

## Institutionalising Valuation Profession in India

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### INTRODUCTION

World over, the services industry is becoming more and more professionalised, and India is no exception to this trend. Due to the exponential increase in knowledge in several areas, specialisation in those areas (in relation to the dissemination of and access to such knowledge) has also increased dramatically.<sup>2</sup> Globally, this has led to the emergence of many neo-professions, which are now as well-recognised as the traditional professions of Law and Medicine. A similar trend is seen in India, as post-independence, multiple market-linked professions have developed over the years, like the professions of Chartered Accountants, Company Secretaries, Cost Accountants, Insolvency Professionals etc.

Post liberalisation in 1991, India has been on the path to become a market-driven economy. Institutions play a very important role in market-driven economies for long-term economic development.<sup>3</sup> Once the basic market economy is in place, a higher level of institutional capacity is required for ensuring its further development and sustainability.<sup>4</sup> Growth will stall, if a middle-income economy proceeds to rise to a mature market economy with weak institutional structures.<sup>5</sup> As the inter-relationship between various actors in the society have become more professionalised, the practitioners of traditional professions and neo-professions have become an essential intermediary between different interest groups. This has resulted in the emergence of professions as an important institution for effective functioning of our market economy. Strengthening the institutional infrastructure for regulating such professions (especially those involved in market-based relationships) is therefore important for supporting India's economic development. Among other measures, this requires institutionalisation of minimum standards for such professions through state-sponsored regulations.

### INSTITUTIONALISATION OF PROFESSIONS THROUGH STATE-SPONSORED REGULATIONS

The practitioners of several professions render services directly to the users. From this point of view, provision of services is essentially a transaction that takes place between two private persons. Therefore, a fundamental question arises about the role of the State in this. Is State intervention through state-sponsored regulations necessary for regulating such transactions? Should the users of such services be left to their own devices for taking refuge under the private law (tort law, contract law or consumer law) for protecting their interests? These issues can be evaluated from two perspectives, namely, (a) the economic perspective and (b) the legal perspective.

## **Economic perspective**

Competition is an essential characteristic of a free market economy. State intervention can limit the abuse of economic power and ensure better quality of services at appropriate prices. Intervention through State-sponsored regulations is required when there are market imperfections which yield poor outcomes for the stakeholders.<sup>6</sup> In the market of services rendered by the professionals, there exists primarily three kinds of market failures, namely, asymmetries of information, externalities and abuse of market-power. Due to the specialised nature of services rendered by the professionals, quality of such services is not easily determinable by the users. In most cases, users do not have the requisite information or specialisation to assess the quality of such services. This can lead to information asymmetries which are difficult to overcome and expose consumers to the possibility of unjust outcomes.<sup>7</sup> In terms of externalities, poor quality of services is another issue that might harm the consumers and inhibit the development of the market for which those services are relevant. Substandard services rendered by professionals not only affect the consumers, but also third-parties and the entire eco-system linked to those services.<sup>8</sup> Lastly, the risk of abuse of market power exists when few service providers achieve a dominant position in the market. The nature of services rendered by the professionals are highly skill-based and specialised. This can result in concentration of knowledge among few practitioners, especially if those services are largely self-regulated. This may result in creation of significantly high entry-barriers for new players.

## **Legal perspective**

A professional service provider and his client share a legal relationship wherein both parties owe certain duties to each other. A peculiar feature of this relationship is that it operates in spheres where a specific and pre-determined outcome can never be assured for reasons beyond the control of the professional.<sup>9</sup> Traditionally, common law provided a diverse set of principles to determine professional liability for different types of services. Under that system, the discussion to determine professional liability starts with the concept of reasonable care. Where a professional is able to meet this threshold, he will not incur professional liability even if the outcome of his services is not to the liking of his client. On the other hand, in a State-sponsored institutional framework for determining liability, the regulator starts from the concept of risk. It seeks fair allocation of risks between the professionals and users and prescribes rules accordingly. This process entails a realistic appreciation of the nature of the risk transferred to the professionals and the degree of risk retained by the users.<sup>10</sup> There is a fundamental difference between these two approaches for determination of liability, as outlined above. The concept of reasonable care reduces the involvement of the users and applies the preconceived notion of a reasonably competent professional to the facts of each case. In contrast, the concept of risk takes into account the fair allocation of risks between the professionals and users, which leaves more room for objective evaluation. While allocating risk, the regulator focuses on requirements of the users and the nature of services rendered by the professionals, and the rules designed for this purpose are eventually tailored accordingly. This is a more holistic approach for determination of liability in comparison to reliance on the concept of reasonable care.

