

Overview of Business Valuation

Lesson 12

KEY CONCEPTS

■ Valuation ■ Price ■ Principle of Valuation ■ Merger & Acquisition ■ Registered Valuers

Learning Objectives

To understand:

- Genesis of Valuation
- Need for Valuation
- Hindrances /Bottlenecks in Valuation
- Various Expression of Value
- Price vs. Value
- Process of valuation
- Business Valuation Approaches
- Principles of Valuation
- Sources of Information for Valuation

Lesson Outline

- Introduction
- Meaning of valuation
- Need to do valuation of a business
- Identifying the areas where valuation can be used
- Identifying the purpose of valuation and its impact on the value estimates
- Main hindrances in value estimates of a business
- Learning the concept of business valuation approaches
- Learning the main principles of valuation
- Identifying the main sources of information for valuation
- Lesson Round-Up
- Test Yourself
- List of Further Readings/References

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The Insolvency and Bankruptcy Code, 2016
- SEBI Regulations
- Valuation Standards-IVS and ICAI Valuation Standards

INTRODUCTION

Market usually discovers price, which reflects the worth of an asset. It discovers different prices for the same asset in different contexts. Thus, price is not absolute; it is context specific. Often, it is neither feasible nor desirable to pass an asset through the market to discover its worth. In such cases, worth of an asset is estimated in a simulated context. The person who estimates the worth is a Valuer, the process of estimation is valuation and the worth so estimated is the value. If value of an asset is what the price ought to be in the given context, the valuation is accurate. While the market may discover a dirty price occasionally failing to reflect the accurate worth of an asset, a value cannot be dirty. If price converges with value in the simulated context, the price discovery is perfect.

Valuation is a process of appraisal or determination of the value of certain assets, i.e., tangible or intangible, securities, liabilities and a specific business as a going concern or any company listed or unlisted or company undergoing liquidation or other forms of organization, partnership or proprietorship. 'Value' is a term signifying the material or monetary worth of a thing, which can be estimated in terms of medium of exchange. In other words, it is an assessment resulting in an expression of opinion rather than arithmetical exactness.

Business valuation requires a working knowledge of a variety of factors, and professional judgment and experience. This includes recognizing the purpose of the valuation, the value drivers impacting the subject company, and an understanding of industry, competitive and economic factors, as well as the selection and application of the appropriate valuation approach (es) and method(s).

The parties need a value for exchange goods or services for which either market does not exist, or market discovers a spurious price for a variety of reasons, including manipulation. They may also need value of an asset for a variety of purposes. Valuation is a key financial information relied upon by investors and used to support decisions in financial markets, having direct impact on the public interest (IVSC, 2014). The services rendered by valuers also helps in avoiding 'market collapse' due to imperfect information (Bartke & Reimund, 2015). Some of the NPAs in the banking system are attributed to decisions based on such valuations. The Committee of Creditors may unjustly liquidate a company if it uses an inflated reference value for comparison with the value offered by resolution plans. Such decisions arising from use of inappropriate values has the potential to distort market and misallocate resources in a market economy. Sustainable economic growth can only be built on valuations that are trusted by investors, creditors, tax authorities, governments, regulators and others.

Generally, the valuation process has four parts.

- (i) First, pre-valuation process where the valuer and the client agree on the terms of engagement.
- (ii) Second, investigation which is the formal or systematic examination or research undertaken on the property.
- (iii) Third, data handling and interpretation which requires processing and calculation of data, qualification and verification of data, and analysis of data.
- (iv) Fourth, post-valuation process reporting, which provides for a single value, presented in the valuation report.

The valuation report provides clients with an independent, comparable evidence and a written confirmation of the value of a property that is neither ambiguous nor misleading. Further, the determination of the value and delivery of the valuation report is made by the valuer on the basis of a framework such as RICS Red Book or the IVS (International Valuation Standards). These standards inter alia provide for the bases of value which are the fundamental measurement assumptions on which values are based, and the approaches and methods which are used to attain different valuation bases.

The valuation process is a complex process and requires multiple skills. In order to determine value, a valuer is required to make several judgments and must possess a mix of competencies.

GENESIS OF VALUATION

Valuation is the process of determining economic worth of an asset or a company under certain assumptions and limiting conditions and subject to data available on valuation date. (International Valuation Standard Council).

The economic agents take several financial decisions on the basis of an estimated value of an asset. They need value of an asset for purposes such as determination of the amount of loan that can be sanctioned against security of an asset or guarantee of a guarantor; levy of taxes like municipal tax, stamp duty, income-tax on capital gains; compensation for compulsory acquisition of property; assessment of loss and insurance premium; distribution of property among children / beneficiaries; etc. They may also need a value for reference or comparison to enable them to take an informed decision such as submitting or accepting a resolution plan in an insolvency proceeding. The purpose is defeated if the value is not authentic and genuine. A banker may not have adequate protection, where it gives loan against the security of an asset whose value is overestimated or guarantee of a person whose net worth is overestimated. Some of the Non-Performing Assets in the banking system is attributed to such inappropriate valuations. The Committee of Creditors may unjustly liquidate a company if it uses an inflated reference value for comparison with the value offered by resolution plans. In market economies, property forms the basis of majority of financial decisions. An improper valuation of the property risks financial exposure for a wide range of stakeholders (Gilbertson & Preston, 2005). The decisions arising from use of inappropriate values, in addition to causing unfair gain or loss to parties, has the potential to distort market and misallocate resources which may impinge upon economic growth in a market economy. This calls for a professional valuation.

Valuations are an essential part of most reporting and business decisions and play a crucial role in many real estate-related decisions. In fact, the evolution of valuation profession is attributed to the development of property markets. Internationally, the pressures driving demand for the professionalisation of valuers include valuation induced financial crisis or the determination to avoid such a crisis; the move towards market economies; and property tax reforms (Gilbertson & Preston, 2005). Further, several financial crises around the world are attributed to consequences of poor valuation. Valuation and prices have served as signals and incentives for both the bubbles as well as of the ensuing collapse in case of real estate market crashes. Therefore, it is observed that after every financial crisis the valuation profession comes into spotlight and efforts are made to increase its accuracy and reliability.

For example, pursuant to the property crash in UK in 1970s, the RICS published Red Book for setting out standards of valuation and professional conduct expected of valuers. In response to the “saving and loan” crisis in USA in late-1980s, the Government created a mechanism for uniform appraisal standards and licensing of valuers in each State. Further, the role of valuation profession was also highlighted in the global financial crisis of 2008.

NEED FOR VALUATION

Valuation of business plays a very vital role, therefore a business owner or individual may need to know the value of a business. The fair market value standard consists of an independent buyer and seller having the requisite knowledge and facts, not under any undue influence or stressors and having access to all of the information to make an informed decision.

Business valuation is carried out to know the business and helps in strategic decision making. Appropriate purpose for valuation becomes the bases of valuation. The strategic decision making in Business Valuation may be related to following:

