

Companies (Registered Valuers and Valuation) Rules, 2017 – An overview

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Background

MCA notified the **Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules)** on 18 October 2017.

MCA specified the **Insolvency and Bankruptcy Board of India (IBBI)** as the responsible authority.

- IBBI has appointed 8 RVOs as of today.
- ICAI is one of the 8 RVOs for the securities or financial asset class.
- Approximately 212 valuers have been registered under these rules (till 20 November 2018).

Asset class	Registered valuers
Land and building	115
Securities or financial assets	70
Plant and machinery	27

The Rules contain aspects pertaining to:

- Criteria for becoming a registered valuer
- Process for registration as valuers
- Recognition of registered valuer organisations
- Valuation standards



Brief Synopsis

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Annexure II: Required Forms
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Annexure IV: Indicative Matrix on Requisite Qualifications/ Experience in Specified discipline



Registered Valuation: Introduction

Rule 1

Short Title:

- These Rules may be called Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred as the 'said Rules').

Commencement:

- Date of publication in Official Gazette, ie 18 October 2017

Applicability:

- The said Rules shall apply for valuation under the Act or the said Rules in respect of any:
 - Property
 - Stocks
 - Shares
 - Other assets / Net worth of the company / its liabilities

Conduct of valuation under any other law than the Act or the said Rules shall not be affected by virtue of these rules coming into effect.

Rule 2

Objective and Scope:

- Prescribes specific definitions of various terms used in the said Rules

Definitions:

Some of the key definitions are represented as under:

- **Act:** The Companies Act, 2013
- **Authority:** An authority specified by the Central Government under section 348 of the Act
- **Asset Class:** It refers to 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
- **Valuation Standards:** The **standards on valuation** referred to in **Rule 18**.
- **Valuer:** A person registered with the authority in accordance with the said Rules

Registered Valuer: Eligibility Criteria

Rule 3 (1) For a Person

- Valuer member of an RVO; and recommended by RVO;
- Passed the **valuation examination (Rule 5)** within **three years** of making an **application for registration (Rule 6)**;
- Possesses relevant **qualifications and experience (Rule 4)**;
- **Person resident in India (FEMA, 1999)**; **not a minor**; **not** been declared to be of **unsound mind**; **not an undischarged bankrupt**/not applied to be adjudicated as a bankrupt;
- **Not been convicted** by any competent court for an offence punishable **with imprisonment for term > 6 months** or for an offence involving **moral turpitude**, and a **period of 5 years** has **not elapsed** from the date of expiry of the sentence;
- **Not been levied a penalty** under **section 271J of Income-tax Act, 1961** and **time limit for filing appeal** has **expired**, and **5 years** have **not elapsed** after levy of such penalty; and
- **Is a fit and proper person**

Rule 3 (2) For a Partnership Entity or Company

A partnership entity or company is **NOT eligible** if:

- It has been set up for **objects other than** for **rendering professional or financial services**, including valuation services;
- In case of a company, it is a **subsidiary, joint venture or associate** of another company or body corporate;
- **Undergoing an insolvency** resolution or is an **undischarged bankrupt**;
- **All the partners/directors** are **not eligible** as per **Rule 3 (1)**;
- **Three or all partners/directors**, whichever is **lower**, are **not registered valuers**;
- **None of the partners/directors** is a **registered valuer for the asset class**, for the valuation of which it seeks to be a registered valuer

Registered Valuers: Qualification and Experience

Rule 4: Qualification and Experience

Asset class	Qualifications	Experience in specified discipline
Plant and Machinery	<ul style="list-style-type: none"> 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 ii. Post-graduate on above courses 	<ul style="list-style-type: none"> i. Five years ii. Three years
Land and Building	<ul style="list-style-type: none"> i. Graduate in civil engineering, architecture or town planning or equivalent 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) 	<ul style="list-style-type: none"> i. Five years ii. Three years
Securities or Financial Assets	<ul style="list-style-type: none"> i. Member of ICAI, ICSI, ICWAI, MBA or post graduate diploma in business management (specialised in finance) ii. Postgraduate in finance 	Three years
Any other asset class with corresponding qualifications and experience as per Rule 4 may be specified by CG.		

Explanation: The term 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of HRD as equivalent to a professional and technical degree.

Registered Valuers: Valuation Examination and Functions

Rule 5: Valuation Examination

- The **authority shall 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 members of an RVO.
- The authority shall **determine the syllabus** for the valuation examination on the **Recommendation Committee** of Experts constituted by the authority in this regard.
- 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**.
- An **individual who passes** the valuation examination shall **receive an acknowledgement** of passing the examination.
- An individual may **appear** for the valuation examination **any number of times**.