The above discussion highlights the importance of institutionalisation of professions through State-sponsored regulations. India has seen the institutionalisation of several market-linked professions in the past, such as Chartered Accountants, Insolvency Professionals, etc. through respective State-sponsored regulations. Just like these professionals, valuers also perform a very useful function in market-based economies. Their services are crucial for ascertaining the value of different classes of assets, as may be required under different contexts. For instance, valuation is required for several private or public

transactions under Company law, Insolvency law, and Tax law, among others. However, unlike other professions, the valuation profession is not institutionalised through State-sponsored regulations or regulated properly. This creates several arbitrage opportunities for malpractices, affects quality-control and also inhibits the development of the profession.

## STATUS OF THE VALUATION PROFESSION IN INDIA

### Market of Valuation Services

The market of valuation services is relevant for both public and private sectors. Primarily, there are two types of valuation services rendered by the valuation professionals in India. First, the valuation services rendered in connection with transactions under various laws like the Company law, Insolvency law, and Tax laws, among others. These type of valuation services can be further divided into two categories. The first category consists of laws that set standards for the transactions between private persons.<sup>11</sup> For example, section 192 of the Companies Act, 2013 seeks to regulate the non-cash arrangement between a company and its directors. It provides that these arrangements require prior approval by a resolution in general meeting of the company. The notice of the 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. By prescribing a requirement of valuation by the registered valuers, the law ensures that the shareholders take an informed decision. The second category consist of laws<sup>12</sup> wherein the valuation services are required to ascertain the liabilities owed by a private person to the Government. A classic example of this can be found under tax related laws, wherein valuation services have been relevant for a very long time. Further, the second type of the valuation services are rendered by the valuation professionals on the basis of the needs of the market to enable private negotiations, for instance, during pre-contract negotiations involving tangible or intangible assets.

### Regulatory norms for valuation profession in India

An overview of the market of valuation services underscores the reliance of the State on the services rendered by the valuation professionals. To that extent, the valuation professionals function as an extended arm of the State to regulate both private and public transactions. Without proper regulation of the services rendered by such professionals, the possibility or risk of misplaced reliance cannot be ruled out, which raises serious questions about the long-term utility of such services. Back in 2008, an unsuccessful attempt was made to provide an institutional and regulatory framework for the valuation profession, through the Valuation Professional Bill, 2008 (VP Bill, 2008). A two-tier statutory self-regulatory model was adopted. The VP Bill, 2008 provided for the constitution of a 'Council of Valuation Professionals' (CVP) as the tier-one level principal regulator and for Recognised Institutes as the tier-two level front-line regulators.<sup>13</sup> However, this proposed reform never saw the light of the day.

#### *Self-Regulations of Valuation Profession in India*

Valuation services should not be understood as a by-product of services rendered by professionals in other fields, as it requires special training and background. It has developed into an independent profession over the years. Most of the valuation professionals in India are associated with multiple professional associations or self-regulatory organisations (SROs).<sup>14</sup> These are primarily non-governmental organizations/associations formed by stakeholders from the private sector. The valuation professionals become members of these SROs based on the membership requirements as prescribed by such organisations. Once a valuation professional becomes a member of an SRO, they are typically required

to follow the bye-laws and a code of conduct, if any. SROs also monitor compliance of such prescriptions and may revoke the membership of a valuation professional for non-compliances. The enforcement mechanisms of such SROs are essentially through internal adjudicatory mechanisms which can lead to suspension or expulsion of members in appropriate cases. Though there is no statutory requirement for a valuation professional to be registered with an SRO, most professionals do get affiliated with one as market practice. There is no doubt that the valuation SROs have played an important role in the development of the valuation profession in India.

