

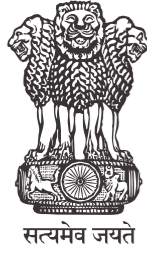
Report of the Committee of Experts to Examine the Need for

An Institutional Framework for Regulation and Development of Valuation Professionals



सत्यमेव जयते

Ministry of Corporate Affairs
Government of India



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Government of India

Report
of the
Committee of Experts
on
Institutional Framework
for
Regulation and Development
of
Valuation Professionals

VOLUME I

APRIL, 2020

**COMMITTEE OF EXPERTS
ON INSTITUTIONAL FRAMEWORK FOR REGULATION
AND DEVELOPMENT OF VALUATION PROFESSIONALS**

2nd April, 2020

To
Smt. Nirmala Sitharaman
Minister of Finance and Corporate Affairs
Government of India
New Delhi – 110001.

Honourable Finance Minister,

The Committee of Experts to examine the need for an institutional framework for regulation and development of valuation professionals, constituted vide order No.12/9/2019-PI dated 30th August, 2019, presents this report to the Government of India. The report is accompanied by a draft of 'Valuers Bill, 2020'.

The Committee had extensive consultation - online and in roundtables - with the stakeholders - registered valuers organisations, registered valuers, other valuers and other professionals, professional institutes, trade and industry, and academicians. It studied the valuation landscape in India, both in terms of institutional arrangements for development and regulation of valuation professionals, and legal and regulatory requirements surrounding valuations services. It considered the institutional framework for valuation professionals in advanced jurisdictions, the attempts made in the past in India to provide such a framework, and experience of institutional / regulatory frameworks in respect of other professions in India. It explored the contemporary thought on the role of regulatory state and design of regulatory architecture in respect of markets and professions. It recommends the least disruptive, yet modern and robust, institutional framework that learns from the experience of valuation profession in India and abroad, and of other professions in India, while addressing the concerns of today and tomorrow, and ensuring respectability for valuation professionals and accountability for valuation services.

We thank you for providing us this opportunity to put our thoughts together for building an important institution (valuation profession) of the Indian economy.

Yours sincerely,



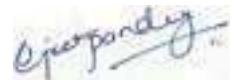
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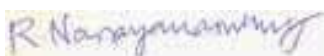
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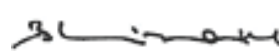
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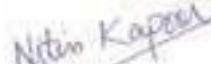
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and Convenor

VALUE

Value is thus nothing inherent in goods, no property of them, nor an independent thing existing by itself. It is a judgment economizing men make about the importance of the goods at their disposal for the maintenance of their lives and well-being. Hence value does not exist outside the consciousness of men. It is, therefore, also quite erroneous to call a good that has value to economizing individuals a “value,” or for economists to speak of “values” as of independent real things, and to objectify value in this way. For the entities that exist objectively are always only particular things or quantities of things, and their value is something fundamentally different from the things themselves; it is a judgment made by economizing individuals about the importance their command of the things has for the maintenance of their lives and well-being.

Carl Menger

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ABBREVIATIONS

| | |
|---------------|--|
| Act | The Companies Act, 2013 |
| AI | Artificial Intelligence |
| AICTE | All India Council for Technical Education |
| ALM | Administrative Law Member |
| ALO | Administrative Law Officer |
| AQB | Appraiser Qualifications Board (US) |
| ASB | Appraisal Standards Board (USA) |
| ASC | Appraisal Subcommittee (USA) |
| BLRC | Bankruptcy Law Reforms Committee |
| BCI | Bar Council of India |
| CA | Chartered Accountant |
| CCI | Competition Commission of India |
| CFA | Chartered Financial Analyst |
| CLRC | Competition Law Review Committee |
| CMA | Cost and Management Accountant |
| CoC | Committee of Creditors |
| Code | The Insolvency and Bankruptcy Code, 2016 |
| CoE | Committee of Experts |
| CoP | Certificate of Practice |
| CPD | Continuing Professional Development |
| CPE | Continuing Professional Education |
| CRCS | Committee to Review the Company Secretaries Act, 1980 |
| CS | Company Secretary |
| CSEET | Company Secretary Executive Entrance Test |
| CVP | Certified Valuation Professional |
| CVSRTA | Centre for Valuation Studies, Research and Training Association |
| DCA | Department of Company Affairs |
| FEMA | Foreign Exchange Management Act, 1999 |
| FINRA | Financial Industry Regulatory Authority |
| FIRREA | Financial Institutions Reform, Recovery and Enforcement Act, 1989 |
| FSLRC | Financial Sector Legislative Reforms Commission |
| GC | Governing Council |
| GIP | Graduate Insolvency Programme |
| HLC | High Level Committee on Transforming the Disciplinary Mechanism across three Professional Institutes |
| IBA | Indian Banks' Association |
| IBBI | Insolvency and Bankruptcy Board of India |
| IBC | Insolvency and Bankruptcy Code, 2016 |
| ICAI | Institute of Chartered Accountants of India |
| ICoAI | Institute of Cost Accountants of India |
| ICSI | Institute of Company Secretaries of India |
| IOS | Institution of Surveyors |
| IOV | Institution of Valuers |
| IP | Insolvency Professional |

| | |
|------------------------|--|
| IPA | Insolvency Professional Agency |
| IRP | Insolvency Resolution Professional |
| IVS | International Valuation Standards |
| IVSC | International Valuation Standards Council |
| L&B | Land & Building |
| LLP | Limited Liability Partnership |
| MAC | Medical Advisory Council |
| MCA | Ministry of Corporate Affairs |
| MDPs | Multi-Disciplinary Practices |
| NAAC | National Academic Accreditation Council |
| NFRA | National Financial Reporting Authority |
| NASDAQ | National Association of Securities Dealers Automated Quotations System |
| NBE | National Board of Examinations |
| NISM | National Institute of Securities Markets |
| NIV / Institute | National Institute of Valuers |
| NMC | National Medical Commission |
| OECD | The Organisation for Economic Co-operation and Development |
| PCAOB | Public Company Accounting Oversight Board |
| PIs | Professional Institutes (ICAI, ICoAI and ICSI) |
| P&M | Plant & Machinery |
| PTM | Part-time Members |
| PSC | Professional Service Corporation |
| PVAI | Practicing Valuers Association (India) |
| RBI | Reserve Bank of India |
| RI | Recognised Institutes |
| RICS | Royal Institution of Chartered Surveyors |
| RV | Registered Valuer |
| RVO | Registered Valuers Organisation |
| SARFAESI | Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 |
| SCF | Standing Committee on Finance |
| SCN | Show cause notice |
| SEBI | Securities and Exchange Board of India |
| SRO | Self-regulatory Organisation |
| TAF | The Appraisal Foundation (US) |
| USPAP | Uniform Standards of Professional Appraisal Practice |
| UGC | University Grants Commission |
| Valuation Bill | Draft Valuation Professionals Bill, 2008 |
| Valuers Bill | Draft Valuers Bill, 2020 |
| Valuation Rules | The Companies (Registered Valuers and Valuation) Rules, 2017 |
| VPO | Valuation Professional Organisation |
| WTM | Whole-time Member |

ACKNOWLEDGEMENTS

1. Professions have emerged as important institutions of market economy. Their influence in the making of the society and the economy has been growing over the years, with increasing organisation of economic activities. They often discharge second order State functions such as audit, reporting, monitoring, due diligence, and compliances, in public interest and thereby act as extended arms of regulators. They also facilitate complex decisions and sophisticated value-added transactions. Professionalisation, to a large extent, determines the competitive edge of nations and sustainability of prosperity.

2. The parties usually exchange goods or services at a price discovered by the market. They, however, need a value for exchange of goods or services for which either market does not exist, or market discovers a spurious price for a variety of reasons. They may also need a value for reference or comparison to enable them to take an informed decision such as submitting or accepting a resolution plan in an insolvency proceeding. The purpose is defeated if the value is not authentic and genuine. The stakeholders may unjustly liquidate a company if they use an inflated reference value for comparison with the value offered under resolution plans. Such decisions arising from use of inappropriate values, in addition to causing unfair gain or loss to parties, has the potential to distort market and misallocate resources which may impinge upon economic growth in a market economy. This calls for institutionalisation of valuation profession.

3. Valuation profession has a long history in India. Different statutes - banking, securities, tax, company, insolvency - require valuation for a variety of purposes. Each statute, acting as a separate island, focusses on what needs to be valued, who can render valuation services and the manner of such valuation. Several self-regulating organisations have generally tried to build expertise to meet the needs of users. Each of these, acting as a separate island, promotes the interests of their respective members. Such islands in both sides of demand and supply, most of which are too small and lack capacity and motivation, have not engendered holistic development of the profession. Since anyone and everyone could join an island, the academic interest in the profession is limited. Despite these limitations, the profession has developed as an independent multi-disciplinary profession. The Companies (Registered Valuers and Valuation) Rules, 2017 provides a unified institutional framework for development and regulation of valuation profession, though its remit is limited to valuations required under the Insolvency and Bankruptcy Code 2016 (Code) and the Companies Act, 2013.

4. Regulation is necessary for valuation profession which carries germs of all three classic types of market failure, namely, information asymmetry, externalities and market power. However, the endeavour is to let the competition address market failures and regulation should step in only when the market fails. The institutional framework for professions seems to have shifted from pure self-regulation in initial days to statutory self-regulation to co-regulation (two tier regulation) to state regulation. The thrust of the regulation has moved from protection of interests of professionals in initial days to development and regulation of profession to protection of the interests of users of professional services. In sync with this, there is considerable focus on letting only those people into the profession, who are capable, ethical, and fit and proper persons. There is strict quality control in terms of entry and exit examinations.