Rule 10: Functions of a Valuer

- **Conduct valuation** as per the **said Rules** as required under **the Act**.

Procedural Requirements: Registration and Transitional Arrangements

Rule 6: Application for Registration

- An **eligible individual** (Rule 3(1)) may make an application in **Form A** with a **non-refundable fee** of **INR 5,000**.
- An **eligible partnership entity/company** under Rule 3(2) may make an application in **Form B** with a **non-refundable fee** of **INR 10,000**.
- After **due examination**, the authority may grant **21 days** to the applicant to **remove the deficiencies** from the application, if any, or submit **additional documents** or clarification, or **appear** before the authority.
- If the authority is **satisfied**, it may **grant a certificate of registration** to the applicant in **Form C** within **60 days** of receipt of the complete application.
- If the authority is **not satisfied**, it shall **communicate the reasons** for not granting certificate of registration within **45 days** of receipt of the complete application.
- The **applicant** shall **submit an explanation** within **15 days** of the receipt of the communication of rejection of application.
- The **authority** shall **communicate its final decision** to the applicant within **30 days** of receipt of explanation.

Rule 11: Transitional Arrangement

- Any person who may be **rendering valuation services** under the Act, as **on 18 October 2017**, may **continue** to render valuation services **without a certificate of registration** under the said Rules **up to 31 January 2019**.

Procedural Requirements: Conditions

Rule 7: Conditions for Registration

The registration granted under Rule 6 shall be subject to following conditions:

- **Possess the eligibility and qualification and experience** criteria at all times (Rule 3 and Rule 4)
- Shall **not conduct valuation** of the assets or class(es) of assets **other than** for which he/it has been **registered by the authority**
- Take **prior permission** of the **authority** for **shifting his/its membership** from one RVO to another
- Take **adequate steps for redressal** of grievances
- **Maintain records of each assignment** undertaken by him **for at least 3 years** from the completion of such assignment
- **Comply** with the **Code of Conduct** as per Annexure I of the said Rules

Along with the these conditions, the following conditions are also to be taken care of, in a partnership entity/ company is the registered valuer:

- Only the **partner or director** who is a **registered valuer**, for the particular asset class(es) that is being valued, is **allowed to sign and act on behalf** of it
- **Disclose** to the company concerned, the **extent of capital employed or contributed** by the partner or director who would sign and act in respect of relevant valuation assignment for the company
- Be **liable jointly and severally** along **with the partner/director** who signs and acts in respect of a valuation assignment on behalf of the partnership entity/ company
- **Immediately inform** the **authority** on the **removal of a partner/director** who is a registered valuer **along with detailed reasons** for such removal

Registered Valuer: Conduct of Valuation

Rule 8(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**:
 - **internationally accepted valuation standards**; or
 - **valuation standards** adopted by any **RVO**.

Rule 8(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**.

Rule 8(3) The valuer shall, in his report, state the following:

- **Background information** of the asset being valued
- **Purpose** of valuation and appointing authority
- **Identity** of the **valuer** and any **other experts** involved in the valuation
- **Disclosure** of valuer **interest or conflict**, if any
- Date of **appointment, valuation date** and **date of report**
- **Inspections** and/or investigations undertaken
- Nature and **sources of the information** used or relied upon
- **Procedures adopted** in carrying out the valuation and valuation standards followed
- **Restrictions on use** of the report, if any
- **Major factors** that were taken into account during the valuation
- **Conclusion**
- **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

Registered Valuer Organisation: Eligibility and Application for Recognition

Rule 12: Eligibility for RVO

Following **type of organisations** can be **registered as RVO**:

- **Section 8 Company** of the **Act** with the **sole object** of dealing with **matters** relating to **regulation of valuers** of an asset class(es) and has in its bye laws the requirements specified
- A **professional institute** established by an Act of Parliament enacted for the purpose of regulation of a profession
- Organisation registered as a **society** under the Societies Registration Act, 1860 or **trust** governed by the Indian Trust Act, 1882

An **eligible organisation** shall be **recognised as RVO** if it provides the following to **its valuers members**:

- Conducts **educational courses in valuation and training**
- **Grants membership or certificate of practice**
- Lays down a **code of conduct** as specified in **Annexure I**
- Provides for **continuing education**
- **Monitors and reviews** their functioning
- Has a mechanism to **address grievances** and **conduct disciplinary proceedings** them