#### *Regulation through registration process under different enactments*

Unlike the profession of Advocates, Medical Practitioners, Chartered Accountants, Company Secretaries and Cost Accountants, the valuation profession does not have a unified legal regime for its regulation. Presently, the diversity in the market for valuation services is also reflected in the mandatory norms regulating the profession. Legislation like the Wealth Tax Act, 1957 and the Companies Act, 2013, prescribe registration requirements for the valuation professionals to render valuation services for transactions envisaged thereunder. For example, the Wealth Tax Act, 1957 provides for the registration of the registered valuers under Chapter VIIB of the Wealth Tax Act, 1957. The rules framed thereunder prescribe the qualifications of registered valuers<sup>15</sup>, process of registration<sup>16</sup>, scale of fees<sup>17</sup>, form of report of valuation<sup>18</sup>, and procedure of removal from register of names of valuers<sup>19</sup>. On the other hand, certain laws recognise the services of the valuation professionals registered under the Wealth Tax Act, 1957<sup>20</sup> and the Companies Act, 2013<sup>21</sup>. Further, legislation like the Foreign Exchange Management Act, 1999 and regulations framed thereunder require rendition of valuation services by other classes of professionals, being Chartered Accountants<sup>22</sup>, Merchant Bankers<sup>23</sup> and Cost Accountants<sup>24</sup>.

#### *The Companies (Registered Valuers and Valuation) Rules, 2017*

A positive development towards providing a comprehensive institutional and regulatory framework for valuation profession under any specific legal regime was made by the Companies (Registered Valuers & Valuation) Rules, 2017 (RV Rules, 2017) notified under the Companies Act, 2013. A review of the legislative history of this Act indicates that it took almost nine years for the Company Law regime to have a specialized framework for registered valuers from the time it was first proposed in 2008.<sup>25</sup> The Companies Act, 2013 replaced a 57-year old legislation and sought to modernise the regulation and governance of companies in India. The Central Government then brought in the RV Rules, 2017, prescribed under the guiding principles of the Chapter XVII of the Companies Act, 2013 that deals with 'Registered Valuers'. Simultaneously, the Government also issued the Companies (Removal of Difficulties) Second Order, 2017<sup>26</sup> and the Companies (Amendment) Act, 2017<sup>27</sup> which modified the framework in response to contemporary needs of the market for valuation services, as relevant for transactions under Company Law.

As mentioned above, the Wealth Tax Act, 1957 and the Companies Act, 2013, are two legal regimes that require valuation professionals to register under them for rendition of valuation services for the purpose of transactions relevant for those laws. Despite similarities in the general policy of registration for rendition of services, the institutional and regulatory model adopted under the Companies Act, 2013 read-with the RV Rules, 2017 is more robust and comprehensive in nature. This is attributable to five distinctive features of the RV Rules, 2017 as explained below.

(a) The RV Rules, 2017 follow a two-tier regulatory model for the valuation profession. It provides for a separate 'authority'<sup>28</sup> as the principal regulator and also recognises Registered Valuers Organisations (RVO) as the second-level front-line regulators. It is mandatory for the registered valuers to become a

member of RVOs before registering as a registered valuer.<sup>29</sup>

(b) The RV Rules, 2017 provide for the development of profession by prescribing minimum educational requirements for the persons seeking registration. They are required to undertake educational courses conducted by the RVOs.<sup>30</sup>

(c) In addition to the requirements related to qualifications and experiences of a person, this framework prescribes the requirement of 'valuation examination'. An individual is required to pass the valuation examination conducted by the authority for one or more asset classes, to test their professional knowledge, skills in valuation, in addition to their values and ethics.<sup>31</sup>

(d) Once a person is registered as a registered valuer, he is required to abide by the mandatory norms prescribed in the RV Rules, 2017<sup>32</sup> and provide valuation<sup>33</sup> services accordingly. It also provides for the cancellation and suspension of registration of the registered valuers for contraventions.<sup>34</sup>

(e) The RV Rules, 2017 provide for the formulation and laying down of valuation standards and policies for compliance by the companies and registered valuers.<sup>35</sup>

This new regime under Company Law thus set in motion the development of a much-needed institutional framework for at least one class of valuers, several years after the reform was first conceptualised. However, since this regime does not apply to valuation services beyond the realm of Company Law and Insolvency Law, its reach remains limited.