5. Along with liberalisation, regulators have emerged to share governance with Government. The thinking about and design of regulators have evolved considerably in the last three decades. Three seminal works, the report of the Financial Sector Legislative Reforms Commission in 2013, the Draft Regulatory Reforms Bill prepared by the Planning Commission in 2013 and the Report

of the Competition Law Review Committee in 2019 provide state-of-the-art regulatory design. Two latest legislations, namely, the Insolvency and Bankruptcy Code, 2016, and the National Medical Commission Act, 2019 capture contemporary thought to a large extent and provide for detailed arrangements for governance, independence and accountability matching the mandate of regulators. These require a regulator to have robust governance norms, supported by a strong accountability framework, to avoid public policy concerns and fine balance between its developmental and regulatory responsibilities.

6. Taken together, these developments - role of professions in a market economy, evolution of valuation profession in India, evolution of institutional framework for professions in India, and contemporary thought on regulatory design - warranted a fresh look at the institutional framework for valuation profession. The Committee of Experts (CoE) thanks the Ministry of Corporate Affairs (MCA) for providing it an opportunity for doing so. It has designed an institutional framework that is the least disruptive and malleable and that protects interests of stakeholders while developing and regulating the valuation profession and market for valuation services. While serving the profession and society for next at least 100 years, this framework has the potential to be a model for the World.

7. On behalf of the CoE, I would like to express my deep sense of gratitude to Mr. Injeti Srinivas, Secretary, MCA, who first realised the need for an institutional framework for the valuation profession. While noting the progress in implementation of the Valuation Rules in a seminar organised by Insolvency and Bankruptcy Board of India (IBBI) on 8th June, 2019, Mr. Srinivas, observed: "We now feel that we have enough critical mass (of valuers) to once again make an attempt to have a national institute for the valuers' profession along the lines of ICAI." In fact, the name 'National Institute of Valuers', which is the fulcrum of the proposed institutional framework for valuation, comes from his observation. He also guided the CoE throughout on various complex issues.

8. With a keen desire to design a regulatory framework that is grounded on realities and meets expectations of the stakeholders, the CoE had extensive consultations with them in several roundtables across the country. It also solicited comments and feedback on a set of 40 structured questions from stakeholders through an electronic platform. It also engaged with each Registered Valuer Organisation (RVO) to have a deep understanding of the issues and realities on the ground and as to what would work and what would not. The CoE benefitted considerably from these engagements. I am extremely grateful to the stakeholders for their enthusiastic engagement and for sharing their suggestions, concerns and perspectives honestly with the CoE. I acknowledge the support extended by Federation of Indian Chambers of Commerce and Industry (FICCI), ICAI and ICoAI for facilitating roundtables at their facilities with warm hospitality.

9. I thank CA. Atul Kumar Gupta and Ms. Shanu Goel of ICAI, Mr. Daksh Trivedi and Mr. Harsh Kabra of AZB & Partners, Mr. Nimish Gupta and Mr. Gurvinder Raina of RICS, Mr. Tanuj Bhatnagar of IOV RVF, Ms. Sarika Singhal of ICAI RVO and Ms. Aishwarya Satija, Ms. Manmayi Sharma and Ms. Saumya Jaju of Vidhi Centre for Legal Policy for bringing their expertise and experience around the table and engaging in fruitful, constructive and open exchanges at the meetings of the CoE.

10. I thank Dr. Navrang Saini, Dr. Mukulita Vijayawargiya, Mr. Ritesh Kavdia, Mr. Saji Kumar, Dr. Anuradha Guru, Mr. Debajyoti Ray Chaudhari, Dr. Kokila Jayaram, Mr. Abhishek Mittapally, and Ms. Namisha Singh of IBBI and Mr. Tharvinder Singh and Mr. Dileep Singh of the MCA for

bringing on the table their perspectives on several complex issues for consideration of the CoE, for active participation in the meetings of the CoE and for practical suggestions and helpful advices.

11. Mr. Akash Chandra Jauhari of Vidhi Centre for Legal Policy deserves a special mention for his relentless support, excellent research and drafting assistance. Mr. Sudhaker Shukla, Mr. Pawan K. Kumar, Mr. Amit Sahu and Mr. Deeptanshu Singh of IBBI deserve special appreciation for their significant contribution at every stage of the work of the CoE, from logistics to research to deliberations to report writing.

12. I am deeply grateful to each member of the CoE and invitee experts for the high quality of debate in meetings and reviewing several drafts of this report. Their openness to consider out-of-box ideas and sincerity to arrive at a consensus are remarkable.

M. S. Sahoo

(Dr. M. S. Sahoo)

A Profession is a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.

Australian Council of Professions, 2003.

Market Economy

1.1 Traditionally, India followed a market model for wealth creation. She, however, deviated from this model for several decades after independence only to return to the roots post economic liberalisation in 1991 (Economic Survey, 2019-20). The thrust of reforms since then has been provision of economic freedom for firms (freedom to start, continue and discontinue business) and building institutions to promote and protect such freedom, and regulate such freedom only to address market failure(s).

1.2 There has been a paradigm shift from State provision of goods and services to State regulation for provision of goods and services by market. India has been enacting a new genre of economic laws, which expand 'who, what and how to do' list and repealing 'control' enactments that restricted freedom such as the Capital Issues (Control) Act, 1947 and the Import and Export (Control) Act, 1947. She also repealed the Monopolies and Restrictive Trade Practices Act, 1969 to promote competition and scaling up of businesses. This expanded the contours of economic freedom and consequently the frontiers of development of our nation. The outcome has been astounding. The average growth rate in the post reforms period since 1992 has been more than double of that in the pre-reforms period. Today, India is the fastest-growing, trillion-dollar economy. It is the fifth largest in the world and, in terms of purchasing power parity, the third largest (IMF, 2019).

Institutions of Market Economy

1.3 A market economy heavily relies on robust institutions for efficient and sustainable provision of goods and services. Recent economic research gives centre stage to the role of public institutions in promoting and sustaining long-run development (Subramanian, 2007). The institutions help create, regulate and stabilise markets, while providing legitimacy to them. If the institutions are not conducive, policies and schemes may not promote growth. The key differentiator between countries is 'institutions' (Acemoglu & Robinson, 2012). A country develops if she has political and economic institutions that unleash, empower and protect the full potential of each citizen to innovate, invest and develop, that is, when she has 'inclusive' institutions. Such institutions are not restrictions on individual behaviour but instruments for liberation of individuals from uncertainty. The focus in recent years has shifted to institutional reforms to sustain economic freedom, and consequently promote economic growth.

Professions as Institutions

1.4 The market economy nudged increasing organisation of economic activity - the number of

firms as well as their scale of operations is increasing at a rapid pace. A firm is an amalgam of stakeholders. The larger the scale of a firm, the larger is the number of stakeholders and the larger is the distance of stakeholders from the firm. Operations of a firm affect the interests of different stakeholders differently. A stakeholder keeps a tab on the performance of the firm and changes its stance towards the firm based on audited financial statements. A professional prepares financial statements and another professional audits such statements. Each stakeholder has a unique objective function and a distinct level of engagement with the firm. Consequently, the interests of one stakeholder may conflict with those of another and / or of the firm and they may work at cross purposes and even against the interest of the firm. Law has prescribed a set of governance norms to synchronise and balance the interests of the stakeholders, the firm and the society. A professional ensures compliance with these norms. Larger the scale of a firm and larger the number of firms in the marketplace, higher is the need for professionals to run businesses and structure sophisticated value-adding transactions. Indian economy, like any other, has been witnessing a proliferation of professions. The need for professional services has been increasing over the years, so also the influence of professionals in the making of the society and the economy. Professions have emerged as important institutions of a market economy.

Valuation Profession as an Institution

1.5 Market usually discovers price, which reflects the worth of an asset. It discovers different prices for the same asset in different contexts. Thus, price is not absolute; it is context specific. Often, it is neither feasible nor desirable to pass an asset through the market to discover its worth. In such cases, worth of an asset is estimated in a simulated context. The person who estimates the worth is a Valuer, the process of estimation is valuation and the worth so estimated is the value. If value of an asset is what the price ought to be in the given context, the valuation is accurate. While the market may discover a dirty price occasionally failing to reflect the accurate worth of an asset, a value cannot be dirty. If price converges with value in the simulated context, the price discovery is perfect.

1.6 A market economy needs valuations of assets to facilitate a variety of transactions. For example, the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (Code) envisages estimation of fair value and liquidation value of the assets of the corporate debtor. These values serve as reference for evaluation of choices, including liquidation, and selection of the choice that decides the fate of the corporate debtor, and consequently of the stakeholders. A wrong valuation may liquidate an otherwise viable company, which may be disastrous for an economy. A banker determines the amount of loan that can be sanctioned against security of an asset. He may not have adequate protection, where it gives loan against the security of an asset whose value is overestimated. Some of the NPAs in the banking system are attributed to decisions based on such valuations. Several financial crises around the world are attributed to consequences of poor valuation. The examples are the property crash in UK in 1970s, "saving and loan" in USA and "Schneider affair" in Germany (Gilbertson & Preston, 2005 and Mooya, 2016). The valuation profession, which provides authentic valuations to serve as reference for evaluation of choices and decision making, is an important profession in a market economy.

Institutional Framework for Professions

1.7 The right to practise a profession carries a duty to protect the society and is not a privilege for the benefit of the professional. The right to practise medicine is a right to protect society, to aid the

sick and afflicted, and to assist in the advancement of the health and well-being of those persons who make up the body politic which grants the privilege (Browne, 1935). A professional often serves the society, while he is usually paid by his client. It is extremely important that the society's interests are kept above his own. If, however, he abuses his right, he should be liable for penal consequences (Hammurabi, Before Christ, 2287-2232). A professional should not only be competent to practise, he must also enjoy the trust and respect of his stakeholders. The institutional framework should aggressively build and protect reputation of the profession from its very inception, while holding the members of the profession accountable for their services.

