



## MCA issues draft Companies (Registered Valuers and Valuation) Rules, 2017

9 June 2017

### First Notes on

Financial reporting

### Corporate law updates

Regulatory and other information

Disclosures

### Sector

#### All

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

### Relevant to

#### All

Audit committee

CFO

Others

### Transition

#### Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

### Background

Section 247<sup>1</sup> of the Companies Act, 2013 (2013 Act) governs the provisions relating to the valuation by registered valuers under the 2013 Act. It requires that wherever valuation with respect to any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities is required to be made under the provisions of the 2013 Act, it should be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed. Such a registered valuer should be appointed by the audit committee or by the Board of Directors (in the absence of audit committee) of that company.

The registered valuer has been entrusted with various significant responsibilities under the 2013 Act. These are as follows:

- Make an impartial, true and fair valuation of assets
- Exercise due diligence while performing the functions as a valuer
- Conduct valuation in accordance with the Rules as may be prescribed
- Not to undertake valuation of any assets in which he/she has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

The table below provides a summary of Sections of the 2013 Act which require valuation to be conducted by a registered valuer:

Sections	Overview
<b>Section 62(1)(c)</b>	<b>Further issue of share capital:</b> If a company that has share capital, proposes to increase its subscribed share capital by the issue of further shares, it could, <i>inter alia</i> , make an offer of such shares to any persons subject to the following conditions: <ol style="list-style-type: none"> <li>The issue is authorised by a special resolution and</li> <li>Price of such shares is determined by the valuation report of a registered valuer.</li> </ol>
<b>Section 192(2)</b>	<b>Restriction on non-cash transactions involving directors:</b> A company could enter into an arrangement by which a director of the company or its holding, subsidiary or associate company or a person connected with him/her or the company itself acquires/is to acquire assets for consideration other than cash, from the company only if such an arrangement is approved by a resolution in a general meeting.

<sup>1</sup>Not yet notified by the Ministry of Corporate Affairs (MCA).

Sections	Overview
	The notice for approval of the resolution should include particulars of the arrangement along with the value of the assets involved in such an arrangement duly calculated by a registered valuer.
<b>Section 230(2)(v)</b>	<p><b>Power to compromise or make arrangements with creditors and members:</b> In case a compromise or an arrangement is proposed between a company and its creditors or between a company and its members, then an application could be made to the National Company Law Tribunal (NCLT) which could order a meeting of the creditors or members involved in such an arrangement.</p> <p>The application to the NCLT should, <i>inter alia</i>, include a valuation report in respect of the shares and property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.</p>
<b>Section 236(2)</b>	<p><b>Purchase of minority shareholding:</b> In case an acquirer or any person becomes a registered holder of 90 per cent or majority of equity share capital of a company by virtue of an amalgamation, share exchange, conversion of securities or by any other reason, then such a holder should notify the company of its intention to buy the remaining equity shares (minority shareholders).</p> <p>The minority shareholders are required to be paid for the equity shares held by them at a price determined on the basis of valuation by a registered valuer.</p>
<b>Section 281(1)(a)</b>	<b>Submission of report by a company liquidator:</b> In case the NCLT has made a winding up order or has appointed a company liquidator, then such a company liquidator is required to submit a report to the NCLT which should, <i>inter alia</i> , include the value of the assets held by the company. The valuation of the assets should be obtained from the registered valuer.
<b>Section 305(2)</b>	<p><b>Declaration of solvency in case of proposal to wind up voluntarily:</b> In case of voluntary winding up of a company, a declaration by its directors is required which should affirm that the full enquiry of the company's affairs have been done by them and the company does not have any debt or they will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.</p> <p>Such a declaration would be valid only if it meets the prescribed conditions which, <i>inter alia</i>, includes report of the valuation of the assets of the company prepared by a registered valuer.</p>

(Source: KPMG in India's analysis, 2017 based on the provisions of the Companies Act, 2013)

### New development

On 26 May 2017, the MCA issued the draft Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). The Valuation Rules provides detailed guidance on various aspects of a registered valuer.

Comments on the draft Valuation Rules could be submitted up to 27 June 2017.

This issue of First Notes provide an overview of the key requirements of the Valuation Rules.

### Overview of the Valuation Rules

- Eligibility for being a registered valuer:** An individual or a partnership entity could practice as a registered valuer only if the individual or the partnership entity has obtained a certificate of registration from the Registration Authority<sup>2</sup>.

The Valuation Rules prescribe various conditions which are to be met by an individual or a partnership entity for grant of certificate of registration. These *inter alia*, include passing of a valuation examination by an individual. However, individuals that have completed 50 years of age and been substantially involved in at least 10 valuation assignments of assets amounting to INR5 crore or more during the five years preceding the commencement of the Valuation Rules, are exempt from the valuation examination.
- Eligibility for recognition of valuation professional organisation:** An organisation may be recognised as a valuation professional organisation for valuation of a *specific class or classes of assets* subject to the specified conditions which, *inter alia*, includes placing of a code of conduct for valuers who are its members. The code of conduct should contain all the provisions given in Schedule I of the Valuation Rules.