## **THE RECOMMENDATIONS OF THE COE REPORT ON VALUATION PROFESSION AND THE DRAFT VALUERS BILL, 2020**

The Report of the Committee of Experts to Examine the Need for an Institutional Framework for Regulation and Development of Valuation Professionals (CoE Report) makes a compelling case for a unified legal regime and institutional framework for the regulation of the valuation profession in India. The need for such a statutory regulation and institutionalisation of the valuation profession is strongly supported by the need for accountability mechanisms empowered statutory regulators that can protect public interest through far-reaching regulatory oversight.<sup>36</sup>

Towards this end, the recommendations of the CoE Report focus on broad themes concerning the regulatory architecture, the regulation and development of the profession and finally, the regulation of the market for valuation services. The selection of these broad, high-level issues for drawing up of a regulatory framework, indicates the CoE's inclination to only provide an 'incomplete law', which should be in the form of a skeletal legislation with significant delegation of powers such that it is flexible enough to adapt to the requirements of the profession, as it develops.<sup>37</sup> The Draft Valuers Bill, 2020 (the Draft Bill), as proposed by the CoE, reflects this approach very clearly. It is pertinent to note that most regulators today, most prominently, the Insolvency and Bankruptcy Board of India (IBBI) and the Securities and Exchange Board of India (SEBI), operate through such 'incomplete laws' rather than overly-prescriptive legal regimes that are more rigid in trying to provide for all possible contingencies.

### **Regulatory Architecture**

#### *Adoption of a two-tier mechanism*

A strong indicator of the formalisation of a profession is when it is brought under a statutory framework and supported by State intervention through a unified governance regime. While the valuation

profession was originally self-regulated, the CoE proposes to reorganize it under a two-tier regulatory model for its proper regulation and development – it provides for a principal regulator functioning under the aegis of the Central Government, to be called the National Institute of Valuers (NIV),<sup>38</sup> while also providing for front-line regulators, the Valuer Professional Organisations (VPOs),<sup>39</sup> who are entrusted with the responsibility of developing the profession. Prominently, the presence of VPOs as frontline regulators should also help further the ease of access and oversight over the numerous valuation professionals practising all over the country. Such a two-tier model has already been employed for insolvency professionals under the Insolvency and Bankruptcy Code, 2016 (IBC), and has is contributing significantly to the development of the profession.

#### *Reliance on appropriate Governance mechanisms*

The broad scheme of the CoE Report indicates that regulation of a profession should be primarily for the benefit of the general public rather than for the persons who are being regulated. In line with this approach, there is significant emphasis in the Report on developing a robust regulatory framework through the adoption of several governance mechanisms.

The CoE Report notes that a regulator acts as a 'mini state' in discharging quasi-legislative, executive and quasi-judicial functions.<sup>40</sup> Hence, care is taken to ensure that there is separation of powers within the regulatory framework, (i.e., departmentalisation of the regulator), such that the departments within the regulator exercise their quasi-legislative, executive and quasi-adjudicatory functions while within '*arm's length from one another to act as mutual checks and balances to address public law concerns*'.<sup>41</sup> Further to this, the CoE Report and the Draft Bill provide for a structured governance mechanism with a Governing Council that is supported by an advisory committee consisting of valuers representing VPOs, the views of which the Governing Council is bound to consider. The Draft Bill goes on to provide for constitution of a 'Committee of Valuers' with *inter alia*, fifteen members nominated by VPOs, and the advice of which shall be considered by the Governing Council.<sup>42</sup>

Additionally, the CoE Report also requires periodic review and consultation in drafting of regulations by the NIV. Consequently, the Draft Bill has extensive provisions furthering this mandate, as it provides for publication of draft regulations along with an economic analysis of the need for such regulations, which should also be accompanied by detailed provisions on the manner of implementation of such regulations along with the process and timelines for receiving and considering public comments on the same.<sup>43</sup>

Such provisions are in line with the thinking of the Report of the Financial Sector Legislative Reforms Commission (FSLRC Report) that had proposed several reforms for regulation of the financial sector in 2013, which stressed on the need to ensure that there is no overlap in the legislative and executive functions of a regulator<sup>44</sup> and that the regulation-making exercise includes cost-benefit analysis and public consultation of the proposals in a systematic manner.<sup>45</sup>

### **Development of the Valuation Profession**

The CoE Report places emphasis on the need to develop high quality valuation professionals and seeks to achieve this by laying out a detailed and structured mechanism that sets the standards for education as well as delivery of courses. The CoE Report and consequently, the provisions of the Draft Bill,<sup>46</sup> provide for the institution of a 'National Valuation Programme' and a 'Graduate Valuation Programme', and also recognises the importance of practice-based learning by requiring mandatory internships as part of such programmes.<sup>47</sup>

It is noteworthy that the approach to education and professional development of valuation professionals is guided by the need to serve public interest – to make available valuation professionals that provide reliable and quality services to the public. Towards this end, the CoE Report also focuses on the need to promote research and publication and seeks to ensure growth and knowledge development at all stages.<sup>48</sup> This largely reflects the need to develop a highly specialised profession, the requirements of which make it desirable for valuation professionals to stay invested and grow along with it.