1. **Merger, acquisition or take over** so that interested party can obtain fair market value - A Party who enters into a transaction with another for acquiring a business would like to acquire a business as a going concern for the purpose of continuing to carry the same business, he might compute the valuation of the target company on a going concern basis. On the other hand, if the intention of the acquirer is to acquire any property such as land, rights, or brands, the valuation would be closely connected to the market price for such property or linked to the possible future revenue generation likely to arise from such acquisition. In every such transaction, therefore, the predominant objective in carrying out a valuation is to put parties to a transaction in a comfortable position so that no one feels aggrieved.
2. **Strategic Partnership, Joint Venture and Collaborations** - Valuation is needed while evaluating decision on Strategic Partnership or Joint Venture or Foreign Collaboration. These have potential to give competitive edge over others in the form of advanced technology or production processes, additional finance, expanding customer base, reengineering of existing product, new products or services, intensive and extensive market coverage.
3. **ESOP, ESPS and Employee Retention** - These are various tools to retain employees for longer period. ESOP is incentive arrangement made by employer for retaining its key employees by allowing them to purchase the shares of company at a fixed price on the date of the grant. In this waiting period is known as 'vesting period' and the period in which ESOP can be availed by the employee is known as 'exercise period'. Certain percentage of shares is kept in ESOP trust fund until the option to buy share is exercised by the employee. If the employee leaves the company or his services are terminated before the completion of vesting period, then he loses the options to buy the share at pre-decided price which is usually less than market price at the time of exercise period. Lapsed options cannot be converted into shares. ESOPs are taxable at the time of purchase of shares as salary income (perquisites) in the hands of employees. Difference in fair market price and issued price is taxable as salary on the date of issue of shares whereas difference between actual sale price and fair market value is taxable as capital gain in the hands of employees.
4. **At the time of Peaceful Exit** - Valuation is required to be worked out at the time of resolving the disputes among stakeholders; purchase of equity from dissenting shareholders; stake sale or exit by co-venturers, strategic partners, foreign collaborator or strategic investors; divestment by existing promoters in favour of strategic investors.
5. **Specific Situations** - Minority oppression cases, economic damages computations, ownership disputes, cases of insolvency and bankruptcy, breach of contract, during submission of resolution plans, during liquidation and winding up, as part of succession planning, the death or disability of the owner.
6. **Under Company Law provisions** - Valuation is mandatorily required at the time of further issue of shares; issue of shares for consideration other than cash; private placement of shares.
7. **Under Other Laws** - Valuation is required to be carried out under various laws in various situations. Regulations and Rules issued under various Acts have situation specific requirement for valuation like SEBI Act, Foreign Exchange Management Act (FEMA), Income Tax Act, Customs Act, Stamp Duty Act, IBC Code, 2016.
8. **For Insurance Coverage** - Valuation of asset for insurance cover need to be carefully assessed so that, on side it covers the damage to the fullest extent possible and on the other insurance premium is not in excess. In the matter of insurance, valuation is twin edge sword. Over valuation is harmful because it results into higher premium whereas under valuation is equally harmful as it will lead to exposed coverage in case of accidental damage to the assets.

9. **Court Directed Valuations** - Some times, business valuations are carried out as per the directions of the court. NCLT issues directives and appoint valuers in the matters of oppression and mismanagement. High Courts appoints valuers to resolve disputes and in winding up matters. ITAT and other tribunals may also engage valuers in certain situations.
10. **During winding up process** - The business assets are valued by the office of Official Liquidators. They are attached to High Courts. In Insolvency and Bankruptcies, valuers are appointed by Resolution Professionals to carry out valuation on Insolvency commencement date. In liquidation, company liquidators are required to appoint valuers to carry out valuation on liquidation commencement date. In case of voluntary winding up, company Board is required to engage valuer before issuing solvency certificate.
11. For IPO and FPO - Valuation of securities is required to be worked out at the time of listing of securities of the company. SEBI is regulatory authority. Under various regulations, SEBI has prescribed the requirement of valuation as well as valuation methodology.
12. **At the Time of Debt Funding** - At the time of business loans and debt funding, valuation is required to be worked out for the purpose of assessing security cover and need of funds of the business.

A market economy needs valuations of assets to facilitate a variety of transactions. For example, the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (Code) envisages estimation of fair value and liquidation value of the assets of the corporate debtor. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the corporate debtor, and consequently of the stakeholders. A wrong valuation may liquidate an otherwise viable company, which may be disastrous for an economy. A banker determines the amount of loan that can be sanctioned against security of an asset. He may not have adequate protection, where it gives loan against the security of an asset whose value is overestimated. Some of the NPAs in the banking system are attributed to decisions based on such valuations.

A business valuation is a complex financial analysis that should be undertaken by a qualified valuation professional with the appropriate credentials. Business owners who seek a low-cost business valuation are seriously missing out on the important benefits received from a comprehensive valuation analysis and valuation report performed by a certified valuation expert. These benefits help business owners negotiate a strategic sale of their business, minimize the financial risk of a business owner in a litigation matter, minimize the potential tax that a business owner or estate may pay in gift or estate tax as well as provide defense in an audit situation.

FACTORS INFLUENCING VALUATION

After having done the due diligence process, the next step is to value the business for the purpose of deciding the swap ratio. A company will change the hand of ownership only when the fair market value is arrived to the satisfaction of the owner's of the seller company. Similarly the buyer company will be ready to pay for the price if it is in the beneficial interest of its owners too. The valuation of the assets and liabilities of the business entity depends upon the various factors. These factors may be as under:

- The past dividend track record of the companies.
- The past earning of the companies.
- The price of shares trading at the bourses of the companies, before the news of the merger deal and after the announcement of the deal.
- Bonus track record of the companies.
- IPO/ FPO of the companies.
- Past history of the prices of the shares of the companies.
- The voting strength in the merged entity of the shareholders.

- The net worth of the companies.
- Net assets of the companies.
- Liquidity in the Company.
- The underlying net tangible asset.
- Conditions of business (Running/closed).
- Future earnings and projections.
- Order Book status, number of ongoing projects, customer future projections.
- Future capacity utilisation.
- Cash flows.
- Net Present Value (NPV).
- Expected Rate of Return (ERR).

GENERAL PRINCIPLES OF BUSINESS VALUATION

In almost all business valuations, there are some principles, which are:

Principle of Time Value of Money: This principle suggests that the value can be measured by calculating the present value of future cash flows discounted at the appropriate discount rate.

Principle of Risk and Return: This principle believes that the investors are basically risk averse and on the other hand expects higher amount of wealth. Higher the risk, higher may be possibility of return and vice versa.

Principle of Substitution: This principle believes that understanding the market with competitive forces are very important in order to decide the price consideration. The risk averse investor will not pay more than that of the substitute available in the market.

Principle of Alternatives: This principle suggests that one should explore the various alternatives available in the market and should not rest only on one option. The benefits of vetting of various alternatives will give a comparative valuation and a prudent investor will choose the most beneficial alternative to his portfolio.

Principle of Expectation: Cash flows are based on the expectations about the performance in future and not the past. In the case of mature companies, we may assume that the growth from today or after some certain period would be constant.

Principle of Reasonableness: In valuation the principle of reasonableness is most important. It takes into consideration various aspects viz: nature of business, historical background, brand image, book value of the stock, earning capacity, dividend tract record, etc.

PURPOSE OF VALUATION

Valuation has been debated in India as an art or science and substantial part of the litigation in Mergers & Acquisitions (M&A) takes place on the issue of valuation as it involves an element of subjectivity that often gets challenged. The introduction of concept of Registered Valuer had been notified under Chapter XVII of the Companies Act 2013 to set the Indian valuation standards for standardizing the use of valuation practices in India, leading to transparency and better governance. The Institute of Chartered Accountants of India (ICAI) has issued and adopted Valuation Standards known as ICAI-Valuation Standards.

Section 247 (2) of the Companies Act, 2013 mandates that a valuer shall (a) make an impartial, true and fair valuation of any assets; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with the Valuation. Rules; 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 three years prior to his appointment as valuer or three years after valuation of assets was conducted by him.

Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) *inter alia* provides for (a) registration of valuers, who may be individuals or partnership firms or companies, with Insolvency and Bankruptcy Board of India (IBBI) for conduct of valuation of different classes of assets under the Companies Act, 2013; (b) recognition of Registered Valuers Organisations (RVOs) to enroll valuer members, enforce a code of conduct on them, and conduct training and educational courses for its members; and (c) mechanism for notification and modification of valuation standards based on the recommendations of the “Committee to advise on valuation matters”.

The Central Government delegated its powers and functions under section 247 of the Act to the Insolvency and Bankruptcy Board of India (IBBI) and specified it as the Authority under the said Rules.

Only a person registered with the Authority as Registered Valuers can conduct valuations required under the Companies Act, 2013 and the Code. Subject to meeting other requirements, an individual is eligible to be an Registered Valuers, if he: (a) is a fit and proper person, (b) has the necessary qualification and experience, (c) is a valuer member of an RVO, (d) has completed a recognised educational course as member of an RVO, (e) has passed the valuation examination conducted by the Authority within three years preceding the date of making the application for registration, and (f) is recommended by the RVO for registration as a valuer. The individual is required to have either a post-graduate qualification in the specified discipline and three years’ experience, or a bachelor’s degree in the specified discipline and five years’ experience.

VALUATION STANDARDS

Emphasis on valuation standards assumed greater prominence in the last quarter of the 20th Century as a result of the financial collapses which was traced to property related valuations /transactions. The concern to avoid such collapses led to the emergence of valuation standards, first on a national and then on an international level (Gilbertson & Preston, 2005). RICS responded to the 1970s property crash in the UK by publishing the Red Book, setting out standards of valuation and professional conduct expected of valuers, while the Federal Government in the USA responded to the “savings and loan” crisis of the late-1980s by insisting on uniform appraisal standards and the licensing of valuers in each State.

