

# Valuation of Shares and Securities and Confluence under Different Legislations

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# Agenda

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| Sr. No. | Discussion Topic   |
|---------|--|
| 1       | Section A – Valuation - Preliminary Information  |
| 2       | Section B – Valuation under Income Tax Act, 1961 and Rules made thereunder                       |
| 3       | Section C –Valuation under Foreign Exchange Management Act, 1999 and Regulations made thereunder |
| 4       | Section D –Valuation under the Companies Act, 2013   |
| 5       | Section E –Valuation under Securities and Exchange Board of India Regulations                    |
| 6       | Section F – Confluence of Valuation Requirements under Different Legislations                    |

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# Section A – Preliminary Information Related to Valuation



# Meaning of Valuation

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## What is Valuation?

*The act or process of determining an opinion or conclusion of value of an asset on a stated basis of value at a specified date in compliance with IVS.*

*Source – Glossary 20.24 of International Valuation Standards(IVS)*

## Difference in Value and Price –

*“Price is what you pay, Value is what you get” Warren Buffett*

# Types of Valuation

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## Regulatory Valuation

- The Income Tax Act, 1961
- The Foreign Exchange Management Act, 1999 and Regulations made thereunder
- The Companies Act, 2013
- Securities and Exchange Board of India Regulations

## Non-Regulatory Valuation - Business Valuation

- Acquisition of shares of a Company (Majority Stake / Minority Stake)
- Takeover of Company
- Transfer of Shares
- Merger / Demerger for Business Efficiency

# Valuation Approaches

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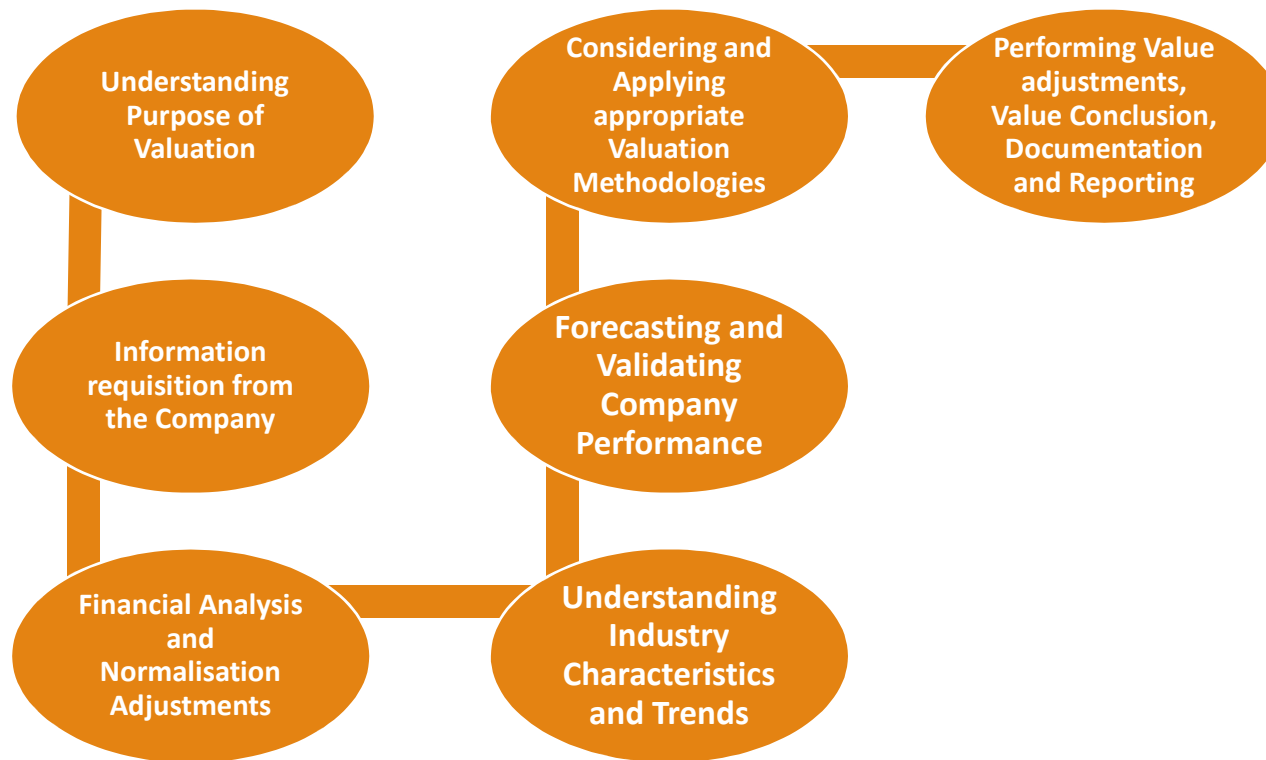
Asset  
Approach