## **Regulation of the Valuation Profession**

### *Standards of Conduct and Eligibility*

As mentioned above, the CoE Report approaches the aspect of regulation from the angle of protection of users of valuation services – towards this end, it also prescribes standards of conduct that need to be maintained in order to build a high-quality cadre of valuation professionals. For instance, one of the primary considerations for development of the profession, as noted by the CoE, is the need to have well-qualified, ‘fit and proper’ persons.<sup>49</sup> Once registered, a valuer will also be required to abide by multiple codes of conduct, non-compliance with which will attract penalties.<sup>50</sup>

### *Strict Monitoring and Compliance*

A major responsibility of any regulator involves the exercise of monitoring and compliance functions. Importantly, the CoE Report recognises that the norms of practise proposed to be enforced on the profession should be more stringent than legal controls, and this can be seen in the wide range of powers bestowed upon the NIV to act on complaints and to conduct routine inspections in addition to specific complaints and targeted inspections.<sup>51</sup> Such thinking is prominently reflected in the FSLRC Report which emphasizes that the exercise of supervision and monitoring powers is fundamental for effective enforcement (albeit, those recommendations were made in a different context).<sup>52</sup>

Consequently, the Draft Bill prescribes elaborate arrangements to discipline erring valuation professionals,<sup>53</sup> and, keeping in priority the protection of the interests of users, prescribes provisions that also allow for disgorgement of unlawful gains and payment of compensation in appropriate cases.<sup>54</sup>

The CoE Report thus recognises the need to impose clear liability and a broad range of measures, in order to address and mitigate possible market failures in the market for valuation services, while also providing for appropriate checks and balances to avoid disproportionate responses, given that actions taken by regulators can also impose significant burden on regulated entities.<sup>55</sup>

## **Regulating the market for valuation services**

The broad suggestions of the CoE Report favour a framework wherein only registered and qualified professionals, as recognized under the proposed framework, are allowed to provide valuation services in India. In the interests of ensuring that such valuers adopt uniform approaches that reduce the scope of divergence in their valuation methods, and boost their reliability, the CoE Report suggests the need for prescription of India-centric, uniform valuation standards.<sup>56</sup> Accordingly, the Draft Bill provides for creation of a Valuation Standards Committee<sup>57</sup> consisting of representatives from the Ministry of Corporate Affairs, the Ministry of Finance, the Central Board of Direct Taxes, the Reserve Bank of India, SEBI, the IBBI, and so on.

In totality, the CoE emphasises on the need for well-qualified, ‘fit and proper’ persons, who are also adequately monitored and regulated to develop a high-specialised cadre of valuation professionals for developing the market for valuation services in India.

## Transitory arrangements

In India, the valuation profession has been in existence for many decades. Therefore, to ensure 'least disruptive and seamless transition' into the proposed institutional framework, the CoE recommended several transitory provisions to accommodate the existing valuers in the market. Towards this end, the

Draft Bill provides transitory arrangements by specific to three categories of professionals rendering valuation services in India. First, the registered valuers under the RV Rules, 2017 are deemed to be valuers under the new framework.<sup>58</sup> Second, a three-year window is provided for valuation professionals that possess eligibility criteria similar to the RV Rules, 2017.<sup>59</sup> Third, a two-year window is given for valuation professionals that possess the required eligibility criteria under the RV Rules, 2017, but lack the required qualifications.<sup>60</sup> Further, RVOs registered under the RV Rules, 2017 are deemed to be VPOs under the new framework,<sup>61</sup> and until the NIV is constituted, the IBBI will exercise powers and discharge functions of the NIV.<sup>62</sup> Thus, the intention is to make available such a unified framework in a phased manner that is least disruptive to the existing market and practice if valuation professionals.