Thrust

1.8 India has experimented with different models of institutional framework for professions in terms of thrust, approaches to regulation and approaches to development and the jury is still out. The thrust of the institutional framework has moved from protection of interests of professionals in initial days to development of profession to regulation of profession to protection of the interests of users. Many professions developed at the initiative of the professionals themselves, who floated self-regulatory organisations to protect the interests of their members. Under the Advocates Act, 1961, the State Bar Councils have an objective to safeguard the rights, privileges and interests of Advocates on its roll. The Chartered Accountants Act, 1949 makes, as stated in its long title, provision for the regulation of the profession of chartered accountants (CAs). Since development is at least as important as regulation, a subsequent statute, the Company Secretaries Act, 1980, as stated in its long title, makes provision for the regulation and development of the profession of company secretaries (CSs). With increasing focus on protection of users of professional services, the new age regulators (who came up along with or after liberalisation) generally have sharper focus on consumer protection. The SEBI Act, 1992 provides for establishment of a Board to protect interests of investors in securities. The Competition Act, 2002 provides for establishment of a Commission to protect interests of consumers. The National Financial Reporting Authority (NFRA) came up with exclusive mandate to protect the public interest and the interests of investors. The National Medical Commission Act, 2019, the latest legislation to regulate a profession, provides for protection of consumers and access to equitable and universal healthcare. Now, the institutional frameworks for most professions explicitly provide for redressal of grievances of users and penalties against erring professionals.

Regulation

1.9 An institutional framework for oversight of a profession has invariably two elements, namely, regulation of profession and development of profession. The thrust on regulation relative to development has been increasing with shift from protection of interests of professionals to protection of consumers. The regulatory approach shifted from self-regulation in initial days to statutory self-regulation to co-regulation / two-tier regulation to state regulation, and the architecture moved from one-tier to two-tiers for oversight of a profession. A profession starts with self-regulation. Valuation profession is largely in the self-regulation mode today, except for 3000+ Valuers regulated under the Valuation Rules. This model usually focuses on the benefit of the regulated, rather than the interest of the general public and has limits in terms of its authority beyond the professionals. To address these concerns, professions moved to statutory / regulated self-regulation. The Advocates Act, 1961 provides for the Bar Council of India (BCI) and State Bar Councils (SBCs). Advocates elect fellow professionals to the Bar Council, which regulates the profession of Advocates. The CSs elect fellow professionals to a Council which regulates the profession of CSs. Since regulated self-regulation did not fully address the concerns of self-regulation, the approach shifted to co-regulation, where the regulations are specified,

administered, and enforced by the two tiers of agencies - the first tier is usually a state agency and the second tier is a self-regulatory or a market agency. An example is regulation of securities market, where the state agency, SEBI and the self-regulatory agencies, stock exchanges jointly regulate the brokers and trading on stock exchanges¹. An example in the context of professions is regulation of insolvency profession, where the first tier is a state agency, IBBI as principal regulator with many competing market agencies as front-line regulators in the second tier. Lately, a few professions have adopted state regulation. The medical profession moved away from statutory self-regulation to two-tier state regulation. The NFRA provides one-tier state regulation of auditors of select companies.

Development

1.10 There are two broad approaches to development of a profession. The principal regulator in case of medical profession and legal profession accredits institutions and universities for delivery of educational courses, which qualifies an individual to enrol as a Doctor or an Advocate. It specifies standards of education, including course content and manner of delivery. The admission to the course is usually based on an entry examination. The second is adopted by the three Professional Institutes (PIs) - Institute of Chartered Accountants of India (ICAI)/ Institute of Company Secretaries of India (ICSI)/Institute of Costs Accountants of India (ICoAI) - who themselves conduct the educational courses, which qualify an individual to enrol as a CA/CS/Cost and Management Accountants (CMA). The statute allows any university and even anyone affiliated to the Institute to impart education on the subjects covered by the educational courses. The Institute as well as several coaching centres provide oral coaching to students of these courses. The admission to CS course is based on an entry examination. Usually there is an exit examination to join a profession. Both the approaches recognise the role of external agencies and use them for delivery of education, while examinations for admission to the courses and for admission to profession are conducted by the regulator to maintain quality.

Regulator

1.11 The standard approach has been establishment of an authority with twin responsibility of developing and regulating a profession (Sahoo & Krishnan, 2014). For example, the ICSI has twin responsibilities. This is probably because regulation and development feed on each other in a virtuous circle. The emergence of regulators like ICSI to share governance with Government is a hard reality. Regulators resemble the State in terms of powers and responsibilities. They share a principal-agent relationship with the Government. When regulators fail to perform, Government, as the principal, is often called upon to explain and carry out rescue operations. It is essential to minimise this risk through the design of regulators with quality governance mechanisms, supported by a strong accountability framework. The thinking about and design of regulators have evolved considerably in the last three decades. The regulator for the valuation profession should have a state-of-the-art design with appropriate arrangements for governance, independence and accountability matching its mandate.

Review

1.12 These institutional frameworks are constantly being reviewed and refined. Three seminal works, the report of the Financial Sector Legislative Reforms Commission in 2013, the Draft Regulatory Reforms Bill prepared by the Planning Commission in 2013 and the Report of the Competition Law Review Committee in 2019 provide state-of-the-art regulatory design. A Committee set up by the ICSI reviewed the Company Secretaries Act, 1980 in 2014. A High-Level

¹ This model has undergone substantial change along with demutualisation of stock exchanges.

Committee, constituted by Ministry of Corporate Affairs (MCA), reviewed the disciplinary mechanism in the three PIs in 2017. Two latest legislations, namely, the Insolvency and Bankruptcy Code, 2016, and the National Medical Commission Act, 2019 capture contemporary thought to a large extent and provide for detailed arrangements for governance, independence and accountability matching the mandate of regulators.

Valuation Profession in India

1.13 The valuation profession has a long history in India, probably of about a century. It has been primarily driven by users of valuations services. Different statutes - banking, securities, tax, company, insolvency - require valuation for a variety of purposes. The users generally focussed on demand side - what needs to be valued, who can render valuation services and the manner of such valuation. They did not focus on supply side of valuation services. The self-regulating valuation professional organisations (VPOs) have generally tried to build expertise to meet the needs of users. The 'Institution of Surveyors' came up in 1950 with the primary objective of advancing and regulating the various disciplines of surveying. 'Institution of Valuers', which came up in 1968, is probably the first VPO in the country and probably the largest one. With the co-operation and guidance of a few practising valuers, Sardar Patel University commenced master's course in real estate valuation and in plant and machinery valuation in 1994. A few other academic institutions offer short- and long-term courses on valuation. The Courts consider Valuers as experts in their field and recognise the evidentiary value of their opinion. Though the profession has developed as an independent multi-disciplinary profession, for many practitioners of valuation, it is a part-time vocation, often as an extension of their primary vocation/profession.

1.14 While several committees have recommended regulation of the profession, regulation and development of the profession were never dealt holistically. Till recently, there was no comprehensive institutional framework that imparted legitimacy to the valuation profession while holding the valuation professionals accountable for their services. Several attempts made to provide an institutional framework in the past fizzled out as not all stakeholders could be on the same page. The attempt, which came closest to fruition, was the draft Valuation Professionals Bill, 2008 (Valuation Bill), which did not reach Parliament. The Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) made under the Companies Act, 2013 provides a centralised institutional framework for development and regulation of valuation profession, though its remit is limited to valuations required under the Insolvency and Bankruptcy Code 2016 (Code) and the Companies Act, 2013. It provides two-tier regulatory architecture, where IBBI has been designated as principal regulator while multiple competing registered valuers organisations (RVOs) act as front-line regulators.

1.15 The Valuation Rules broadly follows the model of insolvency profession. An individual having specified qualification and experience needs to enrol with an RVO, complete the educational course conducted by the RVO, pass the examination conducted by IBBI and subsequently, seek registration with IBBI as a Valuer. An entity (partnership firm and company) is also eligible for registration as a Valuer. The Valuation Rules also provide for valuation standards and Code of Conduct for Valuers. While a few universities offer specialised courses in valuation, the IBBI has made available a very detailed, world class study material for two asset classes, namely, (a) Land and Building (L&B), and (b) Plant and Machinery (P&M), prepared by the Centre for Valuation Studies, Research and Training Association (CVSRTA). It has also made available study material for the asset class 'Securities or Financial Assets' prepared by Institution of Valuers (IOV).

Valuation Professions Globally

1.16 There are different models across jurisdictions. Traditionally, most of them had self-regulation, where a few competing VPOs regulated their members. However, most have shifted to some kind of statutory regulations. In the US, for example, while Appraisal Sub-committee (ASC) created under the Financial Institutions Reform, Recovery, and Enforcement Act, 1989 (FIRREA) acts as the principal regulator and the State Agencies act as the frontline regulators having disciplinary rights, The Appraisal Foundation (TAF) establishes uniform appraisal standards through Appraisal Standards Board (ASB) and minimum appraiser qualification through Appraiser Qualifications Board (AQB). TAF is a member association of VPOs, who mostly cater to developmental needs of the profession, though it is not necessary for an appraiser to be a member of a VPO.

1.17 Incorporated by the Royal Charter in 1881, Royal Institution of Chartered Surveyors (RICS) is probably the oldest, largest and most respected professional body for valuation. Two sets of standards, namely, International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC), and the Royal Institution of Chartered Surveyors (RICS) Red Book, command great respect among the stakeholders. In addition, there are standards issued by national VPOs for their members. Several countries have also prescribed their own standards. However, there is a trend to towards IVS.

