

## **SPECIFIC LAWS REQUIRED TO APPOINT REGISTERED VALUERS**

### **Introduction:**

**Valuation is the process of determining the Economic Worth of an Asset or Liability under certain assumptions and limiting conditions and subject to data available on the Valuation Date.**

**Section 247 of the Companies Act 2013 deals with Valuation by Registered Valuers.**

Where a valuation is required to be made 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 Companies Act 2013 or Insolvency and Bankruptcy Code 2016 , it shall be valued by a registered valuer registered with Insolvency Bankruptcy Board of India (IBBI).

### **Specific Laws required to appoint Registered Valuers :**

- ❖ Companies Act 2013
- ❖ Insolvency Bankruptcy Code 2016

### **Who is a registered valuer?**

A registered valuer means a person registered with the Authority ( IBBI) in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017.

### **Registered Valuers are registered under different asset classes :**

- (i) Land and Building;
- (ii) Plant and Machinery
- (iii) Securities and Financial Assets

### **Process who shall appointment Registered Valuers :**

**Companies Act 2013 :** Registered Valuer shall be appointed by the audit committee or in its absence by the Board of Directors of that company. ( As per Section 247(1) of Companies Act 2013)

**Insolvency and Bankruptcy Code 2016** : Valuer shall be appointed by the Resolution Professional (RP) within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date. RP shall appoint two registered valuers to determine the **fair value** and the **liquidation value** of the corporate debtor. ( As per Regulation 27 of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016

**SPECIFIC PROVISIONS UNDER THE COMPANIES ACT, 2013 WHICH REQUIRES VALUATION  
REPORT FROM A “REGISTERED VALUER”**

<b>Companies Act 2013</b>			
<b>Sl.No</b>	<b>Section / Rule</b>	<b>Description</b>	<b>Particulars</b>
1	62(1)(c)	For Further Issue of Shares	<p>When a company having share capital proposes to increase its subscribed share capital by a fresh issue of shares, such shares shall be offered to:</p> <ul style="list-style-type: none"> <li>➤ Existing shareholders i.e. Rights Issue</li> <li>➤ Employees under a scheme of Employees’ Stock Option</li> <li>➤ Any other persons except those mentioned above, if authorised by a special resolution: Issue of shares on a Preferential Basis</li> </ul> <p>In all of the above cases, the price of the shares issued must be determined by the valuation report of a registered valuer subject to prescribed conditions.</p>
2	232(2)(d)	Merger and Amalgamation of Companies	Where an order has been made by the Tribunal, merging companies or the companies in respect of which a division is proposed, the report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members.
3	232(3)(h)	Merger and Amalgamation of Companies	Where under a Scheme of Compromise/Arrangement, the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal

4	Rule 8 of Companies (Share capital and Debentures) Rules, 2014	Issue of Sweat Equity Shares	This rule applies to all companies except listed companies issuing sweat equity shares to its directors or employees. The rule prescribes that the sweat equity shares shall be issued at a price determined by a registered valuer as the fair price giving justification for such valuation. Also, the value of the intellectual property or know-how or any other value additions, for which the sweat equity shares have been issued to its directors or employees shall be determined by a valuation report of a registered valuer. If the sweat equity shares are issued for a non-cash consideration, the value of such non-cash consideration shall be based on a valuation report by a registered valuer. Additionally, if the sweat equity shares are issued pursuant to acquisition of an asset, the value of such asset shall also be determined based on a valuation report by a registered valuer.
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**SPECIFIC PROVISIONS UNDER THE INSOLVENCY BANKRUPTCY CODE 2016 WHICH REQUIRES VALUATION REPORT FROM A “REGISTERED VALUER”**

Insolvency and Bankruptcy Code 2016			
Sl.No	Code / Regulation	Description	Particulars
<b>If company is under Corporate Insolvency Resolution Process :</b>			
1	Regulation 27 and 35 (1) of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016	Fair value and Liquidation value	<p>Regulation 27 : Resolution Professional within seven days of his appointment shall appoint two registered valuers to determine the liquidation value of the corporate debtor</p> <p>Regulation 35 :</p> <p>(a) the two registered valuers appointed under regulation 27 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;</p> <p>(b) if in the opinion of the resolution professional, the</p>

			<p>two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and</p> <p>(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be</p>
<b>If company is under Voluntary liquidation :</b>			
2	Section 59 (3)(b)(ii) of Insolvency and Bankruptcy Code 2016	Voluntary liquidation of corporate persons	<p>A declaration from majority of individuals constituting the governing body in case of other corporate persons or the designated partners if a corporate person in case of limited liability partnership shall file with Registrar of Companies :</p> <p>Declaration shall be accompanied by a Report of the valuation of the assets of the company from Registered Valuer if any.</p>
3	Regulation 3(1)(b)(ii) of IBBI (Voluntary Liquidation Process) Regulations, 2017	Initiation of Voluntary Liquidation	<p>A declaration from majority of individuals constituting the governing body in case of other corporate persons or the designated partners if a corporate person in case of limited liability partnership shall file with Registrar of Companies :</p> <p>Declaration shall be accompanied by a Report of the valuation of the assets of the company from Registered Valuer if any.</p>
4	Regulation 38 of IBBI (Voluntary Liquidation Process) Regulations, 2017	Final Report - on completion of the liquidation process, the liquidator shall prepare the Final Report consisting of	The Liquidator shall submit an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be;
<b>If company is under Liquidation :</b>			
5	Regulation 35 of IBBI (Liquidation Process)	Valuation of assets intended to be sold	Regulation 35(1) : where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or

	Regulations, 2016		<p>regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.</p> <p>Regulation 35(2) : Cases not covered under sub-regulation (1), the liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor.</p> <p>Regulation 35(3) : The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.</p> <p>Regulation 35(4): The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.</p>
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