Income  
Approach

Market  
Approach

# Valuation Process

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# “Registered Valuer” under the Companies Act, 2013

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- ❖ Section 247 of the Companies Act, 2013 prescribes valuation requirements
- ❖ 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 and registered as a valuer in such manner, on such terms and conditions as may be prescribed.
- ❖ Rule 4 read with Annexure-IV of the Companies (Registered Valuers and Valuation ) Rules, 2017 (‘Valuation Rules’) prescribes eligibility qualification and experience for Registration as Registered Valuer (RV)
- ❖ RV shall be appointed by the audit committee or in its absence by the Board of Directors of that company
- ❖ Valuation Rules have prescribed 3 different types of asset classes for valuation by RV



# Registered Valuer and Asset Class

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Securities  
or Financial  
Asset

Plant and  
Machinery

Land and  
Building

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## Section B – Valuation under the Income Tax Act, 1961 and Rules made thereunder



# Valuation of Shares under IT Act – Section Reference

| Section                       | Section Coverage   |
|-------------------------------|--|
| Sec. 56(2)(viib)              | Issue of shares by a company in which public are not substantially interested defined u/s. 2(18) of the IT Act |
| Sec. 50CA                     | Transfer of shares other than quoted shares  |
| Sec. 56(2)(x)                 | Receipt of Property for no consideration or consideration less than Fair Market Value (FMV)                    |
| Sec. 50B                      | Computation of Capital Gains in case of Slump Sale   |
| Sec. 9(1)(i)<br>Explanation 5 | Indirect transfer of shares of an Indian company   |
| Sec. 17(2)(vi)                | Valuation of perquisites on specified security / sweat equity shares   |

# Valuation of Shares under IT Act – Rule Reference

| Rule                    | Rule Coverage   |
|-------------------------|---|
| Rule 11UA               | Determination of FMV of Property defined u/s 56(2)(vii)   |
| Rule 11UAA              | Determination of FMV of shares other than quoted shares for section 50CA of the IT ACT  |
| Rule 11UAE              | Calculation of FMV of capital assets for section 50B of the IT Act  |
| Rule 11UB and Rule 11UC | Determination of value of assets and apportionment of income in certain cases Determination of income attributable to assets in India |
| Rule 11                 | Meaning of expressions used in determination of FMV   |
| Rule 3                  | Valuation of perquisites on specified security / sweat equity shares  |

# Rule 11U – Certain Important Definitions

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❖ *"valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.*

❖ *"balance-sheet", in relation to any company, means,—*

*(i) for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and*

*(ii) in any other case,—*

*(A) in relation to an Indian company, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and*

*(B) in relation to a company, not being an Indian company, the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;*

# Section 56(2)(viib) of the IT Act

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*Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:*

*Provided that this clause shall not apply where the consideration for issue of shares is received—*

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund; or*
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf:*

*Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of [section 270A](#) for the said previous year.*

# Section 56(2)(viib) of the IT Act

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Explanation (a) to Sec. 56(2)(viib) defines FMV as **Higher of the following:**

- ❖ As may be determined in accordance with such method as may be prescribed – Rule 11UA(2)
- ❖ As may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Explanation (b) states that Sec. 56(2)(viib) is **not applicable** to -