## CONCLUSION

As mentioned in the beginning of this paper, the valuation profession is relied upon for its services in several fields including Tax laws, Companies laws and Insolvency laws, among others. Given the important role played by valuation services in improving the credibility and certainty of several market-based transactions, it is about time there is a unified framework for the regulation of such services, and also contributes to the development of the profession. The implementation of the Draft Bill, as proposed by the CoE, will address a long-standing regulatory lacuna and also help the valuation industry to become more specialised, organised, and valuable than it already is, create more jobs and contribute to the cause of supporting India's development.



## NOTES

\* Authors are research fellows at Vidhi Centre for Legal Policy and they assisted the Committee of Experts referred in this article. Views are personal.

<sup>1</sup> Frankel, Mark S.(1989), "Professional Codes: Why, How, and with What Impact?", *Journal of Business Ethics* 8, no. 2/3, pp. 109-15.

<sup>2</sup> George Beaton, "Why professionalism is still relevant?", p. 21. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1545509](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1545509).

<sup>3</sup> Rodrik, Dani and Arvind Subramanian (2003), "The

Primacy of Institutions (and what this does and does not mean)", Finance & Development, June.

<sup>4</sup> Vijay Kelkar and Ajay Shah (2019), *In Service of the Republic - the art and science of economic policy*, Penguin Random House India, p. 385.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Supra* Note 4, at p. 9.

<sup>7</sup> A.H. Maks and N.J. Philipsen (2005), "An Economic Analysis of the Regulation of Profession" in E. Crals & L. Vereeck (eds), *Regulation of architects in Belgium*



and the Netherlands (Lannoo Campus, Leuven) pp. 11-45, at p.16. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1631685](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1631685).

<sup>8</sup> *Ibid* at 19.

<sup>9</sup> *Jackson and Powell on Professional Liability*, Sweet & Maxwell, Ed. 8, 2019 para 2-001.

<sup>10</sup> *Ibid*.

<sup>11</sup> The Banking Regulation Act, 1949; the SEBI Act, 1992; the Foreign Exchange Management Act, 1999; the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002; the Limited Liability Partnership Act, 2008; the Companies Act, 2013; IBC.

<sup>12</sup> The Estate Duty Act, 1953 (repealed); the Wealth Tax Act, 1957; the Income Tax Act, 1961; the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

<sup>13</sup> The VP Bill, 2008 provided that the Recognised Institutes were self-regulating organisations, and in order to render services they were required to be recognised by the CVP. ICAI, ICSI, ICoAI were deemed to be Recognised Institutes. Unlike other professions, where elected members from the profession form part of the governing body or regulatory, under the Bill, the CVP comprises predominantly members nominated by the Recognised Institutes and few members appointed by the Central Government. The Council governed the valuation professionals through Recognised Institutes, and the Recognised Institutes were responsible for inter alia registering and imparting education, conduct of examinations, maintenance, and publication of the Register, taking out disciplinary actions as specified by the CVP.

<sup>14</sup> For example, the Institution of Valuers, the Practising Valuation Association (India), the Institution of Government Approved Valuers, Indian Institution of Valuers and the Centre for Valuation Studies, Research and Training.

<sup>15</sup> Rule 8A of the Wealth Tax Rules, 1957.

<sup>16</sup> Rule 8B of the Wealth Tax Rules, 1957.

<sup>17</sup> Rule 8C of the Wealth Tax Rules, 1957.

<sup>18</sup> Rule 8D of the Wealth Tax Rules, 1957.

<sup>19</sup> Rule 8E, 8F, 8H to 8K of the Wealth Tax Rules, 1957.

<sup>20</sup> Income Tax Act, 1961, SARFAESI Act, 2002 read with Security Interest (Enforcement) Rules, 2002, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

<sup>21</sup> SEBI Act, 1992 read with certain regulations framed therein and IBC.

<sup>22</sup> Registered with the Institute of Chartered Accountants of India.

<sup>23</sup> Registered with the SEBI.

<sup>24</sup> Registered with the Institute of Cost Accountants in India.

<sup>25</sup> The Chapter XVII dealing with the Registered Valuers, was first introduced in the Companies Bill, 2008 and was reintroduced in the Companies Bill, 2009. The Companies Bill, 2009 was referred to the Standing Committee of Finance, thereafter a modified version of the Chapter XVII was introduced in Companies Bill, 2011. Subsequently, no modifications were made to Chapter XVII and the Companies Act, 2013 was finally passed by the Parliament in 2013. After enactment of the Companies Act, 2013, the Chapter XVII was finally enforced with effect from 18.10.2017.

