

THE VAL STREET JOURNAL

Section 247 – a Diwali gift or a misfired cracker?

Dear Professional,

Section 247 of the Companies Act, 2013 pertaining to valuation by registered valuers, was notified for commencement on the eve of Diwali, but only time will tell whether it was a Diwali gift or a misfired cracker.

Although the draft Rules were prescribed and made available for public comments in May 2017, there was no prior indication or intimation as to when the final Rules would be notified and made effective. Despite being introduced quietly without a bang, like a dud firecracker, the Rules, if applied and implemented correctly, have the potential of a fiery rocket and can boost the valuation profession to a much needed high. On the flipside, if not taken in spirit, it can be a misdirected bomb.

In our opening publication titled **THE VAL STREET JOURNAL** which coincides with the issue of the Companies (Registered Valuers and Valuation) Rules, 2017, we discuss the key areas that the Rules would impact. While we have touched upon the apparent observations pertaining to registered valuers, their eligibility, RVO's, etc. we have discussed in greater depth the not so apparent observations such as limits on number of assignments, restrictions on advertisement, liability for reliance on the work of another registered valuer and the way forward.

The Rules, and consequently the proposed Valuation Standards, surprisingly have been made applicable currently only to valuations carried out under the Companies Act, 2013. Considering that at present, different statutes recognise and allow a diverse set of professionals to act as valuers, an ideal scenario would have been to make the Rules uniformly applicable to all valuations and valuers irrespective of statute. While a casual reference has been made in the Rules, to its applicability under other statutes, the onus of change has been left on the respective authorities.

There is a dearth of fair and professional valuers and not applying the Rules uniformly across statutes affects not only the existing professionals providing the services but also blurs the path for new entrants.

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Forming separate Rules to regulate the profession has definitely given an impetus to the profession. It has made the profession accessible to all, unlike previously, when only chartered accountants or merchant bankers were preferred for financial valuations. We hence see interesting times ahead with different professionals having varied skillsets entering this field. At the same time with the profession growing, financial valuation which is currently taught as part of the general subject of financial management is bound to be recognised as a specialised academic subject and would lead to an increased demand for valuation professionals in the field of academics and training.

The valuation profession in India is at a developing stage and the introduction of these Rules is the first step. The next step is the interpretation and application of these Rules and we believe that as long as valuation is interpreted to be more of an art than science we should see less of red and more of green lights on the Val Street!

Happy Navigating!

We urge you to share your thoughts with us.

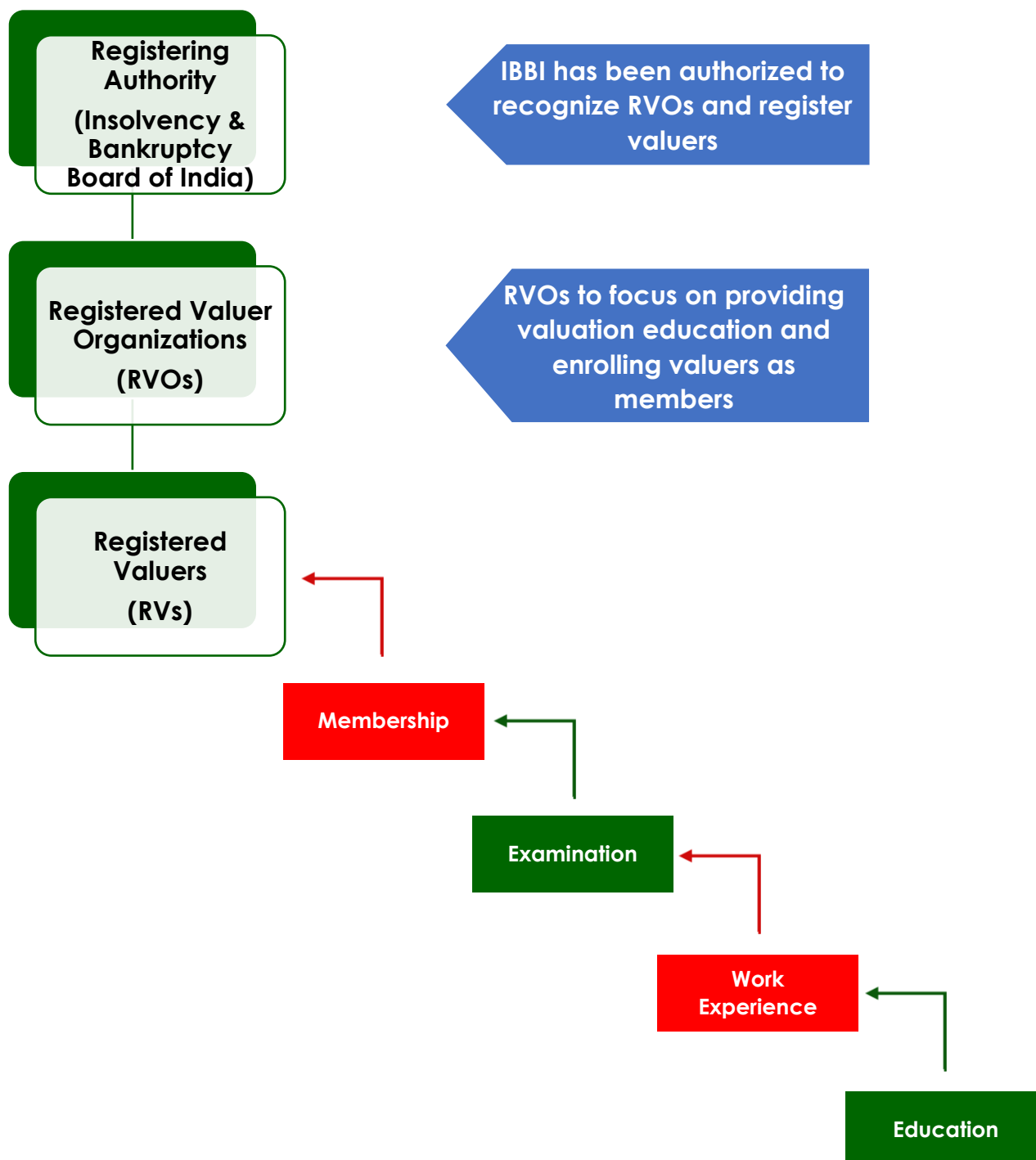
Thank You!