- ❖ Category I AIF
- ❖ Category II AIF
- ❖ Funds set-up under IFSCA Act

# Section 56(2)(viib) of the IT Act

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- ❖ Rule 11UA(2)(A) – Covers valuation of unquoted equity shares – consideration received from resident / non-resident
- ❖ Rule 11UA(2)(B) – Covers valuation of Compulsory Convertible Preference Shares (CCPS) – consideration received from resident / non-resident

| Rule 11UA(2)(A) Clause | Valuation Description   | Applicable to consideration received from - |
|------------------------|---|---|
| (a)                    | Book value of assets and liabilities                                | Resident and Non-Resident                   |
| (b)                    | DCF Method – <b>Valuation by Merchant Banker only</b>               | Resident and Non-Resident                   |
| (c)                    | Consideration received by VCU for issue of shares from VCF or VCC   | Resident and Non-Resident                   |
| (e)                    | Consideration received from notified company i.e. eligible start-up | Resident and Non-Resident                   |



# Section 56(2)(viib) of the IT Act

| Rule 11UA(2)(A) Clause | Valuation Description                              | Applicable to consideration received from - |
|------------------------|--|---|
| (d)                    | <i>Comparable Company Multiple Method</i>          | Non-Resident Only                           |
|                        | <i>Probability Weighted Expected Return Method</i> | <b>Valuation by Merchant Banker only</b>    |
|                        | <i>Option Pricing Method</i>                       |   |
|                        | <i>Milestone Analysis Method</i>                   |   |
|                        | <i>Replacement Cost Methods;</i>                   |   |

# Section 56(2)(viib) of the IT Act

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| Rule 11UA(2)(B) Clause | Valuation Description   | Applicable to consideration received from - |
|------------------------|---|---|
| (i)                    | In accordance with clause (b), (c) or (e) described earlier or based on FMV of unquoted shares determined as per clauses (a), (b), (c) or (e) described earlier           | Resident Only                               |
| (ii)                   | In accordance with clause (b), (c), (d) or (e) described earlier or based on FMV of unquoted shares determined as per clauses (a), (b), (c), (d) or (e) described earlier | Non-Resident Only                           |

## Section 56(2)(viib) of the IT Act

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- ❖ The validity of Merchant Banker report is for a period of 90 days and date of report shall be taken into account as the valuation date
- ❖ Tolerance limit of 10% of value of shares as per valuation report is allowed for both residents and residents.
- ❖ Tolerance limit is applicable **for residents** only if the valuation is derived as per NAV method or DCF method.
- ❖ Tolerance limit is applicable **for non-residents** only if the valuation is derived as per NAV method or DCF method or any of the 5 prescribed methods.
- ❖ Determination of FMV – Compare value as per Rule 11UA(2) with actual consideration based on intangibles etc.

# Section 50CA of the IT Act

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- ❖ *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48 be deemed to be the full value of consideration received or accruing as a result of such transfer*
- ❖ Methodology for determining FMV of **unquoted equity shares** - prescribed under Rule 11UA(1)(c)(b) of the IT Rules read with Rule 11UAA of the IT Rules
- ❖ Methodology for determining FMV of **shares and securities other than unquoted equity shares** - prescribed under Rule 11UA(1)(c)(c) of the IT Rules read with Rule 11UAA of the IT Rules

# Section 50CA of the IT Act

| Sr. No. | Particulars  | Amount (In Rs) | Amount (In Rs) |
|---------|--|----------------|----------------|
| A       | Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property)                        |                |                |
|         | <u>Less:</u>   |                |                |
|         | - Any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any  |                |                |
|         | - Any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset |                |                |
|         | Total Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property)                  |                |                |
| B       | Market value of jewellery and artistic work  |                |                |
| C       | Fair market value of shares and securities   |                |                |
| D       | Stamp Duty value of immovable property   |                |                |
|         | <b>Total of Assets (A+B+C+D)</b>   |                |                |

# Section 50CA of the IT Act

|    |  |  |  |
|----|--|--|--|
| L  | Book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—  |  |  |
|    | (i) the paid-up capital in respect of equity shares;   |  |  |
|    | (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;  |  |  |
|    | (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;  |  |  |
|    | (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; |  |  |
|    | (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;   |  |  |
|    | (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;  |  |  |
|    | <b>Total of Liabilities (L)</b>  |  |  |
| PE | <b>Total amount of paid up equity share capital as shown in the balance-sheet (PE)</b>   |  |  |
| PV | <b>The paid up value of such equity shares (PV)</b>  |  |  |
|    | <b>Fair Market Value of equity shares =[(A+B+C+D-L)/PE]]*PV</b>  |  |  |