Two sets of standards, namely, (i) International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC), and (ii) the Royal Institution of Chartered Surveyors (RICS) Red Book, command great respect among the stakeholders. IVS comprises five ‘General Standards’ and six ‘Asset-specific Standards’.

- The General Standards contain standards applicable to valuation of all asset classes, covering scope of work, investigations and compliance, bases of value, valuation approaches and methods, and reporting.
- The Asset-specific Standards include requirements related to specific types of asset valuation, including background information on the characteristics of each asset type that influence value and additional asset-specific requirements regarding common valuation approaches and methods used. These cover businesses and business interests, intangible assets, plant and equipment, real property interests, development property and financial instruments.

IVS allows flexibility to meet national requirements. Reportedly, some countries have adopted IVS as national standards, and some have adopted IVS with amendments to meet the requirements of national legislations.

RICS Red Book adopts and applies IVS. The standards take three forms: (a) professional standards centred around ethics and conduct, (b) technical standards centred on common definitions and conventions, (c) performance or delivery standards centred on rigour in analysis and objectivity of judgement. RICS also allows departures to meet local statutory or regulatory requirements. Red Book with departures is called national association valuation standards, which have been published in some countries. RICS Valuation Standards – Global and India issued in May 2011 provides four India-specific guidance notes: (a) valuation for financial statements, (b) valuation for secured lending, (c) development land in India, and (d) valuation for tax purposes in India. It is understood that RICS is working on a national supplement to Red Book for India for valuations undertaken subject to Indian jurisdiction.

The Valuation Rules (Rule 8) mandate that an RV shall, while conducting a valuation, comply with the valuation standards as notified or modified by the Central Government. Until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per

- (a) internationally accepted valuation standards; or
- (b) valuation standards adopted by any RVO.

Rule 18 of the Valuation Rules enables the Central Government to notify and modify, from time to time, the valuation standards based on the recommendations of the Committee to advise on valuation matters.

Rule 19 of the Valuation Rules empowers the Central Government to constitute a committee to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and RVs. The Central Government constituted the Committee to advise on valuation matters.

REGULATORY ASPECTS AS TO VALUATION

Valuation provisions under the Companies Act, 2013

Section 247 of the Companies Act, 2013 Section 247 seeks to provide that valuation in respect of any property, stocks, shares, debentures, securities, goodwill or any other assets or net worth of a company or its assets or liabilities shall be valued by a person having such qualification and experience and registered as a valuer, in accordance with such rules as may be prescribed.

Valuation by Registered Valuers

- (1) 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, registered as a valuer and being a member of an organisation recognised, 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.
- (2) The valuer appointed under sub-section (1) 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 such 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.
- (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees: Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (4) Where a valuer has been convicted under sub-section (3), he shall be liable to
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

The Companies (Registered Valuers and Valuation) Rules, 2017

The Central Government vide its Notification No. NO.GSR 1316(E) [F.NO.1/27/2013-CL-V], dated 18-10-2017 notified the Companies (Registered Valuers and Valuation) Rules, 2017. The notification of these Rules shall, while bringing about a clarity regarding various aspect of valuation will have a major impact on the industry, professionals, stakeholders and the government as well. These rules envisage formation of Registered Valuers Organisations for enrolling and imparting continuous education to Registered Valuers.

Though there is some consensus among professional valuers about generally accepted approaches, methods and procedures; however, a need was felt for education, training, regulation and standardization of prevalent practices in valuation.

The notification of these Rules will lead to the setting-up of Valuation Standards that will improve transparency and governance. Introduction of Valuation Standards will ensure that the valuation reports disclose a true, fair and complete view and result in greater objectivity in valuation procedures. The increased transparency and fairness in the valuation system shall also boost stakeholders' confidence alongside plugging of loopholes in valuation.

Eligibility for registered valuers (Rule 3)

Sub-rule (1) provides that 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 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 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 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), (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.

Qualifications and experience (Rule 4)

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 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 and Development as equivalent to professional and technical degree.

Valuation examination & certificate of registration (Rule 5 & 6)

- (1) An individual who passes the valuation examination shall receive the acknowledgment of passing the examination.
- (2) After submitting necessary papers along with application for examination, the authority upon satisfaction may grant the certificate of registration to the applicant to carry out activities of registered valuer.

Conditions of Registration (Rule 7)

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 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 alongwith 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.

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-

- (a) internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuer's 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.

Functions of a Valuer (Rule 10)

A valuer shall conduct valuation required under the Act as per these rules.

Eligibility for Registered Valuers Organisations (Rule 12)

- (1) An organisation that meets requirements under sub-rule (2) may be 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;
 - (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 or any relevant state law, or;
 - (b) an organisation set up as a trust governed by the Indian Trust Act, 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;

- (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, within one year from the date of commencement of these rules.

Model Code of Conduct for Registered Valuers

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.

THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

Face Value of Equity Shares (Regulation 27)

The disclosure about the face value of equity shares shall be made in the draft offer document, offer document, advertisements and application forms, along with the price band or the issue price in identical font size.

Pricing (Regulation 28)

- (1) The issuer may determine the price of equity shares, and in case of convertible securities, the coupon rate and the conversion price, in consultation with the lead manager(s) or through the book building process, as the case may be.
- (2) The issuer shall undertake the book building process in the manner specified in Schedule XIII.

Price and price band (Regulation 29)

- (1) The issuer may mention a price or a price band in the offer document (in case of a fixed price issue) and a floor price or a price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before filing the prospectus with the Registrar of Companies:
 Provided that the prospectus filed with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.
- (2) The cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to one hundred and twenty per cent. of the floor price.
 Provided that the cap of the price band shall be at least one hundred and five percent of the floor price.
- (3) The floor price or the final price shall not be less than the face value of the specified securities.
- (4) Where the issuer opts not to make the disclosure of the floor price or price band in the red herring prospectus, the issuer shall announce the floor price or the price band at least two working days before the opening of the issue in the same newspapers in which the pre-issue advertisement was released or together with the pre-issue advertisement in the format prescribed under Part A of Schedule X.
- (5) The announcement referred to in sub-regulation (4) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" of the offer document.
- (6) The announcement referred to in sub-regulation (4) and the relevant financial ratios referred to in sub-regulation (5) shall be disclosed on the websites of the stock exchange(s) and shall also be pre-filled in the application forms to be made available on the websites of the stock exchange(s).

Differential Pricing (Regulation 30)

- (1) The issuer may offer its specified securities at different prices, subject to the following:
 - (a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 33 may be offered specified securities at a price not lower than by more than ten per cent. of the price at which net offer is made to other categories of applicants, excluding anchor investors;
 - (b) in case of a book-built issue, the price of the specified securities offered to the anchor investors shall not be lower than the price offered to other applicants;
 - (c) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XIII, the issuer may offer the specified securities to its employees at a price not lower than by more than ten per cent. of the floor price.
- (2) Discount, if any, shall be expressed in rupee terms in the offer document.

Pricing of Frequently Traded Shares (Regulation 164)

- (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of 90 trading days or more as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than higher of the following:
 - a. The 90 trading days 'volume weighted average price of the related equity shares quoted on the recognised stock exchange preceding the relevant date; or
 - b. the 10 trading days' volume weighted average prices of the related equity shares quoted on a recognised stock exchange preceding the relevant date.

Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.
- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than 90 trading days as on the relevant date, the price of the equity shares to be allotted pursuant to the preferential issue shall be not less than the higher of the following:
 - a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of compromise, arrangement and amalgamation under sections 230 to 234 the Companies Act, 2013, as applicable, pursuant to which the equity shares of the issuer were listed, as the case may be; or
 - b) the average of the volume weighted average prices of the related equity shares quoted on the recognised stock exchange during the period the equity shares have been listed preceding the relevant date; or
 - c) the average of the 10 trading days' volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date. [Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of 90 trading days from the date of listing on a recognised stock exchange with reference to the 90 trading days' volume weighted average prices of the related equity shares quoted on the recognised stock exchange during these 90 trading days and if such

recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue.

