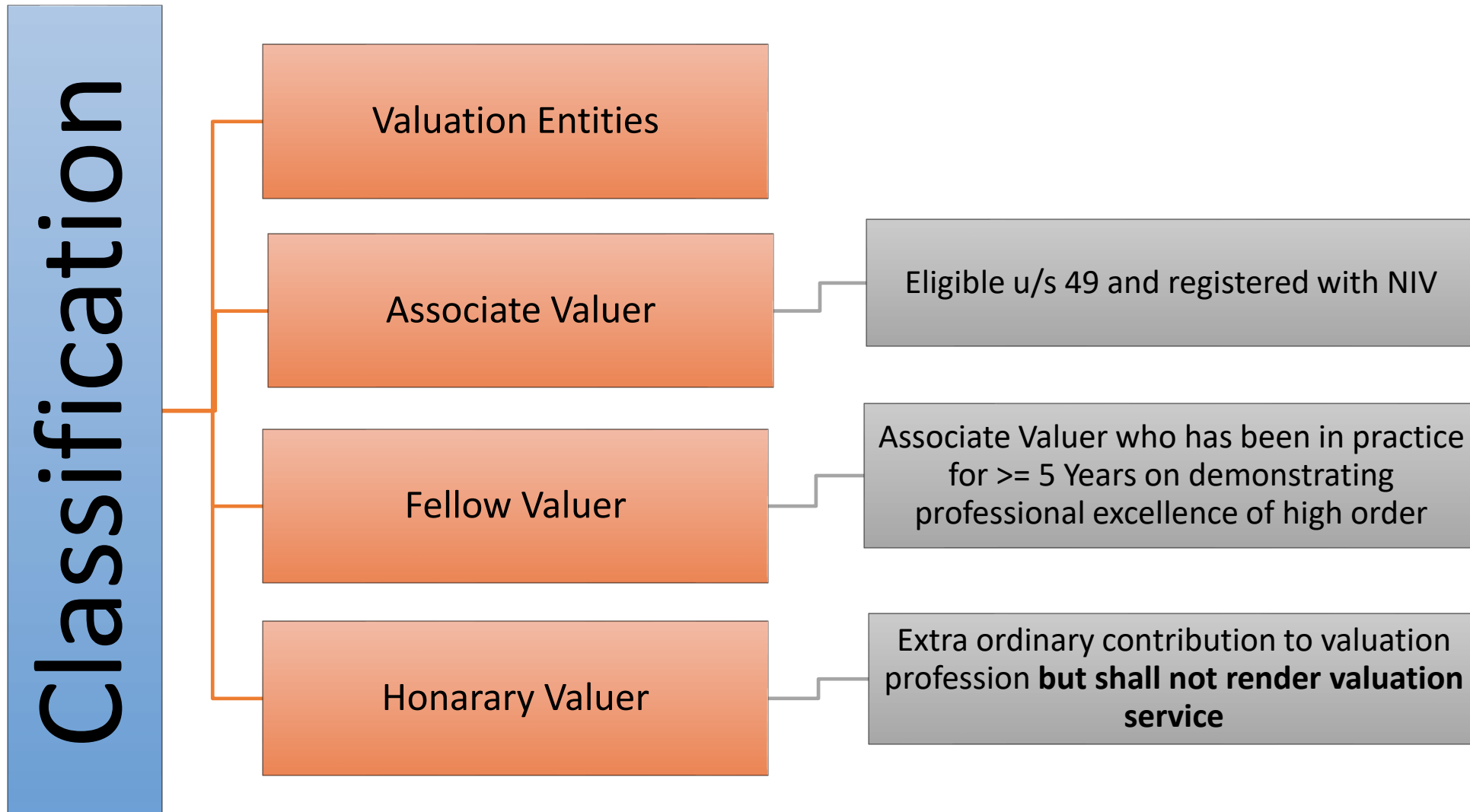


# DRAFT VALUERS BILL 2020 – SALIENT FEATURES

- Establishment of National Institute of Valuers ('NIV')
  - To Promote the development and Regulate the Valuation Profession
  - To Protect the Interest of Users of Valuation Services
- Framework of NIV
  - Governing Council Of NIV
  - Committee of Valuers
  - Valuation Standard Committee
  - Audit Committee
  - Administrative Law Department
- Formation of Valuation Standards Committee
  - To recommend & review (Once in a year) Valuation Standards and Valuation Guidelines
- Power to Inspections and Investigations (Search and Seizure)
- Settlement of Contraventions (similar to SEBI)
- Registration of Valuers under different Asset Classes