# Section 50CA of the IT Act

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❖ *the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.*

# Section 56(2)(x) of the IT Act

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❖ *where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*

(a)-----

(b)-----

(c)-----

**any property, other than immovable property,—**

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:



## Section 56(2)(x) of the IT Act

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- ❖ Rule for fair valuation of unquoted equity shares and fair valuation of unquoted shares and securities other than equity shares is same as is used for the purpose of section 50CA of the IT Act i.e. Rule 11UA(1)(c)(b) and Rule 11UA(1)(c)(c) of the IT Rules
- ❖ As such, if an assessee, resident or non-resident receiving any unquoted shares or securities at a price which is less than the FMV, then difference between the FMV and price paid, if any shall be treated as income in the hands of such assessee

# Section 56(2)(x) of the IT Act

❖ Rule for fair valuation of quoted shares and securities is prescribed under Rule 11UA(1)(c)(a) of the IT Rules.

**If shares and securities are received by way of transaction carried out through any recognised stock exchange -**

The FMV of such shares and securities shall be the transaction value as recorded in such stock exchange

**If shares and securities are received by way of transaction carried out other than through any recognised stock exchange -**

- a. the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
- b. the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

## Section 56(2)(x) of the IT Act

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- ❖ As such, if an assessee, resident or non-resident receiving any quoted shares or securities at a price which is less than the FMV, then difference between the FMV and price paid, if any shall be treated as income in the hands of such assessee

# Section 56(2)(viib) v/s. Section 50CA v/s. Section 56(2)(x) of the IT Act

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| Nature of Transaction | Section and Rule applicable for Issuer of shares / Transferor                          | Section and Rule applicable for recipient of shares  | Conflict ? |
|-----------------------|--|--|------------|
| Issue of shares       | Sec. 56(2)(viib) of the IT Act read with Rule 11UA(2)                                  | Sec. 56(2)(x) of the IT Act read with Rule 11UA(1)(c)(b) or Rule 11UA(1)(c)(c) of IT Rules | <b>Yes</b> |
| Transfer of Shares    | Sec. 50CA of the IT Act read with Rule 11UA(1)(c)(b) or Rule 11UA(1)(c)(c) of IT Rules | Sec. 56(2)(x) of the IT Act read with Rule 11UA(1)(c)(b) or Rule 11UA(1)(c)(c) of IT Rules | <b>No</b>  |

# Section 50B of the IT Act

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- ❖ Profits and Gains on Slump Sale = FMV of capital assets as on transfer date – net worth of the Undertaking
- ❖ Net Worth = Aggregate value of total assets of the Undertaking – value of liabilities as appearing in the books of accounts
- ❖ A practicing CA should issue a report computing the net worth of the Undertaking and certifying that the net worth of the Undertaking is correctly calculated
- ❖ For the purpose of determination of FMV of the capital asset, Rule 11UAE prescribes 2 methods of valuation i.e. FMV1 and FMV2 and directs to consider the **higher of the FMV**
- ❖ FMV1 is based on the market value of assets and liabilities of the Undertaking
- ❖ FMV2 on the other hand is based on the FMV of consideration received on account of slump sale

# Section 9(1)(i) of the IT Act

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❖ *all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or **through the transfer of a capital asset situate in India.***

❖ *Explanation 5—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India:*

❖ *Explanation 6.—For the purposes of this clause, it is hereby declared that—*

*(a) the share or interest, referred to in Explanation 5, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if, on the specified date, the value of such assets—*

*(i) exceeds the amount of ten crore rupees; and*

*(ii) represents at least fifty per cent of the value of all the assets owned by the company or entity, as the case may be;*

*(b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed;*

# Section 9(1)(1) of the IT Act

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- ❖ *Rule 11UB of the IT Rules prescribes the manner of determination of FMV on the assets in India as well as FMV of foreign company*
- ❖ *Rule 11UC of the IT Rules prescribes the manner of determination of income attributable to assets in India based on values derived in Rule 11UB*

## Section 17(2)(vi) of the IT Act

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- ❖ *the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.*
- ❖ *Explanation (d) fair market value" means the value determined in accordance with the method as maybe prescribed. Rule 3(8)(i) and Rule 3(8)(ii) of the IT Rules prescribes the determination of FMV.*