- (4) (a) A preferential issue of specified securities to qualified institutional buyers, not exceeding five in number, shall be made at a price not less than the 10 trading days' volume weighted average prices of the related equity shares quoted on a recognised stock exchange preceding the relevant date.

Provided that if the Articles of Association of the issuer provide for a method of determination which results in a floor price higher than that determined under these regulations, then the same shall be considered as the floor price for equity shares to be allotted pursuant to the preferential issue:

- (b) no allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to the promoters of the issuer:

Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired rights in the capacity of a lender shall not be deemed to be a person related to the promoters.

Explanation. —For the purpose of this clause, a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:-

- (a) rights under a shareholders' agreement or voting agreement entered into with promoters or promoter group;
 - (b) veto rights; or
 - (c) right to appoint any nominee director on the board of the issuer.
- (5) For the purpose of this Chapter, "frequently traded shares" means the shares of the issuer, in which the traded turnover on any recognised stock exchange during the 240 trading days preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.

Explanation: For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchange(s) in which the equity shares of the issuer are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding 90 trading days prior to the relevant date.

SECURITIES AND EXCHANGE BOARD OF INDIA (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

Employee Stock Option Scheme (ESOS)

Pricing-Regulation 17

The company granting options to its employees pursuant to an ESOS shall be free to determine the exercise price subject to conforming to the accounting policies specified in regulation 15 of these regulations.

Accounting Policies - Regulation 15

Any company implementing any of the share-based schemes shall follow the requirements including the disclosure requirements of the Accounting Standards prescribed by the Central Government in terms of section

133 of the Companies Act, 2013 including any 'Guidance Note on Accounting for employee share-based Payments' issued in that regard from time to time.

Employee Stock Purchase Scheme (ESPS)

Pricing and lock-in-Regulation 22

- (1) A company may determine the price of shares to be issued under an ESPS, subject to conforming to the accounting policies specified under regulation 15 of these regulations.
- (2) Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment: Provided that in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the employee under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period required under this sub-regulation. Provided further that in the event of death or permanent incapacity of an employee, the requirement of lock-in shall not be applicable from the date of death or permanent incapacity.
- (3) If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to any lock-in.

Issue of Sweat Equity by a Listed Company

Pricing-Regulation 33

The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

Discovered Price-Regulation 20

- (1) After fixation of the floor price under sub-regulation (2), the discovered price shall be determined through the reverse book building process in the manner specified in Schedule II of these regulations, and the Manager to the offer shall disclose the same in the detailed public announcement and the letter of offer.
- (2) The floor price shall be determined in terms of regulation 8 of Takeover Regulations as may be applicable.
- (3) The reference date for computing the floor price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal was considered and approved.
- (4) The acquirer shall have the option to provide an indicative price in respect of the delisting offer, which shall be higher than the floor price calculated in terms of sub-regulation (2).
- (5) The acquirer shall also have the option to revise the indicative price upwards before the start of the bidding period and the same shall be duly disclosed to the shareholders.
- (6) The acquirer may, if it deems fit, pay a price higher than the discovered price determined in terms of sub-regulation (1).

THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

Issue of sweat equity shares (Rule 8)

Under the Companies (Share Capital and Debentures) Rules, 2014, the sub rules of rule 8 states that the:

- 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.
- 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.
- A copy of gist along with critical elements of the valuation report obtained under clause (6) and clause (7) shall be sent to the shareholders with the notice of the general meeting.
- Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect there of obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

SEBI (SAST) REGULATIONS, 2011

Offer Price

Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. The offer price shall not be less than the price as calculated under regulation 8 of the SEBI (SAST) Regulations, 2011 for frequently or infrequently traded shares.

Consolidated FDI Policy 2020

Issue Price of Shares

Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than –

- (a) the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company are listed on any recognised stock exchange in India;
- (b) the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and
- (c) the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

VALUATION REQUIREMENTS UNDER DIFFERENT STATUTES IN INDIA

There are various laws in India which requires valuations from professionals e.g. the Companies Act, 2013, the Insolvency and Bankruptcy Code, 2016, the Indian Accounting Standards (IndAS), the Securities and Exchange Board of India Regulations, the Income Tax Act, 1961 and the Foreign Exchange Management Act, 1999.

Valuations Requirements Under Companies Act, 2013

Under the Companies Act, 2013 the valuations of financial instruments such as shares, securities, business are required for various purpose such as further issue of shares, transactions in kind, Merger and Acquisitions, Corporate Debt Restructuring, purchase of minority and valuation for the companies under winding up.

S.No.	Section and relevant Rules of the Companies Act, 2013	Subject	Role of Registered Valuer
1.	Section 39 & Companies (Prospectus and Allotment of Securities) Rules, 2014	Return of Allotment.	A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract in the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS-3 a report of a registered valuer in respect of valuation of the consideration.
2.	Section 54 and Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014	Issue of Sweat Equity Shares by an unlisted company	<p>(i) Sweat Equity Shares issued by unlisted company shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.</p> <p>(ii) 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.</p>
3.	Section 62 (1) (b) and Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014	Grant of Employee Stock Option or Employee Stock Purchase Scheme	In pursuance of the approved scheme of provision of money for purchase of or subscription for the shares by the trustees in the company or its holding company, where such shares are to be held by or for the benefit of the employees of the company, the valuation at which shares are to be purchased shall be made by a registered valuer, if shares of the company are not listed on a recognized stock exchange.
4.	Section 62(1) (c) and Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014	Issue of Shares on Preferential Basis	<p>Where at any time, an unlisted company having a share capital proposes to increase its subscribed capital by the issue of further shares through preferential allotment, either for cash or for a consideration other than cash, the price of such shares shall be determined by the valuation report of a registered valuer.</p> <p>Such company shall make the disclosures w.r.t. basis on which the price has been arrived at along with report of the registered valuer as well as the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act.</p>

			<p>The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer.</p> <p>Where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-</p> <ul style="list-style-type: none"> (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or (ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares: <p>Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;</p> <p>The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.</p>
5.	Section 73 & Rule 2 (c) of the Companies (Acceptance of Deposits) Rules, 2014	Acceptance of Deposits	<p>“Deposit” includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include –</p> <ul style="list-style-type: none"> (ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten years: <p>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.</p>
6.	Section 73 & Rule 6 of the Companies (Acceptance of Deposits) Rules, 2014	Creation of Security	<p>For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance:</p>

			<p>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 such assets as assessed by a registered valuer.</p>
7.	Section 192 of the Companies Act, 2013	Restriction on Non-cash Transactions Involving Directors	<p>No company shall enter into an arrangement by which—</p> <ul style="list-style-type: none"> (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected unless prior approval for such arrangement is accorded by a resolution in general meeting of the company including holding company if director or connected person belong to holding company. <p>The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.</p>
8.	Section 230	Power to Compromise or Make Arrangements with Creditors and members	<p>Where a compromise or arrangement is proposed—</p> <ul style="list-style-type: none"> (a) between a company and its creditors or any class of them; or (b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. <p>The company or any other person, by whom such application is made, shall disclose to the Tribunal by affidavit any scheme of corporate debt restructuring consented to by not less than seventy-five per cent 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.</p>

	Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules	Application for order of meeting of the Companies	<p>An application of arrangement for takeover offer shall contain: -</p> <p>(a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors: -</p> <p>(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;</p> <p>(ii) the 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-d-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.</p>
	Section 234 and Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Merger or amalgamation of a foreign company with a Company and vice versa	<p>The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation.</p> <p>So, if transferee company is an Indian Company, then valuation will be conducted by Registered Valuer.</p>
	Section 236 & Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Determination of price for purchase of minority shareholding	<p>In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company or any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.</p> <p>Such acquirer or person acting in concert 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.</p>

			<p>The registered valuer shall determine the price (hereinafter called as offer price) to be paid by such acquirer, person or group of persons for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:</p> <p>(1) In case of a listed company;</p> <p>(i) The offer price shall be determined in the manner as may be specified by the Securities and Exchange Board Of India under the relevant regulations framed by it, as may be applicable; and</p> <p>(ii) The registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.</p> <p>(2) In the case of an unlisted company and a private company,</p> <p>(i) the offer price shall be determined after taking into account the following factors:-</p> <p>(a) the highest price paid by the acquirer, person or group of persons for acquisition during last twelve months;</p> <p>(b) the 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-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies; and</p> <p>(ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.</p>
	Section 281	Submission of report by Company Liquidator.	<p>(1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely: —</p> <p>(a) the nature and details of the assets of the company including their 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;</p> <p>Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;</p>

Further, Rule 8 of the Companies (Registered Valuers and Valuation) Rules, provides for the requisites w.r.t. conduct of valuation in terms of mandatory contents to be stated by the valuer in his 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.