Recommended Institutional Framework

1.18 The CoE took note of attempts made in the past to provide an institutional framework for the valuation profession, particularly the draft Valuation Professionals Bill, 2008. It studied the progress in implementation and experience with the implementation of the Valuation Rules. It perused the institutional framework for other professions in the country and of the valuation profession in other jurisdictions. It also considered the contemporary thought on regulatory architecture and design and had extensive consultation with stakeholders. Further, based on the extensive interaction with the stakeholders, it felt that the stakeholders are keen to have a statutory framework, having embraced the Valuation Rules and anticipating an upgrade. The time is opportune to come up with an institutional framework for regulation and development of the valuation profession.

1.19 Considering the challenges and opportunities in a market economy and role of professions therein, evolution and experience of institutional framework for professions in India, and contemporary thought on regulatory design, the CoE proposes an institutional framework that is the least disruptive, builds on existing institutional framework and is grounded on market realities, with zero gestation period. The proposed framework is, however, state-of-the-art, malleable to evolving environment, yet robust, which would serve the economy and the valuation profession in the days far ahead and engender a cadre of, not just valuation professionals, but most valuable professionals.

1.20 The CoE recommends enactment of an exclusive statute to provide for the establishment of the National Institute of Valuers (Institute / NIV) to protect the interests of users of valuation services in India and to promote the development of, and to regulate the profession of Valuers and market for valuation services. The Institute shall register and regulate Valuer Institutes, VPOs and Valuers. Valuer Institutes, who would compete among themselves for excellence, shall offer courses and conduct internal examinations, while the Institute shall conduct a screening examination for admission to the courses and a qualifying examination for registration as

Valuers. VPOs, who would compete among themselves for excellence, shall focus on development of their members and monitor their activities to ensure compliance with the law. The Institute shall regulate only those persons, who register with it as Valuers, on meeting the eligibility requirements and having enrolled with a VPO. The details of proposed institutional framework are summarised hereunder.

1.21 General

(a) Vision: Valuation should be developed as a discipline of knowledge such that Valuers are not only valuation professionals, but also the most valuable professionals. Further, valuation professionals, in the long run, should be full-time valuation practitioners just like doctors, CAs, etc. The framework should ensure that interest of a Valuer is subordinate to that of his clients, which is subordinate to that of the society. It should also ensure that Valuers enjoy an enviable reputation of the stakeholders, while being accountable for their services, and which could be a model for other professions. The stakeholders should use valuation services because they find value, and not because of a legal mandate.

(b) Objective: The institutional framework should have three primary objectives, namely, (i) development and regulation of the valuation profession; (ii) development and regulation of market for valuation services; and (iii) protection of interest of the users of valuation services.

(c) Scope: The framework should not be limited to valuations under the Companies Act, 2013 and the Code, as are presently covered under the Valuation Rules. While valuations under the Companies Act, 2013 and the Code may be mandatory to begin with, the framework should cover valuations under other laws in a phased manner in due course, depending on experience and the needs of the time.

(d) Ecosystem: The ecosystem should have four elements:

- (i) National Institute of Valuers, which would be a statutory body primarily responsible for the development and the regulation of the valuation profession in India and registration and regulation of Valuers, Valuer Institutes and VPOs;
- (ii) Valuers, who would render valuation services, after registration with the Institute;
- (iii) Valuer Institutes, who would provide educational courses, after registration with the Institute; and
- (iv) VPOs, who would be front-line regulators primarily responsible for development of the valuation profession, after registration with the Institute.

The action and conduct of these four would determine the future of the profession. They are uniquely positioned to nurture the profession, with respect for values, to make the valuation profession the most valuable profession. They have a collective responsibility to build and preserve the reputation of the fledgling profession.

(e) Role of Institute: The Institute would register and regulate Valuer Institutes, who would offer courses and conduct internal examinations, while it conducts a screening examination for admission to a course and a qualifying examination for registration as a Valuer. It ensures high-quality education, by laying down syllabus of courses and standards for education and examination and incentivising research and publication. It registers and regulates VPOs to complement it in its developmental efforts, including development of best practices. It also registers and regulates Valuers, some of whom would practise the profession after having a certificate of practice. It facilitates development of valuation standards. It promotes competition in the market for education and for valuation services in the interest of stakeholders.

(f) Transparency and Accountability: There will be huge scrutiny of the valuation profession, and the proposed institutional framework should be ready for the same. For this to happen, the framework should provide for adequate transparency, accountability and governance norms for the Institute and VPOs and also conduct of Valuers.

(g) Reauthorisation of Statute: A statute should lay down the basic structure of the institutional framework. The Parliament may review the statute, every ten years, for its continuation or modification based on the evaluation of the need for the same. However, if no review is made, the statute shall continue to be in force.

1.22 Development of Profession

(a) Responsibility: Regulation and development are the two main planks of a profession. There can be no regulation unless a profession develops, and a profession does not develop without the comfort/reassurance of regulation. Hence only one agency, namely, NIV should have the prime responsibility of development and regulation of valuation profession.

(b) Valuation Services: Protection of interests of the stakeholders rests on provision of quality valuation services. The framework should provide for a process that grooms a cadre of competent and ethical Valuers who can render quality valuation services for stakeholders and be accountable for the same.

(c) Asset Classes: The market needs valuation of every asset. Expertise required for valuation of each asset varies. For the purpose of learning and professional practice, assets displaying similar characteristics need to be grouped into classes. While the framework may enable valuation of all kinds of assets, to start with, the courses as well as registration of Valuers should be available for three asset classes, namely, L&B, P&M, and Financial Assets. The framework should enable the Institute to add / subtract an asset class to valuation profession as well as increase / decrease the scope of an asset class, with changing needs.

(d) Talent: An enduring and enviable profession requires induction of young and bright talent. It is extremely important in view of ageing membership of valuation profession, which is a concern in many jurisdictions. The framework should enable and attract such talent to join the profession. Students should consider valuation profession as an option, while making a career choice after 10+2 level. It should also attract talented, professionally qualified individuals as well as bright individuals with relevant experience, to join the profession, after undergoing a condensed valuation course.

(e) Educational courses: The framework should define broad entry norms for the profession in terms of educational qualifications and enable the Institute to prescribe the details and to modify the same with changing needs. An individual may join the profession on completing any of the courses:

- (i) national valuation programme, a four-year integrated full-time professional course, which includes an internship of one year, if he has passed class higher secondary examination;
- (ii) graduate valuation programme, a two-year full-time professional course on valuation, which includes an internship of one year, if he has a degree or equivalent qualification in any of the identified disciplines relevant for an asset class; or
- (iii) limited valuation programme, a four-hundred-hour professional course, if he does not have relevant qualification, but has been rendering valuation services as a Valuer for at least five years. The eligibility through this programme shall be available only for two years.

(f) Internship: An internship integrates the knowledge and theory acquired by a student in classroom studies, with practical application and skill development in professional setting. The long-term courses should have internship of one year. In the initial years, it may be difficult to arrange internship for all students, as there may not be enough Valuers with capacity to train interns. Therefore, the internship of one year may include a six-month component of project work in initial years.

(g) Recognition: These courses should not be normal academic courses requiring approval of UGC or AICTE. These should be professional courses enabled under the Statute of the profession.

(h) Admission: The quality of profession depends on quality of students joining the educational courses. There should be a test for admission to ensure that only the best students, with right aptitude, ethics, and competence and having potential to complete the course, join the courses.

(i) Credits: A individual enrolled in the national valuation programme and graduate valuation programme may be required to earn three types of credits being: (i) generic subject credits which is common to every asset class, (ii) specific subject credits for a particular asset class, and (iii) practice credits for a particular asset class. An individual shall be considered to have completed national valuation programme in the asset class L&B, if he has acquired X subject credits common to every asset class, Y subject credits specific to L&B, and Z practice credits specific to L&B. An individual, who has completed national valuation programme in the asset class L&B, shall be considered to have completed national valuation programme in the asset class P&M, if he has acquired Y subject credits specific to P&M, and Z practice credits specific to P&M. The same is true for the graduate valuation programme. The programmes, therefore, should be designed and delivered in modules.

(j) Examinations: On completing the courses, a student should pass credit examinations - generic subject credits, specific subject credits, and practices credits - centrally conducted by the Institute, to demonstrate her competence for registration as a Valuer. This will enable the Institute to maintain the quality standard for the profession, while monitoring performance of Valuer Institutes.

(k) Valuer Institutes: Both the national valuation programme and graduate valuation programme may be delivered by Valuer Institutes, registered with the Institute, in accordance with the syllabus specified by the Institute. The Institute should develop capacity of Valuer Institutes and do initial handholding to prepare them for delivery of courses. Valuer Institutes should compete among themselves to provide superior quality Valuers. The fee charged by them should be market driven.

(l) Continuing Professional Education: A Valuer should be required to top up his knowledge continuously by undertaking continuing professional education to remain relevant. VPOs may drive continuing professional education of their members.

(m) Research: Valuer Institutes, as a condition of registration, should be required to produce certain minimum research publications. The Institute should promote research. This is essential for producing world-class Valuers who can service anywhere in the world with credibility and developing valuation as a discipline of knowledge.

1.23 Regulation of Profession

(a) Registration: The framework should specify entry norms to the profession. A person may be registered as a Valuer, if he (i) is a member of a VPO, (ii) possess necessary educational qualification and professional experience; and (iii) is a 'fit and proper person'.

(b) Fit and Proper: The reputation and credibility of the profession rests on the members of the profession. A person should be fit and proper to be a Valuer. While determining whether a person is a 'fit and proper' person, the Institute should consider the integrity, reputation and character of the person, absence of convictions and restraint orders against the person, etc.

(c) Age Limit: There should not be any lower or upper age limit for entry into the profession. Nor should there be an upper age when a Valuer should cease practice.

(d) Qualification: Only a person having the required competence should be allowed entry to the profession. An individual who has completed any of the educational courses of the relevant asset class and acquired the required credits through the Examination conducted by the Institute should be registered as a Valuer. The eligibility through limited valuation course should be available for the initial few years.