<sup>26</sup> Ministry of Corporate Affairs, the Companies (Removal of Difficulties) Second Order, (S.O. 3400 (E)) dated October 23, 2017. Under Section 247 of the Companies Act, 2013, the Central Government provided that a registered valuer is required to be a member of a registered organisation. The Central Government sought to remove the difficulty that had arisen as there were a number of different organisations which dealt with various, distinct groups of assets and had separate sets of valuers for valuation. The recognition of these organisations was required as it would have been difficult to ensure the required level of regulation for the valuers by registering them directly with the Central Government. It was also necessary to recognise the varying standards of internal procedures and conduct practiced in these organisations to improve the standards in valuations in order to register the valuers under the section 247 of the Companies Act, 2013.

<sup>27</sup> The Companies (Amendment) Act, 2017 which provided that registered valuer shall not undertake valuation of any asset in which he has direct or indirect interest three years before appointment as valuer or three years after valuation of assets.

<sup>28</sup> The Central Government delegated its powers and functions under Section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India *vide* Notification No. S.O. 3401 (E) dated 23.10.2017 issued by the Ministry of Corporate Affairs.

<sup>29</sup> Sub-section (1) of section 247 of the Companies Act, 2013 read-with Rule 3(1)(a) of the RV Rules, 2017.

<sup>30</sup> Rule 5 of the RV Rules, 2017.

<sup>31</sup> Second proviso to Rule 5 (1) of the RV Rules, 2017 provides that *“the authority may recognise an examination conducted as part of a master’s or post graduate degree course conducted by a University which is equivalent to the valuation examination.”* Till date no such examination has been recognised under this provision.

<sup>32</sup> Rule 7 of the RV Rules, 2017.

<sup>33</sup> Rule 8 of the RV Rules, 2017.

<sup>34</sup> Chapter IV of the Rules, 2017.

<sup>35</sup> Chapter V of the RV Rules, 2017.

<sup>36</sup> Para 5.3 at pg. 86 of the CoE Report.

<sup>37</sup> Para 5.41 @pg. 99 of the CoE Report.

<sup>38</sup> See Clause 11 of the Draft Bill.

<sup>39</sup> Para 5.17 at pg. 91.

<sup>40</sup> Para 5.34 at pg. 96 of the CoE Report.

<sup>41</sup> Paras 5.34-5.35 at pg. 96 of the CoE Report.

<sup>42</sup> Clause 11(1)(b) and Clause 19(6) of the Draft Bill.

<sup>43</sup> Clause 26 of the Draft Bill.

<sup>44</sup> Para 4.2 at pg. 33 of the FSLRC Report.

<sup>45</sup> Para 2.4.2 at pg. 16 of the FSLRC Report.

<sup>46</sup> Clause 49 of the Draft Bill.

<sup>47</sup> Para 4.24 at pg. 70 of the CoE Report.

<sup>48</sup> Para 3.5 at pg. 56 of the CoE Report.

<sup>49</sup> Para 4.26 at pg. 71 of the CoE Report.

<sup>50</sup> Paras 4.43-4.44 at pgs. 76-77 of the CoE Report.

<sup>51</sup> Para 4.43 at pg. 76 of the CoE Report.

<sup>52</sup> Para 4.2 at pg. 32 of the FSLRC Report; Also see Report of the Bankruptcy Law Reforms Committee Vol. 1 at para 4.1.

<sup>53</sup> Chapters II and III dealing with Inspection and Investigation and Adjudication, respectively, of complaints and information against service providers.

<sup>54</sup> Clause 41 of the Draft Bill.

<sup>55</sup> Para 4.1.10 at pg. 41 of the CoE Report.

<sup>56</sup> Para 2.31 at pg. 26 of the CoE Report.

<sup>57</sup> Clause 21 of the Draft Bill.

<sup>58</sup> Clause 50(3) of the Draft Bill.

<sup>59</sup> Clause 49(1)(d) of the Draft Bill.

<sup>60</sup> Clause 49(1)(c) of the Draft Bill.

<sup>61</sup> Clause 53(4) of the Draft Bill.

<sup>62</sup> Clause 3(5) of the Draft Bill.