Valuation Requirement under the Insolvency and Bankruptcy Code, 2016 & IBBI Regulations

S.No.	Section/Regulation	Subject	Provisions w.r.t. Valuation
1.	Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Appointment of Registered Valuer	The resolution professional shall, <ul style="list-style-type: none"> ● 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.
2	Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Determination of Fair Value and Liquidation Value	Fair value and liquidation value shall be determined in the following manner: - <ol style="list-style-type: none"> (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; (b) <i>if in the opinion of the resolution professional, the 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</i> (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.

3.	Regulation 38 of the IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021	Appointment of Registered Valuers	The resolution professional shall within three days of his appointment, <i>appoint two registered</i> valuers to determine the fair value and the liquidation value of the corporate debtor.
4.	Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016	Valuation of assets intended to be sold	<p>(1) Where the valuation has been conducted under regulation 35 of the IBBI(CIRP) Regulations, 2016 or regulation 34 of the IBBI (Fast Track CIRP) 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>Liquidator can take the average of the value of earlier two valuers under IBBI(IRPCP) Regulation or if liquidator is of the opinion to get fresh valuation of assets or business, shall obtain valuation report(s) from two Registered valuers ,who estimates the realisable value. (Six manner)</p> <p>Reg 35(2), In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he 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>
5.	Section 59(3)(b)(ii)	Voluntary liquidation of corporate persons, the solvency declaration along with a report on Valuation	For Voluntary liquidation of corporate persons, the solvency declaration along with a report on Valuation of the assets from Registered Valuer, is to be filed by Corporate Person.
6.	Regulation 3(1)(b)(ii) of the IBBI (Voluntary Liquidation Process) Regulations, 2017	Report of valuation of assets of corporate person	The solvency report along with report of valuation of assets of corporate person prepared by Registered Valuer is to be attached.
7.	Regulation 30 of the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019	Valuation of assets	(2) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realisable value of the asset computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.

Valuation requirements have been mentioned in other statutes/ Regulations like SEBI Regulations, the Income Tax Act, 1961, the Goods and Service Tax Act, 2017, the Foreign Exchange and Management Act, 1999 etc and a Draft Valuers Bill, 2020 has been drafted to establish a National Institute of Valuers (NIV) on basis of recommendations by a Committee of Experts constituted by the Ministry of Corporate Affairs (MCA) to examine the need for an Institutional Framework to regulate and develop valuation as a profession.

VARIOUS EXPRESSION OF VALUE

The definition of “value” is appearing in International Valuation Standards, ICAI Valuation Standards, Indian Accounting Standards and IBBI Regulations. The definition of value is in fact linked with the purpose of valuations. Upon comparison of these definitions one can observe that in all these definitions, it is specially mentioned that the value is an estimated amount or it may be an estimated amount for which an asset or liability should be exchanged or an estimated amount that would be realised on sale of assets or group of assets.

The various expression used for valuation are: -

Fair Market value

Estimated amount for which an *asset* or liability *should* exchange between willing buyer and a willing seller in an arm length transaction after proper marketing the parties acted knowledgeably, prudently and without compulsion. The concept of market value presumes a price negotiated in an open and competitive market where the participants are acting freely.

In other words, fair market value is price at which the property would change hands between a willing buyer and a willing seller, where both are not under any compulsion to buy and sell and they have reasonable knowledge of relevant facts and information. This means that any representative price would not work if it affects buyer’s or seller’s unique motivations. This would be an example of investment value, defined by real estate terminology as “value to a particular investor based on individual investment requirements.”

Fair Value

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Thus, fair value is defined as

- (i) Exit price: The price that would be received to sell an asset
- (ii) Market based: Fair value is determined by transaction between market participants and it is not entity based
- (iii) Orderly transaction: A transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (e.g. a forced liquidation or distress sale)
- (iv) Price: The price in the principal (or most advantageous) market used to measure the fair value of the asset or liability.

Book Value

Book value is the historical value, synonymous to shareholders’ equity, net worth, and net book value. It is the difference between total assets and the total liabilities appearing in the balance sheet of a company on a particular date. In any balance sheet, assets are recorded at historical costs, while the net of accumulated depreciation and liabilities are recorded at the face value.

Intrinsic Value

Intrinsic value is the real value of a company based on fundamental analysis of qualitative and quantitative factor and does not consider the Market value in any manner. It is measured as the present value of future cash flows from an asset or company by using an appropriate discount rate.

The qualitative factors include company's performance, productivity, business management and market factors. The quantitative factors include financial statement and accounting data. The qualitative and quantitative factors assess in projecting future cash flows, growth rate and appropriate discount rate.

Replacement Value

Replacement value is the current cost of acquiring a similar new property which is likely to produce the nearest equivalent utility to the property being valued. An estimate of replacement cost takes into account how an asset would be replaced with newer materials and current technology. Replacement value is not the same as reproduction value, which is the cost of a duplicate asset, based on current prices. Replacement value and reproduction cost are used in the valuation of tangible assets that do not produce income directly, such as furniture and fixture, office equipment, and so on.

Going Concern Value

Going concern value is the value of a business that is expected to continue to the future. It takes into account various intangible assets of the organization. The intangible elements of going concern value result from successful continuation of business. Factors like trained workforce, brands, formulations, trademarks, recipes (in fast food and eating joints), operational systems, necessary licenses, and so on, generate value for intangible assets, for which substantial costs are incurred by the company. The going concern value is relevant in the decision of mergers and acquisitions. Sometimes, an 'in-place value' is said to be relevant to assets because they are in working condition and they help produce income. For example, a fully depreciated asset can fetch some value because it is in place, functioning satisfactorily and generating cash.

According to ICAI Valuation Standard 102, "Going concern value is the value of a business enterprise that is expected to continue to operate in the future". The intangible elements of Going Concern Value result from factors such as having a trained work force, an operational plant, the necessary licenses, marketing systems, and procedures in place etc

Example of Going-Concern Value For example, suppose that the liquidation value of Widget Corp. is \$10 million. This sum represents the current value of inventory, buildings and other tangible assets that can be sold assuming that the company is completely liquidated. However, Widget Corp. as going-concern value could very well be \$60 million, as the compan's reputation of being the world's leading widget producer and its ownership of patents and associated rights for widget production mean that the company should have a large and steady stream of future cash flows.

Equity Interest Value

Equity interest of an investor in a business can be considered as an investment. The purchase of an equity interest in a closely held company can be considered as a long-term investment and in a listed company; it can be viewed as short-term investment. The equity investors not only expect to receive the investment (amount invested or principal) back from the company, but also expect to receive a fair return on the investment in the form of dividend. In addition, in the case of listed companies, the investors have an exit route through the stock market. Therefore, capital appreciation is regarded as an important part of return. This can be expressed in terms of the equation.

$$\text{Return on equity investment} = \frac{\text{Cash Flow (dividend) + closing market price} - \text{opening market price}}{\text{opening market price}}$$

Insurable Value

Insurable value is the value of destructible portion of an asset that requires to be insured to indemnify the owner in the event of loss. This type of value has significant relevance, sometimes in M&A decisions as insurance reduces the risk of the property. Of course, post-acquisition review of insurance coverage of property can be done with little impact on the valuation.

For example, in case of a real estate property, the insurable interest will mostly be the market value of the property. However, the insurable value does not include the land on which the property stands.

Value-in-use and Value-in-exchange

Value-in-use or value-in-exchange is a condition under which certain assumptions are made in valuing assets. It is associated with assets that are already in productive use and can be described as the value of an asset, for a particular use or to a particular user, as part of a going concern. However, it is important to understand the concept since the value of acquired assets (especially furniture, fixtures, equipment, and premises) in M&A transactions is influenced significantly by their use in the post-acquisition period. When specific assets used by any going business are valued, it is generally assumed that those assets will remain in their most productive use. Value-in exchange is opposite to value-in-use; it relates to the value of a property or an asset exchanged for itself, and separate from an operating entity. Typically, the value-in-exchange is less than the value-in-use of an asset in a going business enterprise.