(e) Experience: Since the national and graduate valuation courses include practical training in the form of internships, no experience may be required for registration as a Valuer. However, an individual who wishes to register as a Valuer through limited valuation course should have professional experience for at least five years.

(f) Asset Class: An individual may be registered as a Valuer and he may have a certificate of practice, asset class wise. He may have registrations as well as certificates of practice for two or more asset classes simultaneously if he meets the requirements of the respective asset classes.

(g) Full-time Profession: Given that for most of the persons rendering valuation services, it is a part-time vocation, as an extension of their primary vocation / profession, it should not be mandatory to require an individual to practise valuation profession exclusively in the initial years. As the profession as well as the market for valuation services matures, it should be practised only as a full-time profession. However, an individual shall not be considered practising part-time, if he practises as a Valuer in more than one asset class.

(h) Certificate of Practice: A Valuer shall not render valuation services without having a certificate of practice (CoP). This shall not be applicable to an entity registered as Valuer provided that its partners / directors, who are Valuers, have such CoPs. Further, in order to avoid a situation of conflict of interests and to ensure that a Valuer devotes entire attention to the profession, he shall not be eligible to practise, while he is in employment. Therefore, a Valuer will be required to surrender CoP before he takes up employment, and shall quit employment before he applies for CoP. This shall not apply to a whole-time director of a company, which itself is registered as a Valuer.

(i) Associate and Fellow: An individual should be admitted as an Associate Valuer to start with. He may progress to become a Fellow Valuer after a certain number of years of experience and/or on demonstrating certain professional achievements. An individual may be registered as an Honorary Valuer based on the recognition of his extra-ordinary contribution to the valuation profession. However, he should not be permitted to render valuation services.

(j) Entities: An entity (partnership firm, LLP and company) may be registered as a Valuer, if its primary objective is rendition of valuation services, majority of its partners or directors are Valuers and at least one of its partners or directors is a Valuer of the asset class for which the entity is seeking registration. The entity and all its partners or directors shall be jointly and severally liable for all acts of omission and commission of the entity in respect of valuation services. Valuation reports on behalf of the entity shall be signed by one of the partners / directors who is a Valuer for the asset class for which the entity is registered. In course of time, multi-disciplinary practices (MDPs) may be permitted with appropriate safeguards. An entity formed

by Valuers of different asset classes should not be considered as MDP for this purpose.

(k) Subsidiaries: There were two views regarding subsidiary company as a Valuer. After a lot of debate, it was agreed it may not be desirable to prohibit a subsidiary from serving as a Valuer. The statute may enable the NIV to consider providing a framework for registering a subsidiary as a Valuer, when the market warrants it, with appropriate safeguards, that preserve the professional character of the valuation service. An organisational form should not restrict a domestic valuation firm to establish its footprints globally.

(l) Code of Conduct: In the interest of independence and objectivity, a Valuer should abide by a Code of Conduct specified by the Institute. The VPOs should also provide for Code of Conduct and Ethics for their members.

(m) Presumption of bona fide: By definition, divergent views are possible in the field of valuation. If expressions of opinion on the value are lightly interdicted, it would be counterproductive to the objective of developing a vibrant market for the valuation services. Therefore, there should be a presumption of bona fide for the valuation conducted by a Valuer.

(n) Protection of Valuers: Only the Institute should have authority to take action against a Valuer, after following due process. No court should take cognisance of any offence against a Valuer, save on a complaint made by the Institute or the Central Government.

(o) Punishments: Any contravention should attract swift and adequate punishment. The statute should provide a list of possible contraventions and the associated penalties.

1.24 Regulation of Market for Valuation Services

(a) Registered Valuers: In order to ensure at least a minimum quality of valuation services across the market, only Valuers registered under the proposed institutional framework should be permitted to render valuation services. Such mandatory provision, however, may start with valuation services under the Companies Act, 2013 and Code, followed by phased inclusion of valuation services under other laws.

(b) Valuation Standards: The Institute should lay down valuation standards based on the recommendations of the Valuation Standards Committee. It shall be mandatory for Valuers to conduct valuation as per the valuation standards.

(c) Conflict of Interests: A Valuer shall not conduct a valuation where he has any conflict of interest. The Institute should provide guidance on conflict of interest.

(d) Outsourcing: A Valuer shall not outsource any of its duties and responsibilities under the Act, except those specifically permitted by the Institute. A Valuer may, however, seek an opinion from a professional or a Valuer for an asset class for which he is not registered, subject to disclosures.

(e) Disclaimers: While the CoE recognises the need for valuers to provide reasonable disclaimers, a valuation report shall not carry a disclaimer, which has potential to dilute the responsibility of the Valuer or makes the valuation unsuitable for the purpose for which the valuation was conducted. The valuation reports should be capable of being tested through the crucible of legal evidence in judicial proceedings.

(f) Fee: The fee of a Valuer should be decided by the market, subject to the condition that it is not ad valorem to the value of the asset being valued or in the nature of success fee.

(g) Competition: The VPOs should compete among themselves to provide superior quality Valuers. Similarly, Valuer Institutes should compete among themselves to provide superior pass outs.

1.25 Regulatory Architecture

(a) Two-Tier: The framework envisages a two-tier regulatory architecture comprising of VPOs, as front-line regulators, and the Institute, as the principal regulator of Valuers. However, care should be taken to ensure that their jurisdictions do not overlap, and the authority of the first tier is not undermined. The second tier should have predominantly a developmental role, while the first tier has predominantly a regulatory role. This approach retains the benefits of self-regulation while avoiding potential concerns such as regulatory capture.

(b) Statutory Institute: The statute may create and provide for the details of the first-tier (Institute) and enable the Institute to provide for details, such as governance, of the second-tier (VPOs) through regulations. The VPOs will be self-regulating organisations having separate constitutional documents and byelaws.

(c) Institute and Council: The law must view the Institute, as a body corporate, and the Council, as a governing body of members, separately with clear roles and responsibilities attached to each of them. The Institute must operate under the oversight, control and direction of the Council.

(d) Composition of Council: The law should require a formal interface between the Institute and the society in the Institute's governance. For this purpose, the Institute should have a few eminent persons as part-time members (PTMs). It may also have representatives of user government departments, who administer laws or make subordinate legislation, which require valuations. The Council should comprise a Chairperson, three whole-time members (WTMs), of whom at least one shall be an administrative law member (ALM); and one ex-officio member each representing user departments and few PTMs. A Valuer could be a member, WTM or PTM, subject to addressing conflict of interests. This would provide democratic legitimacy, while avoiding regulatory capture which is generally seen in self-regulatory organisations. As a best practice of good governance, the performance appraisal of the chairperson and WTMs should be undertaken by the Council or the PTMs.

(e) Audit Committee: The Council should constitute an Audit Committee for monitoring compliance with laws applicable to the Institute, oversight over risk management functions of the Institute, appraisal of performance of the Council, and oversight of the financial reporting process.

(f) Committee of Valuers: There shall be a Committee of Valuers, comprising exclusively of Valuers to advise the Institute on any issue relating to the profession of Valuers and market for valuation services. Every advice of the Committee shall be considered by the Governing Council of the Institute. Further, the advice of the Committee and decision of the Governing Council regarding the same should be published in public domain.

(g) Valuation Standards Committee: There shall be a valuation standards committee, which shall comprise all relevant stakeholders, to recommend valuation standards, and valuation guidelines to be used by Valuers for valuation services. Based on the recommendation, the Institute shall notify the valuation standards.

(h) Discharge of Duties: As a regulator, the Institute is a mini-State, having three broad types of functions and powers, namely, quasi-legislative, quasi-judicial and executive (including investigative) functions. Quasi-legislative functions and powers must be exercised by the Council. Quasi-judicial functions and powers must be exercised by the administrative law department under the oversight of the ALM. All other functions and powers shall be exercised by, and in the manner as may be decided by the Council.

(i) Separation of Powers: A separate organisational unit of the Institute shall be responsible for

each of the distinct types of functions and powers. These units shall operate at an arm's length from one another to serve as mutual checks and balances to address public law concerns. In particular, the operations of the executive functions, including investigations, and the quasi-judicial functions must remain firmly insulated from each other. While there should be fungibility of talent as a matter of human resources policy, meticulous care must be taken to avoid conflict of interest with no employee performing multiple roles at a point of time or performing multiple roles with regard to the same matter at any time.

(j) Subordinate Legislation: The *raison d'être* of regulators is to hit the moving targets. The professional environment would keep on evolving. The institutional framework should also evolve to deal with the emerging needs. The statute should provide essential legislative matters leaving the details to be provided by the Institute through subordinate legislation. While avoiding over-legislation through the statute and excessive delegation through subordinate legislation, the statute should enable delegated legislation within the basic structure of the legislation to keep the legislation relevant to the times.

(k) Regulation Making: The Institute should use only one instrument of subordinate legislation, namely, regulation. It may, however, issue guidance notes, clarification, FAQs, etc. but these must not constitute 'law'. The law should require that draft regulations – new regulations as well as amendments to existing regulations – along with an associated regulatory impact assessment are put out with the approval of the Council for public comments, in the interest of democratic legitimacy. The Council should approve regulations only after considering public comments. The Institute should place reasons for rejecting a comment in the public domain. The Institute may make regulations or amend existing regulations in case of urgency, without public consultations. However, such regulations shall cease to have effect after 180 days from the date of notification. The Institute should review the regulations every three years to keep them relevant.

