

Valuation of securities or financial assets

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Scope for a Practicing CA



- ✓ Under FEMA only practicing CA/CMA or Merchant Banker can do valuation.
- ✓ Under Income Tax Act practicing CA can do valuation under some of the rules.
- ✓ Advising the right course of action to client under Companies Act, FEMA & Income Tax Act.
- ✓ Questioning value of investments as an auditor specially under IND AS.
- ✓ Aspiring to be a registered valuer

- Companies Act, 2013
- Insolvency and Bankruptcy Code, 2016
- Income Tax Act, 1961
- Foreign Exchange Management Act, 1999
- Security and Exchange Board of India Guidelines

Mandatory under Companies Act, 2013

- ✓ 54(1)(d) Sweat equity shares and IPR.
- ✓ 62(1)(c) preferential basis or for non-cash consideration (value both share and consideration).
- ✓ 67(3)(b) buy back of shares
- ✓ 192(2) non cash transfer of assets to or by directors
- ✓ 230 & 232 compromise or arrangement or Merger
- ✓ 234 cross border merger (Indian into foreign or vice versa)
- ✓ 236 purchase of minority share holding
- ✓ 281 Winding up of the company

Issue of Sweat Equity shares

Section [54\(1\)\(d\)](#) read with Share Capital & Debenture [Rules 8](#) :



If a company is planning to issue sweat equity shares to its Directors or employees then two valuations are required:

- a) Valuation of “Intellectual Property Right” or “Value Addition” and
- b) Valuation of equity shares of the company

Note: Besides valuation by merchant banker is also required under Income Tax Act.

Contd...

- the expression '**Value additions**' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

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Preferential Allotment of shares

Section [62\(1\)\(c\)](#) read with Share Capital & Debenture [Rule 13](#)

- a) Valuation is compulsory.
- b) In case of non cash consideration valuation of consideration is also required.
- c) Not required in case of right issue.
 - a) For issue of declined rights is it required
 - b) In case of renunciation of right it is recommendatory
- d) Valuation is required even if shares are issued to existing shareholders disproportionately.
- e) Valuation is required in case of Employee Stock Options (MB valuation is required for unlisted co. at exercise date)

Preferential Allotment of shares

Section [62\(1\)\(c\)](#) read with Share Capital & Debenture [Rule 13](#)

- f) Valuation is required even in case of a listed company if its shares are not frequently traded.

Here infrequently traded means number of shares traded in last 12 calendar months are less than 10% of total number of shares of that class.

If number of shares changes then take weighted average.

SE means the SE where highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

Preferential Allotment of shares

Section [62\(1\)\(c\)](#) read with Share Capital & Debenture [Rule 13](#)

- g) In case of listed company with frequently traded shares issue price should be at-least:
 - i. Average of weekly high and low of VWAP of last 26 weeks
 - ii. Average of weekly high and low of VWAP of last 2 weeks

Here Valuation need not to be certified by RV but as a good governance practice companies take certificate from CA.

Preferential Allotment of shares

Section [62\(1\)\(c\)](#) read with Share Capital & Debenture [Rule 13](#)

- h) Besides equity shares, valuation is required even if the company is issuing convertible securities like:
 - i) Compulsorily Convertible Preference Shares
 - ii) Optionally Convertible Preference Shares
 - iii) Compulsorily Convertible Debentures
 - iv) Optionally Convertible Debentures (deposit)

Valuation may be done either at the time of issue of security or at the time of conversion.