The D_NA of Valuation



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Governing structure and eligibility criteria for registered valuers



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No restrictions on advertising and marketing of services

Historically, all professions have had limitations imposed on members, by their respective governing authorities on the explicit advertising and marketing of services. A positive omission in the current Rules is not imposing any such restrictions on members. This is particularly relevant for the valuation profession because unlike most professional services which are required to be carried out periodically (eg. audits, tax compliance, etc.), a majority of valuations are not. Moreover unlike most professional services, the need for valuations is driven more by a company's future plans, so rampant advertising or marketing does not drive the demand for valuation services.

The Rules have allowed for a list of registered valuers to be displayed on the website of the respective registered valuers organisation. Not only will this provide companies with a wider choice to choose the registered valuer but it shall also discourage misrepresentation.

Limits on work carried out by a registered valuer

Although there is no restriction on advertisement and marketing, the Rules state, *"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"*. The statement however is vague as it does not specify what "too many" or "adequate" means. On one hand while the limit on work can foster consolidation between valuation professionals, on the other hand too much consolidation can lead to only a few handful of firms surviving and monopolising the profession. It would be hence interesting to see how the quantification, if any, happens viz. whether the limit gets quantified based on number of partners, number of registered valuers, organisational limit or a mix of all. This provision is a potential double edged sword and it is hence imperative to make it unambiguous by quantifying the intent.

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Conflict of interest

The Rules are silent about the restriction on other professionals to provide valuation services and though the Rules do provide that any conflict of interest should be disclosed and independence should be maintained there is no direct mention about say whether a statutory auditor can provide valuation services. As we know, the statutory auditor of a company is not allowed to provide valuation services to the same company. However this has not been provided in the Rules but is a derivation from other statutes. It is necessary that in the Rules, a direct reference be made to who can and cannot provide the required valuation services. This is necessary to ensure more clarity among professionals and prevent misuse.

Reliance by a registered valuer on work of another registered valuer

The Rules unambiguously state that in a case where a registered valuer obtains inputs or gets a separate valuation for an asset class conducted from another registered valuer, not only would he / it be required to disclose the details of the inputs used and the particulars of the other registered valuer in the report, but he / it would also be fully liable for the work of the other registered valuer.

A scenario where a registered valuer would use the inputs of another registered valuer could be in a case where the asset classes to be valued are different for eg. the fair value of land and building is required as an input in a financial valuation or in a scenario where different companies within the same group have appointed different valuers say, the value of the subsidiary is required to value the holding company.

While the provision could promote transparency in the profession, if a valuer specialising in one asset class is made liable for the valuation of another asset class about which he / it may have at best, working knowledge, it could be deemed as unfair, especially if the other registered valuer is not made accountable at all.

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Legal structure and specified disciplines for registered valuers



The way forward

The Rules provide for an expert committee to be formed to assist the Central Government in prescribing Valuation Standards to be followed while performing valuations under the Rules. Till such time, the Rules specify for registered valuers to perform valuations as per “internationally accepted valuation standards” or valuation standards as adopted by any RVO.

The Rules are applicable effective 18th October 2017, but have provided for a transitional arrangement allowing current valuers to continue rendering valuation services without a certificate of registration upto 31st March 2018.

Considering the procedural requirements for recognition of RVOs, organising examinations & registration of valuers with RVOs and IBBI, we are reminded of the following lines by Robert Frost:

***“But I have promises to keep,
And miles to go before I sleep,
And miles to go before I sleep.”***