(l) Disciplinary Mechanism: In the interest of fair and objective enforcement of the law, adjudication proceedings must commence with the issue of a Show Cause Notice (SCN), based on a fact-finding process. The SCN must state the details of any alleged contravention by the noticee (Valuers, VPOs, and Valuer Institutes) and the measures or direction the Institute intends to take or issue if the allegations are established to enable the noticee to respond adequately. The Institute must provide for inspection of relevant material, including material that would be used for pressing charges as well as material that would undermine the charges. It must also supply relevant records, provide an opportunity of fair hearing and dispose of the SCN by a reasoned order. A panel of two or more Adjudicating Officers, as constituted by the ALM, shall conduct quasi-judicial proceedings and dispose of show cause notices by a reasoned order, following principles of natural justice. The order passed by the adjudicating officer may be appealed against before the ALM. The Panel and the ALM may seek expert opinion from a professional on issues under the SCN wherever they consider necessary for better appreciation of facts. The statutory appeal against the order of the ALM of the regulator should be made to the High Court. The Institute may, however, have the power to settle alleged contraventions of the law after detection of contraventions.

(m) Resources: The Institute should have powers to build its human resources. It should have independence on financial matters. It should be capable of raising resources from the regulated entities matching its needs in the interest of independence. A one-time corpus fund may be made available with it, and financial independence may be built with bolstered revenues from fee earnings. It must be exempted from all taxes on its wealth, income and services.

(n) Accountability: The Institute must submit a structured annual report, in accordance with Rules mandating effective areas of coverage in the annual report, which would serve as a metric

to measure and review its effectiveness and performance. It should make regulations specifying timelines for disposal of matters at various stages, and standard operating procedures for the same. These are in addition to composition of the Council and various checks and balances on exercise of its powers.

(o) Advocacy: The Institute may undertake advocacy for the valuation profession but must not lobby for work for Valuers. The focus should be on developing capacity of the profession and not canvassing work for it.

1.26 Transition and Implementation

(a) Transition: There is an arrangement in place under the Valuation Rules. The new framework should subsume the existing arrangement.

(i) Valuers already registered with IBBI under the Valuation Rules should automatically become Valuers under the new framework.

(ii) Valuers engaged in valuation services should have a window of two years to become Valuers if they meet eligibility norms under the Valuation Rules and in the manner, provided therein.

(iii) Valuers engaged in valuation services, but not having relevant educational qualifications, should have a window of three years to become Valuers subject to meeting other eligibility norms under the Valuation Rules and in the manner, provided therein, provided they undergo the limited valuation course.

(iv) Registered valuer organisations recognised by the IBBI should automatically be transitioned as VPOs under the new framework.

(v) Until the Institute is established, the IBBI may exercise the powers and discharge the functions of the Institute under the Valuers Act, in accordance with the provisions of that Act.

(vi) The regulator needs to focus on capacity development to ensure smooth implementation of the proposed framework.

(b) Repeal and Savings: Since the proposed institutional framework provides a unified regime for the valuation profession, section 247 and other provisions in the Companies Act, 2013 need to be modified to provide that valuations under the provisions of the Companies Act, 2013 would be conducted by Valuers under the new regime. Consequently, the Valuation Rules need to be repealed.

(c) Capacity Building: A concerted, planned effort should be made to build capacity of the Institute, VPOs, Valuer Institutes and Valuers to deliver quality educational courses.

(d) Malleability: The proposed framework should be able to accommodate most of the emerging needs without requiring a change in the statute. For example, it proposes to start with three asset classes and enables the Institute to add more classes or subtract some classes from the existing ones as the needs emerge. Similarly, the Institute can expand or contract the scope of each asset class. It can modify the scope of disclosures to be made by service providers to keep them relevant to the times. It can provide appropriate frameworks when it considers necessary to allow MDPs or a subsidiary to register as a Valuer.

(e) Implementation: Keeping the above in view, the CoE has prepared a Draft Valuers Bill, 2020 and placed it in the Implementation Chapter. A comparative statement of the features of the proposed institutional framework with those in Draft Valuation Professionals Bill, 2008, the Valuation Rules, and in similar frameworks relating to a few select professions is appended here.

1.27 The institutional framework builds on the earlier works, namely, the Draft Professionals

Valuation Bill, 2008 and the Valuation Rules, 2017, which seem to have broad acceptability. It is enriched by several welcome features from institutional frameworks for other professions and contemporary thought about professions, regulations and regulators. The source of motivation of different features of the institutional framework are as under:

| Sl.No. | Features in the proposed institutional framework | Found in |
|--------|---|-----------------|
| 1 | Statutory framework | 1,2,3,4,5,6,7,8 |
| 2 | Co-regulation | 3,6 |
| 3 | Two-Tier architecture | 1,3,4,5,6 |
| 4 | Dependence on subordinate legislation | 1,2,3,4,5,6,7,8 |
| 5 | Non-elected members in governing body of principal regulator | 3,4,6,7,8 |
| 6 | Part-time members in the governing body | 3,4,6,7,8 |
| 7 | Ex-officio / nominee members in the governing body | 1,2,3,4,5,7,8 |
| 8 | Administrative law department | 3,7 |
| 9 | Principal regulator recognises institutes for educational courses | 1,3,4,5,6 |
| 10 | Principal regulator conducts examination for admission to educational courses | 2,4 |
| 11 | Principal regulator prescribes educational standards | 1,2,3,4,5,6 |
| 12 | Principal regulator conducts examination for entry to profession | 1,2,3,4,6 |
| 13 | Principal regulator registers professionals | 2,3,4,6 |
| 14 | Provision of certificates of practice | 1,2,3,5, 6 |
| 15 | Professional not allowed to practice while in employment | 1,2,3,6 |
| 16 | Entities eligible for registration as professionals | 2,6 |
| 17 | Multi-disciplinary practice | 2 |
| 18 | Fit and Proper person to be a professional | 3,6 |
| 19 | Categories of professionals (Associate, Fellow, Senior, etc.) | 1,2 |
| 20 | Requirement of continuing professional education | 2,3,6 |
| 21 | Principal regulator specifies professional standards | 2,4,5,6 |
| 22 | Principal regulator specifies code of conduct | 1,2,3,4,5,6 |
| 23 | Market determined fee for professional services | 1,2,3,4,5,6 |
| 24 | Principal regulator adjudicates contraventions | 2,3,6,7,8 |

Legends: 1. The Advocates Act, 1961; 2. The Company Secretaries Act, 1980; 3. The Insolvency and Bankruptcy Code, 2016; 4. The National Medical Commission Act, 2019; 5. Draft Valuation Professionals Bill, 2008; 6. The Companies (Registered Valuers and Valuation Rules), 2017; 7. Report of the Financial Sector Legislative Reforms Commission; 8. Report of the Competition Law Review Committee.

1.28 Though there was broad consensus about the elements and features of the proposed institutional framework, some members and invitee experts had some difference of opinion on details pertaining to few aspects. These have been reflected at appropriate places in the main body of the report.

1.29 This report comes in three Volumes. The first Volume comprises six chapters. First chapter presents an executive summary of the recommendation of the CoE. Second chapter takes stock of the evolving valuation profession and the institutional framework supporting the same. Chapters 3 to 5 deal with development of profession, regulation of profession and of market for valuation services, and regulatory architecture respectively. Chapter 6 concludes with transitional provisions and carries a draft bill for implementation of the recommendations of the CoE.

1.30 The CoE has relied on works of several individuals and institutions and the views of a wide spectrum of stakeholders. The documents pertaining to these, wherever available, have been presented as Annexures in Volume II and as Appendices in Volume III of the Report.

A COMPARATIVE STATEMENT OF THE FEATURES OF THE PROPOSED INSTITUTIONAL FRAMEWORK VIS-À-VIS OF THOSE OF SIMILAR FRAMEWORKS (WITH SOME APPROXIMATIONS)

