

REQUIREMENT OF REFORMS UNDER THE COMPANIES ACT, 2013

The Companies Act and related rules stipulate several requirements for Valuation to be done by Registered Valuers. This note summarises the various requirements for Valuation under the said statute and attempts to suggest reforms in the said requirements to make the valuers more accountable to meet the objective of protecting stakeholders better.

Valuation requirement under the Companies Act, 2013

- ★ Further Issue of Shares (Section 62(1)(c)) r/w Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014
- ★ Consideration other than cash for issue of shares (Section 62(1)(c))
- ★ Assets acquired by Directors or Associate companies for consideration other than cash (Section 192(2))
- ★ Compromise or Arrangement with Creditors/ Shareholders (Section 230)
- ★ Purchase of Minority Shareholding (Section 236(2))
- ★ Liquidation (Section 281(1)(g))/ Declaration of Solvency (Section 305(2))
- ★ Issue of Sweat Equity (Rule 8 of Companies (Share Capital and Debentures) Rules, 2014)
- ★ Purchase of Shares by Employees (Rule 16 of Companies (Share Capital and Debentures) Rules, 2014)

★ Security for inviting Secured Public Deposits (Rule 6 of Comp (Acceptance of Deposits) Rules, 2014)

★ Revaluation of Assets under Accounting Standards

Section/ Rule	Subject	Objective	Valuation Requirement	Suggested Reform
Sec. 62 r/w Rule 13 (SCAD)	Fresh Issue of Shares other than Rights Issue and ESOP	Safeguard existing shareholders	<p>"the price of such shares is determined by the valuation report of a registered valuer"</p> <p>price determined on the basis of valuation report of a registered valuer</p>	<p>Valuation Base(is) may be prescribed as Market Value</p> <p>Range of value may be permitted</p> <p>Valuation Date may be prescribed</p> <p>Valuation methodology may be prescribed for FEMA and Income Tax Law to rely on the same valuation</p>
Section/ Rule	Subject	Objective	Valuation Requirement	Suggested Reform
Sec. 62 r/w Rule 13 (SCAD)	Issue of shares against Non- Cash Consideration	Safeguard existing shareholders	justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer	<p>Valuation Base(is) may be prescribed as Market Value</p> <p>Valuation Date may be prescribed</p>
Sec. 192	Non-Cash Transaction with Directors	Safeguard company & stakeholders from Directors	value of the assets involved in such arrangement duly calculated by a registered valuer	<p>Valuation Base(is) may be prescribed as Market Value</p> <p>Valuation Date may be prescribed</p>

Sec. 230	Compromise or Arrangement	Protect Shareholders and Creditors from Management and Promoters	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	Valuation Base(is) may be prescribed as Market Value Valuation Date may be prescribed
Sec. 230 r/w Rule 3 (CAA)	Takeover Offer	Protect Minority Shareholders in event of Takeover Offer	fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.	Valuation Base(is) may be prescribed as Market Value For choosing valuation method change from Customary Practise to factors stated in valuation standards Valuation Date may be prescribed
Section/ Rule	Subject	Objective	Valuation Requirement	Suggested Reform
Sec. 236 r/w Rule 27 (CAA)	Purchase of Minority Shareholding	Protect Minority Shareholders & Offer fair exit price	fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and such other parameters as are customary for valuation of shares of such	Valuation Base(is) may be prescribed as Market Value For choosing valuation method change from Customary Practise to factors stated in valuation standards Valuation Date may be prescribed

Sec. 281	Winding Up	Check on the liquidator – Realise full value of assets	valuation of the assets shall be obtained from registered valuers	Valuation Base(is) may be prescribed as Market Value Valuation Date may be prescribed
Rule 8 (SCAD)	Sweat Equity	Protect Minority Shareholders and company	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	Valuation Base(is) may be prescribed as Market Value Valuation Date may be prescribed
			valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued	
Rule 16 (SCAD)	Provision for purchase of own shares for employees	Safeguard other stakeholders from Employees	valuation at which shares are to be purchased shall be made by a registered valuer	Valuation Base(is) may be prescribed as Market Value Valuation Date may be prescribed
Section/ Rule	Subject	Objective	Valuation Requirement	Suggested Reform
Rule 6 (AOD)	Valuation of Security for Deposits	Safeguard Depositors w.r.t. Value of Security	market value of such assets as assessed by a registered valuer	No reform required
AS 10/ IndAS 16 r/w Sch. III	Revaluation of PPE	Disclosure of Revaluation of PPE	being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses undertaken by professionally qualified valuers	Valuation requirement on <u>an</u> yearly interval may be prescribed for companies other than small companies Valuation Report may be required to be attached with Audited Financial Statements for more

				accountability of valuers for method adopted
IndAS 40 r/w Sch. III	Fair Value of Investment Property	Disclosure of Fair Value of Investment Property	measure the fair value of investment property, for the purpose of disclosure even though they are required to follow the cost model. An entity is encouraged, but not required, to measure the fair value of investment property on the basis of a valuation by an independent valuer	Valuation requirement on <u>an</u> yearly interval may be prescribed for companies other than small companies Valuation Report may be required to be attached with Audited Financial Statements for more accountability of valuers for method adopted
Sch. III	Re-valuation of Intangible Assets	Revaluation should be based on report of Registered Valuer	Not Specified	Requirement for revaluation may be made part of the Accounting Standard

Section/ Rule	Subject	Objective	Valuation Requirement	Suggested Reform
Rule 12 (SCAD)	ESOP	Allow Shareholders (Special Res.) to allot ESOPs on any terms	No Valuation Requirement	No reform suggested
Sec. 232	M&A	Protect Stakeholders – Provide for a fair Swap Ratio	report of the expert with regard to valuation	Report should be required from Registered Valuer Valuation Basis(es) must be prescribed

Reforms suggested:

- ★ Valuation Base should be Market Value by Default. The same is well defined in standards.
- ★ Valuation Date should be prescribed.
- ★ Improve Ease of doing business: Sync requirements with FEMA and Income Tax.
- ★ Value of Existing Business only or Future expansion possibility is also required to be considered?
- ★ Floor Price or Range of Value?
- ★ Special Considerations attached with instruments must be required to be taken into consideration.
- ★ Non-Operating Assets must be identified & valued separately.
- ★ Effect of Control Premium, DLOC, DLOM on the valuation should be clarified.
- ★ Valuers must be required to state value at which previous transactions were made on record for issue or transfer of shares in valuation reports and reason for deviation in value in their reports.