# Section 17(2)(vi) of the IT Act

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## ❖ *Listed shares*

| Traded on the date of exercising of the option  | No trading on the date of exercising of the option  |
|---|---|
| <ul style="list-style-type: none"><li>❖ the fair market value shall be the <b>average of the opening price and closing price of the share</b> on that date on the said stock exchange</li><li>❖ listed on more than one recognized stock exchanges – FMV shall be the <b>average of opening price and closing price of the share</b> on the recognised stock exchange <b>which records the highest volume of trading in the share</b></li></ul> | <ul style="list-style-type: none"><li>❖ the <b>closing price of the share</b> on any recognised stock exchange <b>on a date closest to the date of exercising of the option and immediately preceding such date</b>; or</li><li>❖ the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.</li></ul> |

# Section 17(2)(vi) of the IT Act

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## ❖ *Unlisted shares*

*In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.*

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## Section C – Valuation under Foreign Exchange Management Act, 1999 and Regulations made thereunder

# Foreign Direct Investment (FDI)

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- ❖ Investment in the equity shares or fully convertible instruments such as FCPS / FCDS of an Indian company by a person resident outside India is governed by **Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 (NDI Rules)**
- ❖ The Pricing Guidelines have been prescribed in Rule 21 of the NDI Rules.
- ❖ The said Pricing Guidelines is applicable to –
  - ❖ Fresh issue of shares / FCPS / FCDS to a person resident outside India
  - ❖ Transfer of shares / FCPS / FCDS from a person resident outside India to a person resident in India
  - ❖ Transfer of shares / FCPS / FCDS from a person resident in India to a person resident outside India

# Foreign Direct Investment (FDI)

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- ❖ Listed Company – The valuation for issue of shares of listed company shall be made as per SEBI Regulations
- ❖ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) is usually adopted for this purpose.
- ❖ Regulations 164 of ICDR Regulations prescribes the manner of valuation of frequently traded shares as under:

*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.*

# Foreign Direct Investment (FDI)

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- ❖ “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:
- ❖ Where the shares of an issuer are not frequently traded, the price determined by the issuer shall take into account the valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies. Further, the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent registered valuer to the stock exchange where the equity shares of the issuer are listed.
- ❖ Unlisted Company - Valuation of equity instruments done as per any internationally accepted pricing methodology (IAPM) for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian Company.

# Foreign Direct Investment (FDI)

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- ❖ In case of transfer of shares/convertible instruments from person resident outside India to person resident in India, the price arrived as per Pricing Guidelines is maximum price i.e. the Indian buyer cannot pay more than the price arrived as per SEBI Regulations or IAPM.
- ❖ Similarly, in case of transfer of shares/convertible instruments from person resident in India to person resident outside India, the price arrived as per Pricing Guidelines is minimum price i.e. the Indian seller cannot sell less than the price arrived as per SEBI Regulations or IAPM.
- ❖ In case of convertible equity instruments, the price or conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with NDI rules.
- ❖ **Swap of equity instruments** - In case of swap of equity instruments, irrespective of the amount, **valuation will have to be made by a Merchant Banker** registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.

# Foreign Direct Investment (FDI)

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- ❖ **Subscription to Memorandum of Association** -Where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, **such investments shall be made at face value** subject to entry route and sectoral caps.
- ❖ **Share warrants** - In case of share warrants, their pricing and the price/ conversion formula shall be determined upfront. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants.
- ❖ **Investment in an LLP** - Investment in an LLP either by way of capital contribution or by way of acquisition/ transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted/ adopted as per market practice and a valuation certificate to that effect should be issued by a Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.



# Foreign Direct Investment (FDI)

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- ❖ **Downstream Investment** -The underlying principle of the downstream investment guidelines is that “*what cannot be done directly shall not be done indirectly*”. Accordingly, downstream investments which are treated as indirect foreign investment are subject to the entry routes, sectoral caps or the investment limits, as the case may be, pricing guidelines, and the attendant conditionalities for such investment as laid down in the NDI Rules.
- ❖ The pricing guidelines will not apply for investment in equity instruments by a person resident outside India on non-repatriation basis.
- ❖ The valuation certificate should not be more than 90 days old as on the date of allotment

# Overseas Investment (OI)

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- ❖ Overseas Investment by an Indian Party is governed by **Foreign Exchange Management (Overseas Investment) Regulations, 2022**
- ❖ The AD may insist that the valuation of shares to be acquired under OI Rules shall be performed using as per any internationally accepted pricing methodology and a valuation certificate to be obtained to that effect.