Rule 13 Application for Recognition:

- An **eligible organisation** which meets the conditions under **Rule 12** may **make an application** to authority in **Form D** with a **non-refundable fee of INR 1,00,000**.
- After **due examination**, the authority may **grant 21 days** to the applicant to:
 - **remove the deficiencies** from the application, if any;
 - **submit additional documents** or clarification;
 - **appear** before the authority.
- If the authority is **satisfied**, it may **grant a certificate** of recognition as RVO in **Form E**.
- If the authority is **not satisfied**, it shall **communicate the reasons** for not granting certificate of registration **within 45 days** of receipt of the complete application.
- The **applicant** shall **submit an explanation within 15 days** of the receipt of the communication of rejection of application.
- The **authority** shall **communicate its final decision** to the applicant **within 30 days** of receipt of explanation.

Registered Valuer Organisation: Conditions for Recognition

Rule 14 Condition for Recognition

The **recognition** granted **under Rule 13** shall be subject to **ALL** of the **following conditions**:

- At **all times** continue to **satisfy** the **eligibility requirements** specified under **Rule 12**;
- **Maintain a register of members** who are registered valuers, which shall be **publicly available**;
- **Admits** only **individuals** who **possess** the educational qualifications and experience **requirements as per Rule 4** and as specified in its recognition certificate, as members;
- Make such **reports and comply with such other conditions** as may be required by the authority;
- Be converted or **registered as a company** with **governance structure and bye laws within two years** from commencement of the said Rules;
- **Display** on its **website**, the **status** and **specified details** of every **registered valuer member** and actions taken/ being taken against them, if any

Valuation Standards

Rule 18 Valuation Standards:

- The **Central Government** shall **notify/modify** (from time to time) the **Valuation Standards** on the **recommendations of the Committee** set up under **Rule 19**.
- The Valuation Standards issued by ICAI on 10 June 2018 are effective from 1 July 2018 until the Valuation Standards are notified by the Central Government. Accordingly, the following Valuation Standards issued by ICAI would be applicable to valuation engagements carried out under the Act as follows:

Valuation Standard	Name
Valuation Standard 101	Definitions
Valuation Standard 102	Valuation Bases
Valuation Standard 103	Valuation Approaches
Valuation Standard 201	Scope of Work, Analyses and Evaluation
Valuation Standard 202	Reporting and Documentation
Valuation Standard 301	Business Valuation
Valuation Standard 302	Intangible Assets Valuation
Valuation Standard 303	Financial Instruments Valuation

Committee for Valuation Matters

Rule 19 Committee to advise on valuation matters

- The **Central Government** may **constitute** a Committee to **make recommendations** on formulation and laying down of **valuation standards and policies** for compliance by companies and registered valuers.
- The **Committee** shall **comprise**:
 - **Chairperson** who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics
 - **one member each** nominated by the **Ministry of Corporate Affairs**, the **Insolvency and Bankruptcy Board** of India, the **Legislative Department**
 - Up to **four members** nominated by the **Central Government representing authorities** which are allowing valuations by registered valuers
 - Up to **four members** who are **representatives of the RVO**, nominated by the Central Government.
 - Up to **two members** to **represent industry** and other stakeholder **nominated** by the **Central Government in consultation** with the **Authority**
 - **President of ICAI, ICSI, ICWAI**
- The Chairperson and Members of the Committee shall have a **tenure of three years** and they shall **not have more than two tenures**.

Cancellation and Suspension

Rule 9: Temporary Surrender

- A **registered valuer** may **temporarily surrender** his registration certificate and shall **inform the authority**.
- A **RVO** shall **inform the authority** if any **valuer member** has **temporarily surrendered/revived** his/its membership, within **7 days** from approval of the application for temporary surrender/ revival.
- Every **RVO** 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.

Rule 15: Cancellation of Certificate

- The authority may cancel or suspend the registration of a valuer or recognition of a RVO for **violation of the provisions of the Act, any other law** allowing him to perform valuation, **the said Rules or any condition of registration or recognition**.

Complaint, Cancellation and Suspension

Rule 16: Complaint against a registered valuer or RVO

- A complaint may be filed before the authority along with a non-refundable fees of INR 1,000 and the authority shall examine the complaint and take such necessary action as it deems fit.
- Where the **complaint** is against a **registered valuer** who is a **partner/director** of a partnership entity/company, the authority may **refer** it to the **relevant RVO** who shall **handle** it.