# SECTION 48: CLASSES OF VALUER



## SPECIFIED QUALIFICATION AND EXPERIENCE UNDER CLAUSE (D) OF SECTION 49(1) OF THE ACT

Asset Class	Qualification (obtained from a recognised Indian University or Deemed University, whether in India or abroad)	Post-qualification experience of valuation in the asset class
Plant & Machinery	Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Post-Graduate in above disciplines.	5 years
	Post-Graduate in Valuation of Plant and Machinery	3 years
Land & Building	Graduate in Civil Engineering, Architecture, Town Planning or Valuation Surveying or Post-Graduate in above disciplines	5 years
	Post-Graduate in Valuation of Land and Building or Real Estate Valuation	3 years
Financial Assets	Member of ICAI, ICSI, ICWAI, MBA, Post-Graduate Diploma in Business Management (specialisation in finance) or Post-Graduate in Finance	3 years

# DRAFT VALUERS BILL 2020 - SALIENT FEATURES

## ■ Individual eligibility

The individual should not be:

- Minor
- Bankrupt
- Person of Unsound Mind
- Convicted
- Non-Resident (FEMA Definition)
- Not Fit and Proper

# DRAFT VALUERS BILL 2020 - SALIENT FEATURES

- Partnership/ Company Eligibility (Other than Subsidiary/JV/ Associate)
  - Primary Objective should be Valuation
  - Not Undergoing Insolvency
  - None of Its Partners or Directors are ineligible (*All partners need not pass 'Valuation Examination' as required under current Rules*)
  - Majority Partners/Directors are Valuers
  - None of Partners/ Directors are Partner or Director of another Partnership/Company which is a Valuer
  - Atleast one of the Partners or Directors is Valuer of Assets class for which Partnership/Company seeks registration



# TRIGGERS OF VALUATION



# PURPOSE OF VALUATION

Business Valuation	Regulatory	Intangibles	Financial Reporting
Restructuring	FEMA	Purchase / Sale	Purchase Price Allocation
Purchase / Sale of shares / business	Income Tax Act	Hypothecation	Private Equity/ Venture Capital Funds
Litigation / Family Settlements	SEBI Regulations	Accounting for purchase	Financial Instruments
Fund raising	Companies Act	Impairment	Ind AS reporting – Fair Value / Impairment



# VALUATION UNDER VARIOUS PROVISIONS OF LAW



# COMPANIES ACT, 2013

## INDICATIVE LIST OF TRANSACTIONS:

Section	Valuation Requirement
54(1)(d)	Issue of Sweat Equity Shares in case of unlisted companies
62(1)(c)	Issue of shares / convertible securities on preferential basis by unlisted company for cash or for consideration other than cash
66 *	Reduction of Share Capital
67(3)(b)	Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees
68 *	Buyback of shares



# COMPANIES ACT, 2013

## INDICATIVE LIST OF TRANSACTIONS:

Section	Valuation Requirement
192(2)	Transactions involving transfer of assets for non-cash consideration to / from directors
230 & 232	Scheme of Compromise/Arrangement or Scheme of Corporate Debt Restructuring
234	Cross border merger of an Indian Co. into Foreign Co. or vice versa
236	Purchase of minority share holding
281	Winding up of a company

# DETERMINATION OF PRICE FOR PURCHASE OF MINORITY SHAREHOLDING UNDER SEC. 236

As per Clause 27 of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016

## ■ In case of listed company:

- Offer price shall be determined in the manner as may be specified by SEBI under relevant regulations as applicable: and

## ■ In case of unlisted company / private company:

- Offer price shall be determined after taking into account the following:
  - Highest price paid by the acquirer, person or group of persons for acquisition during last twelve months
  - Fair price of shares to be determined by Registered Valuer after taking into account the valuation parameters including return of net worth, book value of shares, earning per share, price earning multiple vis-a-vis industry average and such other parameters customary for valuation