| Sl. No | Particulars | The Advocates Act, 1961 | The Company Secretaries Act, 1980 | The National Medical Commission Act, 2019 | The Insolvency and Bankruptcy Code, 2016 | Draft Valuation Professionals Bill, 2008 | The Companies (Registered Valuers and Valuation Rules), 2017 | Draft Valuers Bill, 2020 |
|--------|--|---|--|--|--|--|---|--|
| 1 | Regulatory Model | Statutory Self-Regulation | Statutory Self-Regulation | State Regulation | Co-regulation (State + Market) | Statutory Self-Regulation | Co-regulation (State + Market) | Co-regulation (State + Market) |
| 2 | Governing law | Statute | Statute | Statute | Statute & Bye-laws | Statute & Bye-laws | Statute & Bye-laws | Statute & Bye-laws |
| 3 | Tiers (No. of agencies in a hierarchy to regulate the same object) | Two-tier (SBC and BCI) | Single-tier with three layers of governance, (Central, Regional and Chapter) | Two-tier (NMC and SMCs) | Two-tier (IBBI and IPAs) | Two-tier (CVP and Recognised Institutes) | Two-tier (Authority and RVOs) | Two-tier (NIV and VPOs) |
| 4 | Principal Regulator (1st tier) | Bar Council of India (BCI) | Institute of Company Secretaries of India (ICSI) | National Medical Commission (NMC) | Insolvency Bankruptcy Board of India (IBBI) | Council of Valuation Professionals (CVP) | Authority (IBBI) | National Institute of Valuers (NIV) |
| 5 | Broad role of Principal Regulator | Recognise universities for law courses, safeguard the rights, privileges and interests of members, supervise SBCs, etc. | Develop and regulate the profession of company secretaries, impart education and training, undertake disciplinary action, etc. | Conduct graduate and post-graduate level entry and exit examinations; Recognise educational institutions, etc. | Develop and regulate the insolvency profession; register IPAs, conduct examination, undertake disciplinary actions, etc. | Develop and regulate the valuation profession, recognise institutes; monitor disciplinary proceedings, etc. | Develop and regulate of valuation profession, recognise RVOs, conduct examinations, undertake disciplinary action, etc. | Protect interests of users, develop and regulate valuation profession, register VPOs and educational institutes, conduct examinations, undertake disciplinary action, etc. |
| 6 | Governing Body of Principal Regulator | Elected Members + a few ex-officio members | Elected Members + a few government nominees | Chairperson + 22 PTMs + 10 ex-officio members; all appointed by Central Government. | Chairperson + WTMs + PTMs + ex-officio members; all appointed by Central Government | Nominees of Recognised Institutes and of Central Government | Authority | Chairperson, ALM, WTMs, PTMs and ex-officio Members; all appointed by Central Government. |
| 7 | Accountability Arrangement | Not very detailed. | Not very detailed. | Detailed. | Very detailed | Not very detailed | NA | Very detailed |
| 8 | Supporting Structures at Principal Regulator | Executive Committee, Legal Aid Committee, etc | Examination Committee, Quality Review Board, Secretarial Standards Board, etc. | Medical Advisory Council, Autonomous Education Boards, Assessment and Rating Board, etc. | Advisory Committees | Quality Review Board Academics and Standards Committee, and Professional and Ethical Standards Committees | Valuation Standards Committee | Committee of Valuers, Valuation Standards Committee, Advisory Committees |
| 9 | Disciplinary Arrangement at Principal Regulator | Disciplinary Committees | Investigation, Board of Discipline / Disciplinary Committee | Ethics and Medical Registration Board | Investigation, Disciplinary Committee | NA | Investigation, Authorised Officer | Inspection/Investigation, Panel of Adjudicators |
| | | Supreme Court | Appellate Authority | NMC | NA | NA | Authority | Two layers of appeal (ALM and High Court) |
| 10 | Front-line Regulator (2nd tier) | State Bar Councils (SBCs) | NA | State Medical Councils (SMCs) | Insolvency Professional Agencies (IPAs) | Recognised Institutes | Registered Valuers Organisations (RVOs) | Valuation Professional Organisations (VPOs) |
| 11 | Role of Front-line Regulator | Register advocates, safeguard the rights, privileges and interests of members, undertake disciplinary action, etc. | NA | Monitor compliance, undertake disciplinary action, etc. | Enrol members, monitor performance, lay standards of professional conduct, redress grievance, disciplinary action, etc. | Register professionals, impart education, conduct examinations, undertake disciplinary actions, etc. | Enrolment of members, conduct educational courses, monitor performance, and redress grievances | Promote professional development, monitor performance and compliance, and redress grievances |
| 12 | Governance of Front-line regulator | Elected Members + a few ex-officio members | NA | In accordance with respective State Acts. | Provided in Byelaws & Regulations | Provided in Byelaws & Regulations | Provided in Byelaws & Rules | Provided in Byelaws & Regulations |
| 13 | Disciplinary Arrangement at Front-line Regulator | Disciplinary Committee | NA | In accordance with respective State Acts. | Investigation, Disciplinary Committee | Investigation, Board of Discipline/ Disciplinary Committee | Disciplinary Committee | NA |
| | | BCI | NA | Ethics and Medical Registration Board | Appellate Panel | Appellate Authority | Appeal to Appellate Panel | NA |
| 14 | Education Standards | BCI | ICSI | NMC | IBBI | CVP | Authority | NIV |
| 15 | Delivery of Education | Universities, recognised by BCI | ICSI through Correspondence. ICSI and market offers oral coaching, which is optional. | Medical institutions, recognised by NMC | (a) No long-term course, as professionals become IPs. IPAs provide pre-registration course. Market offers training; (b) Recognised Institute offers Graduate Insolvency Programme. | No long-term course, as professional become Valuers. Recognised Institutes provide pre-registration course. Market offers training | No long-term course, as professionals become Valuers. RVOs provide preparatory course. Market offers training. | Valuer Institutes, registered by NIV |
| 16 | Admission to Course | As per respective Universities | Entrance by ICSI | Central Entrance Examination | Entrance by the Institute | NA | NA | NIV |
| 17 | Examination for Entry to Profession | BCI | ICSI | NMC | IBBI | Recognised Institutes | Authority | NIV |
| 18 | Fit & Proper person | NA | NA | NA | Yes | NA | Yes | Yes |
| 19 | Registration as a Professional | SBCs / BCI | ICSI | SMCs / Ethics and Medical Registration Board | IBBI, after enrolment with an IPA | Recognised Institutes | Authority, after enrolment with an RVO | NIV, after enrolment with a VPO |
| 20 | Entities as Professionals | Not eligible | Firms eligible | Not eligible | Not eligible. | Not eligible | Registered Partnership Firms and Companies eligible subject to conditions | Registered Partnership Firms and Companies eligible subject to conditions |
| 21 | Continuing Professional Education | NA | Yes | In some states. | Yes | NA | Yes | Yes |
| 22 | Certificate of Practice | Yes | Yes | NA | Yes | Yes | Yes | Yes |
| 23 | Fee for service | Market determined | Market determined | Market determined | Market determined | Market determined | Market determined | Market determined |
| 24 | Transitional provision | Yes | Yes | Yes | NA | NA | NA | Yes |

I hold every man a debtor to his profession; from which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be a help and ornament thereunto.

Francis Bacon.

2.1 Valuation as a discipline of knowledge and as a profession is evolving. So is the thinking on design of institutional framework for regulation and development of professions, including valuation profession. This Chapter takes stock of the fluid state of valuation profession in India and the emerging institutional framework in the context of a market economy, while assimilating the aspirations of the stakeholders.

Institution of Valuation Profession

Market Economy

2.2 The economic history of India suggests that India always commended wealth creation and unshackling the economic freedom for markets augments wealth creation. Kautilya advocated economic freedom by asking the King to 'remove all obstructions to economic activity' (Sihag, 2016). Despite a rich tradition of emphasising wealth creation, India deviated from this model for several decades after independence. However, she returned to these roots post economic liberalisation in 1991 (Economic Survey, 2019-20). Freedom unleashes and realises the full potential of every firm and every resource in the economy. It is well established that economic freedom and economic performance have a very high positive correlation. Countries having a high level of economic freedom generally outperform countries with not-so-high level of economic freedom.

2.3 It has been the endeavour since 1990s to provide the right institutional milieu that (a) provides, promotes and protects economic freedom, and (b) regulates such freedom only to the extent it is necessary for addressing market failure(s). India has been enacting a new genre of economic laws, which expand 'who, what and how to do' list and repealing 'control' enactments such as the Capital Issues (Control) Act, 1947 and the Import and Export (Control) Act, 1947, that restricted freedom. She also repealed the Monopolies and Restrictive Trade Practices Act, 1969 to promote competition and scaling up of businesses. This expanded the contours of economic freedom and consequently the frontiers of development. In other words, the endeavour is to have conducive business regulations that make it easier for firms to do business.

2.4 A firm needs freedom broadly at three stages of a business - to start a business (free entry), to continue the business (fair competition) and to discontinue the business (free exit). The first stage enables allocation of resources to the most efficient use, the second stage enables efficient use of resources allocated, and the third stage enables release of resources from inefficient uses. Together they facilitate the most efficient use of resources and consequently optimum economic well-being. Economic reforms typically endeavour to provide economic freedom at these three stages. The reforms in India in the 1990s focused on freedom of entry. It ushered in liberalisation, privatisation and globalisation. It dismantled the *license-permit-quota Raj*,¹ when discretionary license gave way to an entitlement of registration. It allowed firms meeting the eligibility requirements to raise resources, without requiring any specific approval from the State, to

¹ A term coined by C. Rajagopalachari for bureaucratic system of granting licenses and permits for new commercial ventures.

facilitate freedom of entry. The reforms in the 2000s focused on competition - creating a free and fair market. It moved away from control of monopoly of firms to promote competition among firms in the marketplace. Size or dominance, per se, was no longer considered bad, its abuse was. The reforms provided a level playing field and competitive neutrality and prohibited firms from restricting the freedom of other firms to do business.

2.5 The Indian economy moved from *socialism with limited entry* to 'marketism' without exit, leading to substantial cost of impeded exit (Economic Survey, 2015-16). After having commenced business, a firm in a market economy fails to deliver, as planned, mostly on account of competition and innovation. In such cases, resources at the disposal of the firm are underutilised and the management / entrepreneur has failed. Insolvency reforms provide a market mechanism for (a) rescuing a failing, but viable firm; and (b) liquidating an unviable one and releasing its resources, including entrepreneur(s), for competing uses, and thereby provides the freedom to exit, the ultimate freedom. The index of economic freedom, which measures the degree to which policies and institutions of an economy are supportive of economic freedom, has substantially improved for India since the 1990s. The outcome has been astounding. The average growth rate in the post reforms period since 1992 has been more than double of that in the pre-reforms period (Sahoo, 2019). Today, India is the fastest-growing, trillion-dollar economy and the fifth largest in the world (IMF, 2019).

Institutions Matter

2.6 The father of Economics, Adam Smith (1776), who was a major exponent of laissez faire economic policies, recognised the significance of institutions in economic growth: "*Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay. Commerce and manufactures, in short, can seldom flourish in any state in which there is not a certain degree of confidence in the justice of government.*" Recent research reaffirms the significant role of institutions in promoting and sustaining long-run development.

2.7 Every enquiry into the causes of wealth has reinforced the idea that the institutions do matter. Every institution matters, be it commercial, economic, political, social or ethical, and whether it is formal or informal. Institutions matter because they lay down and enforce the incentive structure of economic agents, and thereby determine their economic performance. Some institutions matter more in some context and may matter less in some other context. Depending on the kind of institutions a country has, similar policies relating to macroeconomic stabilisation, trade liberalisation, privatisation, market microstructure, etc. yield different economic outcomes in different countries. In the absence of conducive institutions, policies and measures, such as, fiscal stimulus, monetary expansion, welfare measures, that are taken to uplift the economy or quality of life of people, have often not yielded the desired outcomes. Mal-functioning of institutions can thwart an economy's progress and render the more visible policy instruments, such as good fiscal and monetary policies, less effective (World Bank, 2014). The institutions differentiate countries in terms of the level of economic prosperity and it is not a coincidence that a change in institutions changes the growth trajectory.