| Preferred Shares | Seniority | # of Shares Outstanding | OIP/ Strike Price | Conversion Ratio | Conversion Price | LP Per share |
|--------------------|-----------|-------------------------|----------------------|---------------------|---------------------|-----------------|
| Class A CCCPS | 1 | 78,791 | 26,958 | 1.000 | 26,958 | 26,958 |
| Class B CCCPS | 1 | 16,396 | 97,713 | 1.000 | 97,713 | 97,713 |
| Class C CCCPS | 1 | 13,664 | 113,739 | 1.000 | 113,739 | 113,739 |
| Class D CCCPS | 1 | 28,460 | 136,396 | 1.125 | 121,241 | 136,396 |
| Class E CCCPS | 1 | 729,192,849 | - | 0.000000 | - | - |
| Class F CCCPS | 1 | 190,653,540 | - | 0.000000 | - | - |
| Class G CCCPS | 1 | 10,885 | 118,881 | 1.000 | 118,881 | 118,881 |
| Class H CCCPS | 1 | 83,425 | 116,267 | 1.000 | 116,267 | 116,267 |
| Class I CCCPS | 1 | 103,500 | 218,791 | 1.000 | 218,791 | 218,791 |
| <hr/> | | | | | | |
| Options | | | | | | |
| Option Outstanding | | 58,056 | 5,564 | | | |
| Option Pool | | 13,860 | | | | |
| <hr/> | | | | | | |
| Common | | | | | | |
| Common | | 295,928 | | | | |
| <hr/> | | | | | | |
| Total | | 920,549,354 | | | | |

Mandatory under Companies Act, 2013

- ✓ 54(1)(d) Sweat equity shares and IPR.
- ✓ 62(1)(c) preferential basis or for non-cash consideration (value both share and consideration).
- ✓ 67(3)(b) buy back of shares
- ✓ Section 73 & Deposit rules
- ✓ 192(2) non cash transfer of assets to or by directors
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Purchase of shares by Trust for benefit of employees

Section [67\(3\)\(b\)](#) read with Share Capital & Debenture [Rules 16](#)

- For offering share based payment to employees some companies do form a trust.
- If the trust is buying share of that unlisted company then valuation of shares is to be done by a registered valuer.

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Secured Debentures are not deposit

Acceptance of deposit [Rules 2](#)

- Debentures are not treated as deposit if secured by a first charge on assets referred to in schedule III except Intangible assets.
- the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer

Mandatory under Companies Act, 2013

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Non cash transfer of assets to or by directors

Section [192\(2\)](#)

- a) Valuation of asset acquired from director or acquired by director from company must be done by the registered valuer.
- b) If the company is issuing its shares to director for acquisition of asset from director then it will automatically attract section 62(1)(c) also for preferential allotment of shares.
- c) Valuation should be done by relevant valuer like SFA, LB or PM.

Mandatory under Companies Act, 2013

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Compromise or arrangement or Merger

Section [230](#) and Section [232](#)

- a) In case of merger of two or more unlisted companies Valuation of individual companies on standalone basis as well as calculation of exchange ratio is required.
- b) In case of compromise or arrangement with creditor or debt restricting valuation of assets of company including intangible assets and goodwill is required.
- c) If members holding 75% or more shares in an unlisted company want to acquire remaining shares they can apply to NCLT (amended in Feb 2020). In this case valuation is required. Section 236 is also about squeezing out minority but that is available to 90% majority and is event base.

Cross border merger

Section [234](#) read with Amalgamation [Rule 25A](#)

If a company registered outside India is to be merged with a company registered in India and vice versa then valuation is required.

Winding up of the company

Section [281](#)

When NCLT appoints a liquidator, he will submit several reports to NCLT. Here Valuation report is to be prepared by Valuer.

But now people prefer to go for liquidation under IBC. In that case also valuation is required.

Recommenderatory under Companies Act, 2013

- ✓ 61(1)(b) consolidation of nominal value. For fractional shares
- ✓ 62(1)(a) right issue. Where say some shareholders renounce their right in favour of other shareholders.
- ✓ 62(1)(a) right issue (for governance or documentation)
- ✓ Reduction of share capital u/s 66 (squeeze out minority shareholders simultaneously)
- ✓ Buy back u/s 68 (for governance). For NRI shareholders you need under FEMA.
- ✓ Sec.242(2)(b) tribunal may appoint valuer in case of oppression and mismanagement u/s241.
- ✓ Demerger without change in shareholding pattern.
- ✓ Merger of wholly owned company