Goodwill Value

The term goodwill is defined as an asset representing the future economic benefits arising from a business, business interest or a group of assets, which has not been separately recognised in other assets. (ICAI Valuation Standard-101)

Goodwill is a specific type of intangible asset that arises when a business as a whole has value greater than the value of its identified intangible assets. Goodwill is also the sum total of imponderable qualities of a company which attract the customers to a business and it makes the stakeholders of the company give continued patronage. From M&A perspective, the value of goodwill is calculated as the difference between the price paid for an acquired business and the fair market value of the assets acquired (both tangible and separately identified intangible) and the net of the liabilities. The concept of goodwill value has important applicability to banks for tax, financial reporting, and regulatory reasons.

Salvage Value

Salvage value is the amount that can be realised upon sale or disposal of an asset after it is found no longer useful to the current owner and is to be taken out of service. This is not as era value, which is no more useful to any one for any purpose. Knowledge of salvage value in the target company is significant for any acquisition decision.

Liquidation Value

According to IVS 104 Bases of Value: Liquidation Value is the amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity.

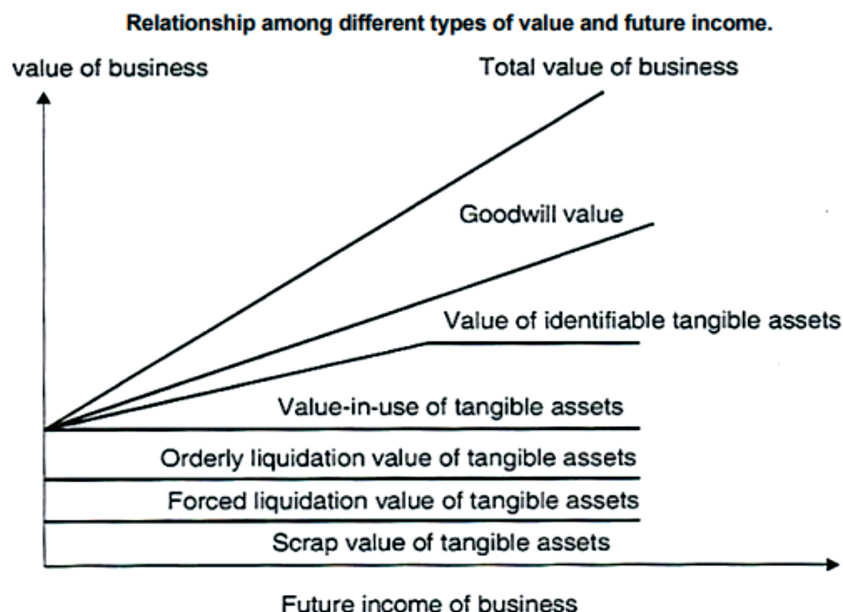
“Liquidation Value” according to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Clause 2(k) means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

According to ICAI Valuation Standard 102 (Valuation Bases), Liquidation value is the amount that will be realised on sale of an asset or a group of assets when an actual/hypothetical termination of the business is contemplated/assumed. Liquidation value can be carried out

- (i) under the premise of an orderly transaction with a typical marketing period; or
- (ii) under the premise of forced transaction with a shortened marketing period.

The valuer must disclose whether an orderly or forced transaction is assumed. The net amount is determined after considering estimated cost of disposal.

RELATIONSHIP AMONG DIFFERENT TYPES OF VALUE



The relationship among the various types of values discussed earlier in the context of total business value or enterprise value. The diagram exhibits how different levels of future income of a business affect the various types of value.

- The *lowest expected value* of a business is the *scrap value of tangible assets*, which is the same no matter what the income level is of the enterprise. The scrap value of equipment is constant, at a given point in time, irrespective of the earnings of the business that owns it.
- *Forced liquidation value* is the *second lowest potential value*, but from a practical point of view, this is perhaps the lowest value a business as a whole. Like scrap value, forced liquidation value remains the same, no matter what the income of the enterprise.
- *Orderly liquidation value* is conceptually identical to forced liquidation, except that a higher value is usually received because more time is allowed to find a buyer.
- *Value-in-use* of the tangible assets typically increases with the income of the business up to the point at which the value-in-use equals the replacement value of the asset.
- At zero income, the value-in-use and orderly liquidation value are theoretically equivalent, but as the business becomes more successful, the importance of the tangible assets becomes more significant. Hence, value-in-use exceeds orderly liquidation value.
- The value of identifiable intangible assets also tends to increase as the income of the business increases. Along with the tangible assets and the income of the business, the importance of the identifiable intangibles also grows. *Goodwill value* will always increase with the earnings of the business because it is computed as the difference between the value of the total business and the value of the tangible and identified intangible assets. Consequently, as the earnings of the business grow, so does its total goodwill and enterprise value. The cumulative result is therefore the total business value. This is the value of the tangible and intangible assets, and it increases along with the future income prospects of the business.

PRICE AND VALUE DIFFERENTIATION

Generally, the term value and price are used interchangeably. However, both are different terms having different meaning. Price is determined by demand and supply of underlying asset while valuation is a process of estimating economic worth of a given asset or undertaking which depends upon the purpose of valuation as well as judgement of valuer. Price is the valuable consideration for which a thing is bought and sold. Most of the time, price and value differ indicating differences in perceptions between the buyers and sellers. The fact that price obtained for an asset differs from its valuation does not necessarily indicate that the valuation was wrong. It may arise because the purchaser is unaware of the availability of the asset or the buyer believes that the price is lower than the worth of the asset. A reverse situation may also arise when the seller feels that the price he is charging is much above the worth of the asset.

In essence, the difference between the price obtained and the valuation is the result of only the market imperfections and not necessarily indicate imperfections in the valuation process. The difference may arise because the valuer has adopted advisory approach rather than act as impartial appraiser of value. Owing to the complexities and interrelationships of value, purpose of valuation, methodologies used and information considered, rarely will two valuers value the same company at the same amount. The subjective components involved in the valuation, even though mitigated by professional judgment and experience, can hardly be eliminated.

PROCESS OF VALUATION

Valuation is a process used to determine the economic value of a company, asset, or investment opportunity. The process typically involves several steps, methodologies, and considerations. Here's a general outline of the valuation process:

1. *Gather Information:* Collect all relevant data about the company or asset being valued. This includes financial statements, market trends, industry benchmarks, and any other pertinent information.
2. *Select Valuation Method:* Choose the appropriate valuation method based on the nature of the asset and the purpose of the valuation. Common valuation methods include:
 - **Comparable Company Analysis (CCA):** Compares the target company to similar publicly traded companies to determine a valuation multiple.
 - **Comparable Transactions Analysis (CTA):** Examines recent transactions involving similar companies to estimate the value of the target company.
 - **Discounted Cash Flow (DCF) Analysis:** Calculates the present value of future cash flows generated by the company.
 - **Asset-Based Valuation:** Determines the value of a company based on the value of its assets minus liabilities.
3. *Conduct Financial Analysis:* Analyze the financial statements of the company, including the income statement, balance sheet, and cash flow statement. This helps assess the company's historical performance, growth prospects, and financial health.
4. *Perform Market Analysis:* Evaluate the industry and market conditions in which the company operates. Consider factors such as competition, regulatory environment, technological advancements, and market trends.
5. *Apply Valuation Methodology:* Utilize the selected valuation method to calculate the value of the company or asset. This may involve applying financial ratios, estimating future cash flows, or adjusting for market comparable.

6. *Consider Risk Factors:* Assess the risks associated with the company or investment opportunity. Factors such as market volatility, operational risks, competitive landscape, and regulatory compliance can impact valuation.
7. *Sensitivity Analysis:* Conduct sensitivity analysis to evaluate how changes in key assumptions or variables affect the valuation results. This helps identify the sensitivity of the valuation to different scenarios.
8. *Finalize Valuation Report:* Prepare a comprehensive valuation report summarizing the analysis, methodologies used, key assumptions, and valuation conclusions. The report should be well-documented and clearly communicate the rationale behind the valuation.
9. *Review and Validation:* Review the valuation report for accuracy and consistency. Validate the results by seeking feedback from other stakeholders or industry experts if necessary.
10. *Present Findings:* Present the valuation findings to relevant parties, such as company management, investors, lenders, or regulatory authorities. Be prepared to address any questions or concerns raised during the presentation.
11. *Update Valuation:* Periodically review and update the valuation as conditions change, such as significant events, changes in market dynamics, or new information becoming available.