Rule 17: Procedure for cancellation or suspension of registration or recognition certificate

Issue of Show Cause Notice

- Based on the findings of an inspection/investigation/a complaint received/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 recognition of RVO, it shall issue a show cause notice to the valuer or RVO.

Manner of Serving the Show Cause Notice

- At the **registered address** by **registered post with acknowledgment due** or an appropriate **electronic means**.

Disposal of Show Cause Notice

- The notice shall be disposed off in adherence to the principles of natural justice which may provide no action, warning, suspension, cancellation or change in any one or more partner or director or the governing board of RVO.

Order

- The order shall become **effective after** the lapse of **30 days** from **date of issue/publish** on **website of the authority**.

Penal Provisions

Rule 20 Punishment for Contravention:

- Where a person contravenes any provisions of the said Rules, he shall be **punishable** in accordance with **sub-section (3) of section 469** of the Act, which states:
 - a. **Fine** which may **extend to INR 5,000**
 - b. In case of **continuing contravention**, a further **fine** which may **extend to INR 500 for every day** after the first day of contravention

Rule 21 Punishment for false statement

- If in any **report, certificate or other document** required under the provisions of the Act or the said Rules, any person **makes**:
 - a. **false statement** in any material particulars, knowing it to be false **or**
 - b. **omits any material fact**, knowing it to be material,he shall be **liable** under **section 448 of the Act**.
- As per Section 448 of the Act, a person shall be **punishable** for false statement in **accordance with section 447** of the Act.
- Section 447 states that, without prejudice to any liability under the Act, any person who is found guilty of fraud shall be punishable with:
 - a. **imprisonment** for a term **extending from 6 months to 10 years**
 - b. **fine** which shall **at least** be the **amount involved** in fraud and may **extend to three times**
- Provided that where fraud in question **involves public interest**, the term of **imprisonment** shall be **at least 3 years**.

Annexure: Code of Conduct to be Followed by Registered Valuers

Integrity and Fairness

- Follow high standards of integrity and fairness in all dealings; Maintain **integrity** by being **honest, straightforward** and **forthright** in all professional relationships
- Ensure that he/it provides **true and adequate information** and shall **not misrepresent** any facts
- **Refrain** from being **involved** in any **action** that would **bring disrepute to the profession**
- Keep **public interest foremost**

Professional Competence and Due Care

- Render at high standards of service, **exercise due diligence**, ensure proper care and exercise **independent professional judgement**
- Carry out **professional services** in accordance with the relevant **technical and professional standards**
- Continuously **maintain professional knowledge and skill** to provide competent professional service based on latest developments in practice

- 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 **not generated by the valuer**
- **Not carry out any instruction** of the **client**, as they are **incompatible** with the requirements of **integrity, objectivity and independence**
- **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

Gifts and Hospitality

- **Valuer/His relative shall not accept gifts** or hospitality which **undermines or affects** his **independence** as a valuer

Annexure: Code of Conduct to be Followed by Registered Valuers

Gifts and Hospitality (Cont'd)

- **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**

Independence and Disclosure of Interest

- **Act with objectivity** in professional dealings by ensuring that **decisions** are made **without** the presence of any **bias, conflict of interest, coercion, or undue influence** of any party
- **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.
- Maintain **complete independence** in his/its professional relationships
- **Disclose** to the clients, possible **sources of conflicts** of duties and interests, while providing unbiased services

- **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
- **Not indulge in 'mandate snatching'** or offering '**convenience valuations**' in order to cater to a client's needs
- **Not charge success fee**
- 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

- **Not use or divulge any confidential information** about the subject company, **unless** there is a **legal or professional right or duty to disclose**
- **Not conduct business** which in the **opinion of the authority or the RVO discredits the profession**

Annexure: Code of Conduct to be Followed by Registered Valuers

Remuneration and Costs

- Render 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**
- **Not accept any fees** or that are **not disclosed** in a **written contract** with the client

Occupation, employability and restrictions.

- **Refrain from accepting too many assignments**, if it is unlikely to be able to devote adequate time to each of his/ its assignments

Information Management

- **Maintain written contemporaneous records** for any decision taken, the reasons for taking the decision, and the information and supporting evidence of such decision.
- Provide **all information** and records as may be required by the **authority, RVO** or any **other statutory regulatory body**.
- A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorized by the authority, the registered valuers organization with which he/it is registered or any other statutory regulatory body
- While **respecting the confidentiality of information acquired**, 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

Thank you