# INCOME TAX ACT, 1961

## INDICATIVE LIST OF TRANSACTIONS:

Section	Valuation Requirement
Sec 56(2)(viib)	Issue of unquoted shares. FMV of such shares to be computed in accordance with Rule 11UA
Sec 56(2)(x) and Sec 50CA	Transfer of unquoted shares
Sec 50B	Slump sale of a business
Sec 92	Transfer pricing provisions
Sec 9(1)(i) - Rule -11UB & 11UC	Income deemed to accrue or arise in India in case of indirect transfer of shares
Sec 17(2)(vi) - Rule 3(8) & 3(9)	Valuation of perquisites in respect of ESOP's/sweat equity shares

# VALUATION OF SHARES AND SECURITIES UNDER SEC.56

- Sec 56(2)(viib)
- Where a private company receives any consideration for issue of shares from any resident person, that exceeds the face value of shares, the aggregate consideration received as exceeds the FMV shall be taxable. FMV of such shares to be computed in accordance with Rule 11UA
- Value to be computed under option (a) or (b) below at the option of the assessee
  - a) Net worth of the company after making adjustments as specified in Rule 11UA clause(2);  
or
  - b) FMV as determined by a merchant banker as per the DCF Method.

# COMPUTATION OF ARM'S LENGTH PRICE UNDER SEC.92

- Arm's Length Price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribed, namely:
  - Comparable uncontrolled price method;
  - Resale price method;
  - Cost plus method;
  - Profit split method;
  - Transactional net margin method;
  - Such other method as may be prescribed by the Board

# VALUATION OF PERQUISITES IN RESPECT OF ESOP

- For listed company:
  - $\text{Perquisites Value} = \text{Quoted Price} - \text{Exercise Price}$
  
- For unlisted company:
  - $\text{Perquisites Value} = \text{Fair Market Value determined by Merchant Banker} - \text{Exercise Price}$

# FOREIGN EXCHANGE MANAGEMENT ACT, 1999

## INDICATIVE LIST OF TRANSACTIONS:

- Fresh Issue of Indian Company Shares by subscription to Memorandum of Association to a Person Resident outside India
- Issue of Shares or Securities by an Indian company to a Person Resident outside India
- Transfer of Shares or Securities by a Resident to a Person Resident outside India
- Transfer of Shares or Securities by a Person Resident outside India to a Resident

# FOREIGN EXCHANGE MANAGEMENT ACT, 1999

**Valuation: In case of issue or transfer of shares or securities following approach is to be adopted:**

- **Listed Securities** - the price worked out in accordance with the relevant SEBI guidelines, or preferential allotment price of shares determined under the SEBI Guidelines or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009.
- **Unlisted Securities** - internationally accepted pricing methodology for valuation, on an arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant.
- In case of partial / full acquisition of an existing foreign Company, where the investment is more than USD 5 million, valuation of the shares of the company shall be made by Category I Merchant Banker registered with SEBI or an Investment Banker / Merchant Banker outside India registered with the appropriate regulatory authority in the host country and, *in all other cases by a Chartered Accountant or a Certified Public Accountant*



# SEBI (SUBSTANTIAL ACQUISITION OF SHARES & TAKEOVERS) REGULATIONS, 2011

- **Frequently traded shares** - the volume-weighted average market price of such shares for a period of **sixty trading days** immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period,
- **Not frequently traded** - the price determined by the acquirer and the 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

# SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS), REGULATIONS, 2018

- As per SEBI ICDR Regulation, the price of frequently traded equity shares pursuant to **preferential allotment** shall be **higher of**:
  - the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the **twenty six weeks** preceding the relevant date; or
  - the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the **two weeks** preceding the relevant date.
- 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

# SEBI REGULATIONS - MERGER / DEMERGER

- Following disclosure needs to be made by a valuer in the valuation report:

Valuation Approach	XYZ Ltd.		PQR Ltd.	
	Value per share	Weight	Value per share	Weight
Asset Approach	x	a	y	a
Income Approach	x	b	y	b
Market Approach	x	c	y	c
Relative value per share	x		y	
Exchange / Entitlement Ratio (rounded off)			xx	

Ratio : “x (xxx) equity share of XYZ Ltd of INR 10 each fully paid up for every y (yyy) equity shares of PQR Ltd of INR 10 each fully paid up”

In case any approach is not used for arriving at the share exchange / entitlement ratio, detailed reasons for the same need to be provided by the valuer in his report



THANK YOU !