For carrying out any valuations, the valuer has to look into the purpose of valuation. The next step will be to finalise the Bases of Value/Premises and accordingly the valuation approaches and methods will be decided by considering various factors.

The steps involved in valuation process are:

- Purpose of valuation
- Bases of Value
- Premises of Value
- Business Valuation Approaches
- Determination of Required Value
- Documentation
- Preparation of Valuation Report.

The purposes of valuation are important because different methods of valuations produce different values. Before a valuation exercise is undertaken, the valuer has to define the purpose of each valuation in clear terms. In fact, there is no single method of valuation that can be universally applied to all valuation purposes. Unless carefully done, a business valuation may fail to arrive at a conclusive valuation figure. The valuer may fail to match the valuation methodology with the purpose for which it is being done. The value conclusion can become useless if it is used for a purpose other than that intended for. Valuations, especially business valuations, are needed for different purposes and their purpose is to have an impact on the type of value derived and the methodologies adopted.

As already mentioned, different statutes have laid down provisions w.r.t. valuation standards to be adopted for the purpose of valuation like IVS in IBC,2016, formulae-based valuation in case of listed companies having frequent trading of shares and Income Tax Act,1961 regarding issue of shares by a closely held company or transfer of shares.

For any valuation the “Bases of value” describe the fundamental premises on which the reported values will be based. Therefore, it is critical that the basis (or bases) of value be appropriate to the terms and purpose of the valuation assignment. List of Bases of Value have been described in International Valuation Standards IVS 104 and ICAI Valuation Standards, ICAI VS 102. Before commencement of any valuations, the valuer must consider the parameters for selection of bases of like (a) nature of the asset to be valued; (b) scope and purpose

of the valuation engagement; (c) valuation date/ measurement date; (d) intended purpose of the valuation; (e) applicable bases /standard of value; (f) applicable premises of value; (g) assumptions and limiting conditions; and (h) applicable governmental regulations.

It has been specifically mentioned that ICAI VS 102 will not be applicable in those cases where a valuer is required to adopt valuation bases that are prescribed either (a) by a Statute/ Regulations; or (b) agreed between the parties.

The Premises of value describes the circumstances of how an asset or liability is used. In a given set of circumstances, a single premise of value may be adopted while in some situations multiple premises of value may be considered.

Accurate valuation requires appropriate application of the available approaches to determine value, a clear understanding of the exact investment in a business that is being sold or acquired, and a clear measure of the returns that the company generates. Business varies in the nature of their operations, the markets they serve, and the assets they own. For this reason, the body of business valuation knowledge has established three primary approaches by which businesses may be appraised.

The three Principal Business Valuation Approaches are:

- Market Approach
- Income approach
- Asset Approach

Market Approach

Market approach is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business.

In market approach, the valuer has to get reliable information about the comparable or identical asset is traded in the active market and such transactions must be a recent and orderly transaction as well identical or comparable asset(s).

Valuer should not use market approach if:

- the asset has fewer identical or comparable assets
- the asset to be valued or its market comparable are not traded in the active market;
- sufficient information on the comparable transaction(s) is not available;
- there is no recent transaction either in the asset or in the market comparable; or
- there are material differences between the asset to be valued and the market comparable, which require significant adjustments.

Three Valuation methods under the market approach:

- Market Price Method
- Comparable Companies Multiple (CCM) Method
- Comparable Transaction Multiple (CTM) Method

Income Approach

The income business valuation approach is based on the idea of valuing the present value of future economic monetary benefits. This approach estimates business value by considering the present value of

future income accruing over a period of time. Present Value of future income is calculated using time value of money concept:

$$FV = PV \cdot (1 + i)^n$$

Where, FV = Future Value

PV = Present Value

i = Periodic Interest rate

n = number of times compounding takes place in a year

The methods most commonly used by business valuation professionals include

- (i) the Capitalization of Earnings Method;
- (ii) the Discounted Earnings Method (Discounted Cash Flow Method); and
- (iii) Dividend Discount Method (used for valuation of shares).

Cost Approach

The cost approach provides an indication of value using the economic principle that a buyer will pay no more for an *asset* than the cost to obtain an *asset* of equal utility, whether by purchase or by construction, unless undue time, inconvenience, risk or other factors are involved. This approach tends to determine the business value on the basis of value of assets of the business. It is specifically useful for asset intensive firms, valuing holding companies as well as distressed entities that are not worth more than their overall net tangible value.

The cost approach should be applied and afforded *significant weight* under the following circumstances:

- (a) participants would be able to recreate an *asset* with substantially the same utility as the subject *asset*, without regulatory or legal restrictions, and the *asset* could be recreated quickly enough that a *participant* would not be willing to pay a *significant* premium for the ability to use the subject *asset* immediately (nothing special in the assets).
- (b) the *asset* is not directly income-generating and the not in unique nature of the *asset* makes using an income approach or market approach unfeasible.

The methodologies adopted under cost approach are as under:

- Replacement Cost Method
- Reproduction Cost Method
- Summation Method-Sum of part Method.

PRINCIPLES OF VALUATION

Valuation principles serve as guiding concepts or standards that underpin the process of determining the value of assets, companies, or investments. These principles help ensure that valuations are conducted consistently, objectively, and accurately. Some of the key principles of valuation include:

Principle of Value Maximization: The primary objective of valuation is to determine the maximum value of an asset or investment opportunity. This principle reflects the notion that investors seek to maximize their returns and that asset should be valued based on their potential to generate future cash flows or benefits.

Principle of Market Efficiency: Valuations should take into account market prices and information. In efficient markets, asset prices reflect all available information and are considered fair representations of their intrinsic value. Valuations should consider market dynamics and incorporate relevant market data and trends.

Principle of Risk and Return: Valuations should incorporate the relationship between risk and expected return. Assets with higher risk levels should command higher expected returns to compensate investors for taking on additional risk. Valuations should assess and quantify the risks associated with an investment and adjust the discount rate or required rate of return accordingly.

Principle of Time Value of Money: The time value of money principle recognizes that a dollar received today is worth more than a dollar received in the future due to the opportunity to invest and earn returns. Valuations should discount future cash flows or benefits to their present value using an appropriate discount rate, such as the cost of capital or the risk-free rate.

Principle of Substitution: The principle of substitution suggests that the value of an asset is determined by the cost of acquiring a substitute asset with similar characteristics and utility. This principle is particularly relevant in the valuation of tangible assets and real estate, where the value is often determined by comparing prices of similar properties or assets.

Principle of Arm's Length Transaction: Valuations should be based on hypothetical transactions that would take place between willing and knowledgeable parties, each acting in their self-interest and without undue pressure or compulsion. This principle ensures that valuations reflect fair market value and are not influenced by external factors or special circumstances.

Principle of Consistency: Valuations should be conducted using consistent methodologies, assumptions, and data sources to ensure reliability and comparability. Consistency in valuation practices allows for meaningful comparisons over time and across different assets or companies.

Principle of Transparency and Disclosure: Valuation processes and methodologies should be transparent, well-documented, and disclosed to relevant stakeholders. Transparency enhances credibility and allows stakeholders to understand the basis for the valuation conclusions.

1. The value of anything tends to be determined by the cost of acquiring an equally desirable substitute, and this is known as the principle of substitution.
2. The amount of return (profit) that a business provides to its owner is based on the rate of return expected on the investment. A fundamental relationship exists between the rate of return from an investment and the amount of risk involved in the investment. The greater the risk involved, the greater the required rate of return.

In other words, the greater the risk that an owner will lose a particular deal, the greater the 'odds' (ROI) that will be placed on that owner. There are various types of investments that carry different levels of risk and, therefore, different potential returns.

3. Many owners of businesses feel that their businesses have no intangible assets value. Therefore, such businesses are sold and transferred at tangible asset values only. It follows that intangibles exist if a business has excess earnings, and values are determined by capitalizing the excess earnings.
4. The given fact gives rise to two key questions:
 - (i) What are excess earnings?
 - (ii) What is an appropriate capitalization rate?
 - Excess earnings are the earnings of the company in excess of the average earnings of companies with similar activities and size. But it is difficult to define an appropriate capitalization rate. Today, valuation has become an important topic of interest. Various methods and factors are used in valuing closely held businesses.
 - These methods are not alternatives to one another; but all or many of the methods may need to be considered.
 - Many formulas are tied to 'earnings' rather than 'excess earnings. Earnings are multiplied or capitalized by certain industry factors or 'public' company comparable factors.
 - It is recognized that if 'comparable' factors are not available, then other methods can be used.