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# Section D – Valuation under the Companies Act, 2013

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules   | Valuation Requirement   |
|---|---|
| Section 62(1)(c) read with Rule 13(1) of the Companies (Share Capital and Debentures) Rules, 2014 - <b>Preferential Allotment</b> | <ul style="list-style-type: none"><li>• Where shares are issued on Preferential basis</li><li>• <b>Rights Issue is not covered</b></li><li>• Offer of Convertible Instruments on preferential basis - The price of the resultant shares pursuant to conversion shall be determined-<ul style="list-style-type: none"><li>✓ If the Instrument can be converted without any time restrictions: Upfront at the time when the offer of convertible securities is made.</li><li>✓ Basis of Conversion - Valuation report of RV or</li><li>✓ If the Instrument can be converted subject to time restrictions: The holder can apply for conversion prior to 30 days when the conversion is entitled.</li><li>✓ Basis of Conversion - Valuation report of RV not earlier of 60 days of the date when the holder of convertible security becomes entitled to apply for shares.</li></ul></li></ul> |

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules  | Valuation Requirement  |
|--|--|
| Section 192(1) and 192(2) - <b>Non-cash Transactions Involving Directors</b> | <ul style="list-style-type: none"><li>• Section 192 deals with</li><li>• 192(1) – Where a Company is proposing to enter into an arrangement by which, a director of the company, or a director of its holding, subsidiary, or a director of its associate company, or a person connected with such director acquires or is to acquire assets for consideration other than cash, then prior approval in general meeting is required.</li><li>• 192(1) – Where a Company is proposing to enter into an arrangement by which such company acquires or is to acquire assets for consideration other than cash from its director, or a director of its holding, subsidiary, or a director of its associate company, or a person connected with such director, then prior approval in general meeting is required.</li><li>• 192(2) - The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the <u>particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.</u></li></ul> |

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules   | Valuation Requirement   |
|---|---|
| Section 230(2)(c)(v) and Section 230(3)<br><b>Compromise or Arrangement</b> | <ul style="list-style-type: none"><li>• Compromise or arrangement-<ul style="list-style-type: none"><li>✓ between a company and its creditors or any class of them; or</li><li>✓ between a company and its members or any class of them</li></ul></li><li>• Company or member or creditor or liquidator who will be an applicant is required to furnish a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company to NCLT</li></ul> |
| Section 232 (2)(d)<br><b>Compromise or Arrangement</b>                      | <ul style="list-style-type: none"><li>• When an application for a compromise or arrangement made to the NCLT involves a merger or amalgamation, the NCLT may order a meeting of the creditors or members as the case may be.</li><li>• The section enlists documents to be circulated for such a meeting including a report of the expert with regard to valuation.</li></ul>   |

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules                            | Valuation Requirement  |
|--|--|
| <b>Section 236(2)<br/>Minority Buy-out</b> | <ul style="list-style-type: none"><li>• Purchase of Minority Shareholding. Where an acquirer or a person acting in concert (PAC) with such acquirer becomes a registered holder of 90% or more of the issued equity share capital of the company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, the acquirer shall notify the company of its intention to buy the remaining shares of the company.</li><li>• The acquirer or PAC is required to offer price as determined by the RV</li><li>• The RV shall value the shares as prescribed in Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.</li><li>• As per said Rule the price shall be determined as under:<ul style="list-style-type: none"><li>✓ In case of listed shares – As prescribed by SEBI</li><li>✓ In case of unlisted shares – The offer price shall be determined after taking into account the following factors :-<ol style="list-style-type: none"><li>a) The highest price paid by the acquirer, person or group of persons for acquisition during last 12 months;</li><li>b) <u>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</u></li></ol></li></ul></li><li>• The registered valuer's report shall provide valuation report giving justification for such valuation.</li></ul> |