Additionally, a certificate of recognition as a valuation professional organisation is required to be obtained from the Registration Authority.

<sup>2</sup>Registration Authority means the Insolvency and Bankruptcy Board of India established under the Insolvency and Bankruptcy Code, 2016.

- **Compliance with valuation standards:** A registered valuer is required to make valuations as per the valuation standards as may be notified by the Central Government (CG). Till the time such valuation standards are being notified by the CG, the valuations should be performed in accordance with the following:
  - a) An internationally accepted valuation methodology
  - b) Valuation standards adopted by any valuation professional organisation, or
  - c) Valuation standards specified by the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI) or any other statutory regulatory body.
- **Valuation report:** Valuation Rules prescribe the items to be covered in the valuation report of a registered valuer. These, *inter alia*, includes, purpose of valuation and appointing authority, disclosure of valuer interest/conflict, valuation methodology and major factors that influenced the valuation.
- **Cancellation or suspension of certificate of registration or recognition:** The Registration Authority could cancel or suspend the registration of a valuer or recognition of a valuation professional organisation in the following circumstances:
  - a) Such an action is required in the public interest or
  - b) There has been violation of the provisions of the 2013 Act, Valuation Rules or any condition of registration or recognition, as the case may be.
- **Forms:** Schedule II of the Valuation Rules also provides the formats of the following important forms:
  - a) *Form A:* Application for registration as a valuer by an individual
  - b) *Form B:* Application for registration as a valuer by a partnership entity
  - c) *Form C:* Certificate of registration
  - d) *Form D:* Application for certificate of recognition
  - e) *Form E:* Certificate of recognition.

### Our comments

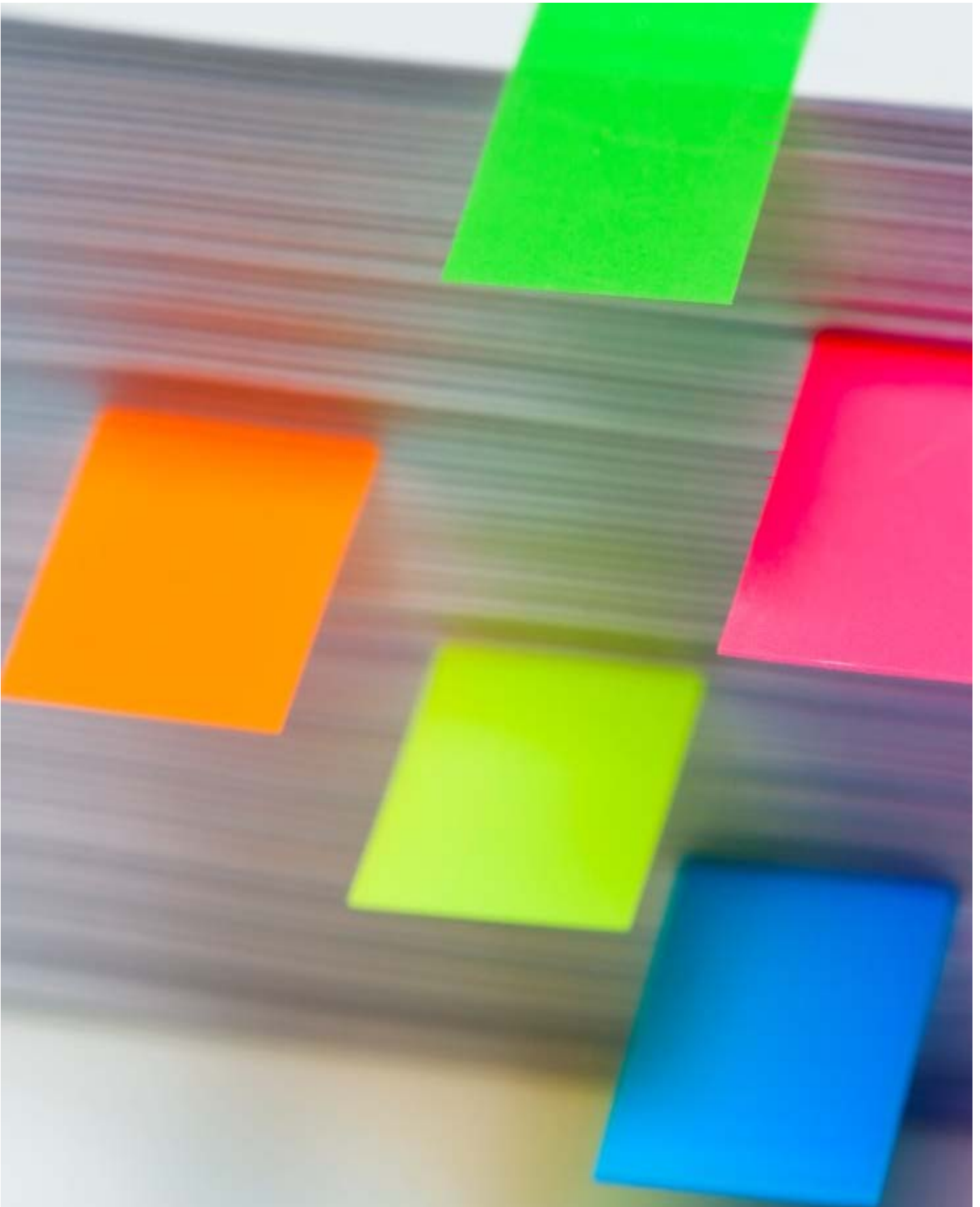
The MCA has issued the much awaited draft Valuation Rules for public comments. The Valuation Rules address the key areas of concern such as who would be eligible to be registered as a valuer under the 2013 Act, the procedure for registration, the code of conduct required to be followed and the disciplinary proceedings which could be initiated against the valuer in case of non-compliance.