5. Valuations cannot be made on the basis of a prescribed formula. There is no means whereby mathematical weights and the various applicable factors in a particular valuation case can be assigned in deriving the fair market value. Thus, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance.
6. Sometimes, it may not be possible to make a separate appraisal of the tangible and intangible assets of the business. An enterprise has a value on an ongoing concern basis. Whatever intangible values are available, may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets. In addition to the fundamentals of business valuation, there are other sources of information which valuation professionals should read and/or add to their library in the valuation business assignments. In particular, the valuer should be familiar with the business related texts which may include books, research papers, articles, seminars, and interactions with notable valuation mentors or other business mentors. It is in fact a subject of continuous learning.

HINDRANCES / BOTTLENECKS IN VALUATION

Business valuations are an important aspect of transferring ownership of a closely-held business. Whether buying or selling a business, valuing assets during a divorce or gifting to the next generation, an accurate business valuation can save or make you money. When selling or purchasing a privately-held company, sellers look to maximize their return at a value based on a rose-colored future. Buyers want to purchase at a discounted value based on the business's weaknesses. The right business valuator helps bridge the gap between buyers and sellers, provides a thorough understanding of the company's real value and structures the transition to take maximum advantage of the opportunity. So, when we are in the process of valuing a business, a detailed, comprehensive analysis and the ability to develop accurate projections and assumptions are necessities. Business valuation also requires the application of finance theory in the appropriate places and using professional judgment. Some of the most common hindrances include:

1. Value, as a concept, is ambiguous. An asset has different values depending on the purpose or context. Thus an asset has several values: market value (amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing); fair value (amount that will fairly compensate an owner who was involuntarily deprived of the economic enjoyment of a property where there is neither a willing buyer nor a willing seller); liquidation or forced sale value (amount which may reasonably be expected to be obtained from the sale of a property within a time-frame too short to obtain a value under open market conditions); going concern value (amount ascribed to an established business, not to its constituent parts); investment value (value of a property to a particular investor, or a class of investors for specified investment objectives).
2. Everyone has an opinion of value about a business, a tangible asset, or an intangible asset but actually, the term 'value' means different things to different people. The problems faced by the valuers are enormous. They have to bring forward an appropriate definition of value for a specific valuation. The Webster's dictionary puts value as:

"A fair return or equivalent in goods, services, or money for something exchanged: the monetary worth of something: marketable price; relative worth, utility, or importance: something intrinsically valuable or desirable."
3. Mathematical certainty or certainty of one output based on specific set of inputs is neither demanded, nor possible in valuation discipline. Being context specific, the value keeps on fluctuating. It is for the valuers to express the value attributed by them to the asset, which is estimated on the basis of the facts drawn from the evidence before them. Valuation is an art more than a science and is an interdisciplinary study drawing upon law, economics, finance, accounting, and investment. It is a procedure, essentially, a bringing together of the economic concept of value and the legal concept of property. Valuation discipline is neither science nor an art; it is a craft, i.e., a skill that one learns by doing. The more one does it, the better one gets at it.

4. Valuation may be considered a science but, to a large extent, valuation variables require inherent subjectivity. In other words, valuation is not a precise science as there is always imperfection in the market. Even in rare instances, where the valuer has perfect knowledge of the market, the market does not have the perfect knowledge of value as well as the valuation methodology and process. On every occasion, there may not be a definitive valuation method or a definitive value conclusion, but every valuation is based only on its circumstances. Right valuation requires logical and methodical approach and careful application of the basic principles. This means that there may not be a prescribed format or a preferred methodology, which is to be adopted always.
5. Any business valuation activity is based on the hypothetical consideration that there is an arm's length sale of a business between a willing buyer and a willing seller, usually for cash. Any valuation theory attempts to search for truth and relates to the practice in order to understand valuation theory.
6. One of the frequent sources of legal confusion between cost and value is the tendency of courts, in common with other persons, to think of value as something inherent in the thing being valued, rather than an attitude of persons toward that thing in view of its estimated capacity to perform a service. Whether or not, as a matter of abstract philosophy, a thing has value except to people to whom it has value, is a question that need not be answered for the sake of appraisal theory. Certainly, for the purpose of a monetary valuation, property has no value unless there is a prospect that it can be exploited by human beings.
7. In a business valuation, the value of an interest in business is typically considered to be equal to the future benefits that are to be received from the business, discounted to the present value, at an appropriate discount rate. However, this simple definition of value raises the following issues to be addressed:
 - (i) How to define 'benefits'?
 - (ii) Future projections may be extremely difficult to make and also very difficult to get interested parties to agree to.
 - (iii) What is an appropriate discount rate that reflects the risk inherent in the subject entity
8. Developing reasonable assumptions for projections based on historical trends and expected future occurrences and documenting the reasoning behind those assumption choices.
9. Gathering the appropriate market comparable (both public and private) and documenting the reasoning behind the market comparable choices.
10. Choice of Valuation Standards to be followed.
11. Drafting a comprehensive valuation report.
12. Remaining compliant with International Valuation Standards (IVS) or ICAI Valuation Standards IRS guidelines and other industry standards.

PRINCIPLES OF VALUATION TO BE FOLLOWED BY VALUERS

Core Principles of Valuation	
Ethics	Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust.
Competency	At the time the valuation is submitted, valuers must have the technical skills and knowledge required to appropriately complete the valuation assignment.
Compliance	Valuers must disclose or report the published valuation standards used for the assignment and comply with those standards.
Basis (ie, Type or Standard) of Value	Valuers must select the basis (or bases) of value appropriate for the assignment and follow all applicable requirements. The basis of value (or bases) must be either defined or cited.

Core Principles of Valuation	
Date of Value-Effective Date/Date of Valuation	Valuers must disclose or report the date of value that is the basis of their analyses, opinions or conclusions. Valuers must also state the date they disclose or report their valuation
Assumptions and Conditions	Valuers must disclose significant assumptions and conditions specific to the assignment that may affect the assignment result.
Intended Use	Valuers must disclose or report a clear and accurate description of the intended use of the valuation.
Intended User(s)	Valuers must disclose or report a clear and accurate description of the intended user(s) of the valuation
Scope of Work	Valuers must determine, perform, and disclose or report a scope of work that is appropriate for the assignment that will result in a credible valuation
Identification of Subject of Valuation	Valuers must clearly identify what is being valued.
Data	Valuers must use appropriate information and data inputs in a clear and transparent manner so as to provide a credible valuation.
Valuation Methodology	Valuers must properly use the appropriate valuation methodology (ies) to develop a credible valuation.
Communication of Valuation	Valuers must clearly communicate the analyses, opinions and conclusions of the valuation to the intended user(s).

LESSON ROUND-UP

- Valuation is a process of appraisal or determination of the value of certain assets: tangible or intangible, securities, liabilities and a specific business as a going concern or any company listed or unlisted or other forms of organization, partnership or proprietorship. Business valuation requires a working knowledge of a variety of factors, and professional judgment and experience.
- Valuation may be considered a science but, to a large extent, valuation variables require inherent subjectivity.
- Enhanced credibility of the valuation process requires establishing various estimates of values with minimum most possible range between the highest and lowest values arrived at through various methods.
- Valuation is a vital subject which will be used in different areas like merger & acquisition, amalgamation, acquisition, dispute resolution etc.
- The subject of the valuation is of vital importance to the valuation process, the selection of inputs and approach and method.
- The main objectives of corporate valuation are to assist a purchaser or a seller in deciding the acceptable purchase consideration & assist an arbitrator in settling a dispute between parties.
- Developing reasonable assumptions for projections based on historical trends and expected future occurrences and documenting the reasoning behind those assumption choices is a bottleneck during valuation process.
- Accurate valuation requires appropriate application of the available approaches to determine value, a clear understanding of the exact investment in a business that is being sold or acquired, and a clear measure of the returns that the company generates.
- The three types of Business Valuation Approaches are Income approach, Market Approach & Asset Approach.