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules  | Valuation Requirement   |
|--|---|
| Section 281(1)(a)<br><b>Company Liquidator Report</b>  | <ul style="list-style-type: none"><li>• Submission of report by Company liquidator / Insolvency Professional (IP)</li><li>• In the event of winding up order passed in case of a company, NCLT appoints a liquidator. Such liquidator shall submit within 60 days of order, a report which, inter alia, provides the value of the assets and securities held if any, of the company.</li><li>• The value shall be determined per valuation report by registered valuer.</li></ul> |
| Rule 2(c)(ix) of the Companies (Acceptance of Deposit) Rules, 2014<br><b>Issue of Bonds / Debentures</b> | <ul style="list-style-type: none"><li>• Issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on assets referred in Schedule III (excluding Intangible Assets)</li><li>• The amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer</li></ul>   |



# Valuation Requirements by RV under the Companies Act, 2013

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| Section / Rules                           | Valuation Requirement   |
|---|---|
| <b>IND AS 103 Business Combinations</b>   | <ul style="list-style-type: none"><li>• Acquirer of business is required to account for the business acquisition in its books of account at fair value of the assets acquired and fair value of the liabilities taken over.</li><li>• The valuation to be issued by Registered Valuer</li></ul>   |
| <b>IND AS 133 Fair Valuer Measurement</b> | <ul style="list-style-type: none"><li>• Applies when another Ind AS requires or permits fair value measurements or disclosures about fair value measurements</li><li>• 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.</li></ul> |

# Valuation Requirements by RV under the Companies Act, 2013

| Section / Rules  | Valuation Requirement   |
|--|---|
| Section 59(3)(b)(ii) of the Insolvency and Bankruptcy Code, 2016   | <ul style="list-style-type: none"><li>• Voluntary Liquidation of Corporate Persons</li><li>• A declaration from majority of the directors of the company is required to be filed with the NCLT.</li><li>• Such declaration is required to be accompanied by a report of the valuation of the assets of the company, if any prepared by a registered valuer</li></ul>                    |
| Regulation 27 read with regulation 35 of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 | <ul style="list-style-type: none"><li>• Appointment of registered valuers by interim resolution professional who shall within 7 days of his appointment, appoint 2 registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35.</li><li>• Regulation 35 prescribes that the value shall be determined as liquidation value</li></ul> |

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# Section E – Section E –Valuation under Securities and Exchange Board of India Regulations


# SEBI Valuation

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- ❖ This has been covered under FEMA NDI Rules valuation requirement

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Section F –Confluence of Valuation  
Requirements under Different  
Legislations



# Confluence of Valuation Requirements under Different Legislations

| Nature of Transaction   | Valuation under Companies Act  | Valuation under FEMA                           | Valuation under IT Act   |
|---|--|--|--|
| Preferential issue of shares by a company in which public are not substantially interested to a person resident in India      | Valuation by RV  | Not Applicable                                 | <ul style="list-style-type: none"> <li>❖ For Issuer - DCF Valuation – MB and any other method – CA</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>                             |
| Preferential issue of shares by a company in which public are not substantially interested to a person resident outside India | Valuation by RV  | Valuation by MB/CA/Cost Accountant as per IAPM | <ul style="list-style-type: none"> <li>❖ For Issuer - DCF Valuation and Other Specified Methods – MB and any other method – CA</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul> |
| Right issue of shares by a company in which public are not substantially interested to a person resident in India             | Valuation may not be required, however, it is advisable to obtain valuation report as a good governance practice | Not Applicable                                 | <ul style="list-style-type: none"> <li>❖ For Issuer - DCF Valuation – MB and any other method – CA</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>                             |