Some of the important points that need to be considered are as follows:

- **Eligible registered valuer:** As per the Valuation Rules, any individual, or partnership entity having the requisite qualifications and experience would be eligible for registration as a valuer subject to prescribed conditions. It is important to note that the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Compromises Rules) notified by the MCA on 15 December 2016 mention that till the notification of the Valuation Rules, the valuation report to be issued pursuant to a compromise/arrangement by the company would be made by an independent merchant banker registered with SEBI or an independent Chartered Accountant (CA) in practice having minimum experience of 10 years. In practice, a majority of the merchant bankers operate in the form of companies which would not be eligible for conducting valuation under the Valuation Rules. Further clarification would be required from the MCA, in cases where the merchant bankers are registered to act as registered valuers under the Compromises Rules as they may no longer be able to continue valuation under the 2013 Act as per the Valuation Rules. Another area of concern is that the Valuation Rules include a condition that a partnership entity would not be eligible to be a registered valuer if a majority of its partners practicing in India are not registered valuers. This could pose some practical challenges.
- **Valuation standards:** A registered valuer has to make valuations as per the valuation standards as may be notified by the CG. Till the time such standards get notified, they have been permitted to adopt internationally accepted methodology, standards adopted by any professional organisation or valuation standards specified by the RBI or SEBI. However, in practice there is no internationally benchmarked valuation methodology. Therefore, CG should define the valuation standards to be applied by the valuers under the 2013 Act at the earliest so as to ensure consistent valuation approach being followed by all the valuers.
- **Notification of the corresponding section:** Section 247 of the 2013 Act which governs the provisions of the registered valuers have still not been notified by the MCA. The draft Valuation Rules will hold significance only when the corresponding Section of the 2013 Act would also get notified. Therefore, the MCA should notify it along with the final Valuation Rules.

### The bottom line

Companies and other stakeholders should provide their feedback over the draft Valuation Rules so that they could be addressed by the regulators and the final Valuation Rules should ensure transparent and accurate valuation practice.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

## IASB seeks feedback for post-implementation review of IFRS 13

2 June 2017

The IASB is conducting the PIR of IFRS 13 in two phases. During the first phase, the IASB held meetings with many stakeholders to identify potentially challenging areas of application. Although the general consensus from stakeholders was that IFRS 13 has worked well and brought significant improvements to financial reporting, a number of areas were flagged in which it was felt that practical improvements could be made to the standard.<sup>1</sup> Since IFRS 13 has given rise to a number of implementation issues, IASB has issued a Request For Information (RFI) on this standard. The RFI launches the second phase of the PIR.

The RFI is open for comments until 22 September 2017.



## Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 10/2017 – May 2017

The topics covered in this issue are:

- Accounting treatment of enabling assets
- Computation of EIR for loans advanced by banks
- Independent directors – An insight into the role and responsibilities
- Application of substance over form under Ind AS – sale and leaseback arrangements
- Regulatory updates.

## SEBI issues norms for listing of non-convertible redeemable preference shares and non-convertible debentures issued in a scheme of arrangement

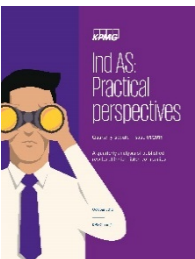
6 June 2017

On 26 May 2017, SEBI issued a circular (SEBI circular on listing of NCRPS/NCDs) which lays down the additional conditions to be complied when NCRPS/NCDs are issued in lieu of the specified securities and such NCRPS/NCDs are proposed to be listed on the recognised stock exchanges.

These additional conditions have been classified under the following heads:

- Conditions to be complied before the scheme of arrangement is submitted for sanction by the NCLT
- Conditions to be complied after the scheme of arrangement is sanctioned by the High Court/NCLT and at the time of making application for relaxation under Rule 9(7) of the Securities Contracts (Regulation) Rules, 1957.

The above conditions have to be complied with in addition to the requirements specified under the SEBI circular dated 10 March 2017. Our issue of First Notes provides an overview of the conditions specified under the above two heads.



## Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have started reporting their financial results for the year ended 31 March 2017.

Out of the companies comprising Nifty 50 index, eight companies are banks, one is Non-Banking Financial Company (NBFC) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 39 companies.

This can be accessed on KPMG in India website - '[Ind AS- Practical perspectives' webpage](#)

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