# Confluence of Valuation Requirements under Different Legislations

| Nature of Transaction   | Valuation under Companies Act  | Valuation under FEMA                           | Valuation under IT Act   |
|---|--|--|--|
| Right issue of shares by a company in which public are not substantially interested to a person resident outside India    | Valuation may not be required, however, it is advisable to obtain valuation report as a good governance practice | Valuation by MB/CA/Cost Accountant as per IAPM | <ul style="list-style-type: none"> <li>❖ For Issuer - DCF Valuation and Other Specified Methods – MB and any other method – CA</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul> |
| Preferential issue of shares by a company in which public are substantially interested to a person resident in India      | Valuation by RV under Companies Act / SEBI Regulations   | Not Applicable                                 | <ul style="list-style-type: none"> <li>❖ Not Applicable for issuer</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>   |
| Preferential issue of shares by a company in which public are substantially interested to a person resident outside India | Valuation by RV under Companies Act / SEBI Regulations   | Valuation by MB/CA/Cost Accountant as per IAPM | <ul style="list-style-type: none"> <li>❖ Not Applicable for issuer</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>   |

# Confluence of Valuation Requirements under Different Legislations

| Nature of Transaction  | Valuation under Companies Act  | Valuation under FEMA                           | Valuation under IT Act   |
|--|--|--|--|
| Right issue of shares by a company in which public are substantially interested to a person resident in India      | Valuation may not be required, however, it is advisable to obtain valuation report as a good governance practice | Not Applicable                                 | <ul style="list-style-type: none"> <li>❖ Not Applicable for issuer</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>         |
| Right issue of shares by a company in which public are substantially interested to a person resident outside India | Valuation may not be required, however, it is advisable to obtain valuation report as a good governance practice | Valuation by MB/CA/Cost Accountant as per IAPM | <ul style="list-style-type: none"> <li>❖ Not Applicable for issuer</li> <li>❖ For recipient – 56(2)(x) – CA</li> </ul>         |
| Transfer of unquoted shares of an Indian or foreign company by a resident to non-resident                          | Not Applicable   | Valuation by MB/CA/Cost Accountant as per IAPM | <ul style="list-style-type: none"> <li>❖ For Transferor – Section 50CA</li> <li>❖ For Transferee – Section 56(2)(x)</li> </ul> |



# Confluence of Valuation Requirements under Different Legislations

| Nature of Transaction  | Valuation under Companies Act | Valuation under FEMA  | Valuation under IT Act   |
|--|-------------------------------|---|--|
| Transfer of unquoted shares of an Indian by a non-resident to resident       | Not Applicable                | Valuation by MB/CA/Cost Accountant as per IAPM                | <ul style="list-style-type: none"> <li>❖ For Transferor – Section 50CA</li> <li>❖ For Transferee – Section 56(2)(x)</li> </ul>   |
| Transfer of unquoted shares of foreign company by a non-resident to resident | Not Applicable                | Valuation by MB/CA/Cost Accountant as per IAPM under OI Rules | <ul style="list-style-type: none"> <li>❖ For Transferor – Not Applicable</li> <li>❖ For Transferee – Section 56(2)(x)</li> </ul> |
| Transfer of quoted shares of an Indian company by a resident to non-resident | Not Applicable                | Valuation as per SBEI by MB/CA/Cost Accountant                | <ul style="list-style-type: none"> <li>❖ For Transferor – NA</li> <li>❖ Transferee – Section 56(2)(x)</li> </ul>                 |

# Confluence of Valuation Requirements under Different Legislations

| Nature of Transaction  | Valuation under Companies Act | Valuation under FEMA  | Valuation under IT Act   |
|--|-------------------------------|---|--|
| Transfer of quoted shares of an Indian company by a non-resident to resident | Not Applicable                | Valuation as per SBEI by MB/CA/Cost Accountant                | <ul style="list-style-type: none"> <li>❖ For Transferor – NA</li> <li>❖ Transferee –Section 56(2)(x)</li> </ul>              |
| Transfer of quoted shares of a foreign company by a resident to non-resident | Not Applicable                | Valuation as per SBEI by MB/CA/Cost Accountant under OI Rules | <ul style="list-style-type: none"> <li>❖ For Transferor – Section 50CA</li> <li>❖ Transferee – Not Applicable</li> </ul>     |
| Transfer of quoted shares of a foreign company by a non-resident to resident | Not Applicable                | Valuation as per SBEI by MB/CA/Cost Accountant under OI Rules | <ul style="list-style-type: none"> <li>❖ For Transferor – Not Applicable</li> <li>❖ Transferee – Section 56(2)(x)</li> </ul> |

Q&A Time....

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Thank You For Your Attention



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Thank You J. B. Nagar CPE Study  
Circle of WIRC



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