2.8 Rodrik & Subramanian (2003) and Subramanian (2007) classify institutions into four categories, namely, (a) Market creating: These protect property rights, ensure enforcement of contracts and provide law and order, and thereby provide an environment for business and

investment to flourish. These include rule of law, judiciary, and police. (b) Market regulating: These deal with market failures arising from externalities, economies of scale (market power), and imperfect information. The examples are regulatory agencies. (c) Market stabilising: These ensure low inflation, minimise macroeconomic volatility, and avert financial crises. These include central banks, exchange rate regimes, and budgetary and fiscal rules. (d) Market legitimising: These provide social protection and insurance, involve redistribution, and manage conflict. The examples are pension systems, unemployment insurance schemes, and other social funds and democracy which is the ultimate institution for legitimising markets. In fact, political democracy is a meta-institution that helps societies make choices about the institutions they want. The institutions are deeper determinants of economic growth (Rodrik & Others, 2004). The key differentiator between countries is 'institutions' (Acemoglu & Robinson, 2012). Nations thrive when they develop "inclusive" political and economic institutions, and they fail when those institutions become "extractive" and concentrate power and opportunity in the hands of only a few. It is not surprising that the focus of reforms in recent years has shifted to building institutions to sustain economic freedom and consequently economic growth.

Age of Professionals

2.9 Economic freedom nudged increasing organisation of economic activity - the number of firms as well as their scale of operations is increasing at a rapid pace. A firm, being an amalgam of stakeholders, the larger the scale of a firm, the larger is the number of stakeholders and the larger is the distance of stakeholders from the firm. Operations of a firm affect the interests of different stakeholders differently. A stakeholder keeps tab on the performance of the firm and changes its stance towards the firm based on audited financial statements. A professional prepares financial statements and another professional audits such statements. Each stakeholder has a unique objective function and a distinct level of engagement with the firm. Consequently, the interests of one stakeholder may conflict with those of another and / or of the firm and they may work at cross purposes and even against the interest of the firm. The law prescribes a set of governance norms to synchronise and balance the interests of the stakeholders, subordinate the interests of immediate stakeholders to those of the firm and establish precedence of interests of the society over those of the firm. A professional ensures compliance with these norms. Thus, professionals often discharge second order state functions such as audit, reporting, monitoring, due diligence, and compliances, in public interest and thereby act as extended arms of the regulator. Further, larger the scale of a firm and larger the number of firms in the marketplace, higher is the need for professionals to run the businesses and structure sophisticated value-adding transactions. Higher the level of specialisation and complexity of markets and business, higher is the need for professionals having specialised knowledge and expertise.

2.10 This is the age of professionals. They wield significant power and influence in the decision-making process of our major social institutions, both government and corporate (Jennings & Others, 1987). Historically, professions have provided a sophisticated system that has valuable efficiency properties. Their importance increased as value of their specialised knowledge gained recognition for its key role in facilitating knowledge-based transactions. They also support the creation and transmission of knowledge and specialised information. Further, professional systems interact with other institutions in course of setting up structures to facilitate knowledge-based exchanges. From the economical and societal perspective as a whole, the professions represent sub-systems that are interlinked with others which govern diverse activities. Therefore, without this professional sub-system, the social and economic system as a whole could be deprived of specialised knowledge or would rely on existing institutional arrangements that might be less effective (Boyce, 2007).

2.11 Professions have emerged as important institutions of a market economy. The rise and proliferation of profession is a conspicuous feature of an emerging modern society characterised by growing social, political and economic complexity. Indian economy, like any other, has been witnessing a proliferation of professions. The need for professional services has been increasing over the years, so also the influence of professionals in the making of the society and the economy (Sahoo & Krishnan, 2014). Professionalisation to a large extent determines the competitive edge of nations and sustainability of prosperity. Recent years have witnessed emergence and formalisation of three professions, namely, insolvency profession, valuation profession and independent directors.

Valuation Profession

2.12 The economic agents take several financial decisions on the basis of an estimated value of an asset. They need value of an asset for purposes such as determination of the amount of loan that can be sanctioned against security of an asset or guarantee of a guarantor; levy of taxes like municipal tax, stamp duty, income-tax on capital gains; compensation for compulsory acquisition of property; assessment of loss and insurance premium; distribution of property among children / beneficiaries; etc. They may also need a value for reference or comparison to enable them to take an informed decision such as submitting or accepting a resolution plan in an insolvency proceeding. The purpose is defeated if the value is not authentic and genuine. A banker may not have adequate protection, where it gives loan against the security of an asset whose value is overestimated or guarantee of a person whose net worth is overestimated. Some of the NPAs in the banking system is attributed to such inappropriate valuations. The CoC may unjustly liquidate a company if it uses an inflated reference value for comparison with the value offered by resolution plans. In market economies, property forms the basis of majority of financial decisions. An improper valuation of the property risks financial exposure for a wide range of stakeholders (Gilbertson & Preston, 2005). The decisions arising from use of inappropriate values, in addition to causing unfair gain or loss to parties, has the potential to distort market and misallocate resources which may impinge upon economic growth in a market economy. This calls for a professional valuation.

2.13 Valuations are an essential part of most reporting and business decisions and play a crucial role in many real estate-related decisions (RICS, 2017). In fact, the evolution of valuation profession is attributed to the development of property markets. Internationally, the pressures driving demand for the professionalisation of valuers include valuation induced financial crisis or the determination to avoid such a crisis; the move towards market economies; and property tax reforms (Gilbertson & Preston, 2005). Further, several financial crises around the world are attributed to consequences of poor valuation. Valuation and prices have served as signals and incentives for both the bubbles as well as of the ensuing collapse in case of real estate market crashes. Therefore, it is observed that after every financial crisis the valuation profession comes into spotlight and efforts are made to increase its accuracy and reliability (Mooya, 2016).

2.14 For example, pursuant to the property crash in UK in 1970s, the RICS published Red Book for setting out standards of valuation and professional conduct expected of valuers. In response to the “saving and loan” crisis in USA in late-1980s, the Government created a mechanism for uniform appraisal standards and licensing of valuers in each State (Gilbertson & Preston, 2005). Further, the role of valuation profession was also highlighted in the global financial crisis of 2008, however, the same has been a matter of intense debate.

2.15 Despite several shortcomings pointed by these financial crises, no serious alternative to the

basic valuation system in place has been suggested (Mooya, 2016). On the other hand, efforts are being made to improve the current system, by enhancing the valuation standards, providing better training to the valuers and ensuring independence of the valuers. The concerns of the collapse also gave rise to valuation standards at the national and international levels (Gilbertson & Preston, 2005).

2.16 Integrity of the valuation process involves strong public interest. It becomes a responsibility of the valuation professionals, the governments and other stakeholders to ensure that there are consistent and transparent standards in valuation. Further, users of valuation services expect valuers to meet fundamental standards and ensure independence, integrity and objectivity in their functioning. A valuer is required to perform his duties with a high level of professionalism, independence, and efficiency as major commercial, administrative, and adjudicatory decisions are taken on the basis of the services of a valuer. However, unlike many other professions, the profession of a valuer does not have an established institutional framework.

Work Process of the Committee

2.17 The Ministry of Corporate Affairs (MCA), vide order dated 30th August, 2019 (Annexure A), constituted a Committee of Experts (CoE) to examine the need for an institutional framework for regulation and development of valuation profession.

Terms of Reference

2.18 The terms of reference for the CoE are to examine and make recommendations on: -

- (a) Institutional Framework for regulation and development of the valuation profession and its scope;
- (b) Regulatory architecture, including the extent of self-regulation and statutory regulation; Governance of the regulatory institutions; Monitoring of the conduct and performance of valuers and disciplinary mechanism;
- (c) Mechanism for development of a cadre of valuers, including for the current practitioners and freshers who wish to have a career in valuation profession; knowledge development and management, databases, technology etc.;
- (d) Provision of valuations services, including market structure, valuation standards;
- (e) Transitional arrangement for Registered Valuers (RVs) /other valuers & Registered Valuers Organisations (RVOs);
- (f) Resource planning for all the above; and
- (g) Any other aspect that may be referred to the Committee by the Government or the Committee may consider relevant.

Composition

2.19 The CoE comprises as under:

- (a) Dr. M. S. Sahoo, Chairperson, IBBI - Chairperson
- (b) CA. Prafulla Chhajed, President, ICAI - Member
- (c) CMA. Balwinder Singh, President, ICoAI - Member
- (d) CS. Ranjeet Pandey, President, ICSI - Member

 1 This model has undergone substantial change along with demutualisation of stock exchanges.

- (e) Mr. B. Sriram, Ex-CEO & MD, IDBI Bank - Member
- (f) Prof. R. Narayanaswamy, Professor, IIM, Bangalore - Member
- (g) Mr. Ajay Bahl, Founding Partner, AZB & Partners – Member, and
- (h) Mr. Manoj Pandey, Joint Secretary, MCA - Member-Secretary and Convenor.

2.20 Keeping in view the representations received by the CoE and the need to have complete perspective, the CoE, in its first meeting held on 14th September, 2019, decided to invite the following experts to its meetings:

- (a) Mr. Vinay Goel, CEO of IOV Registered Valuers Foundation
- (b) Mr. Kirit P. Budhbhatti, Principal, Budhbhatti & Associates
- (c) Mr. Varun Gupta, Managing Director, Duff & Phelps
- (d) Mr. Somasekhar Sundaresan, Advocate, and
- (e) Mr. Nitin Kapoor, Director, Operations and Business Development, South Asia, RICS.

All of them accepted the invitation. However, Mr. Budhbhatti, excused himself citing personal reasons, after the final report was circulated.

Meetings

2.21 The CoE had a total of three meetings. The minutes of the three meetings are at Annexures B, C and D respectively. Table 1 presents attendance in the meetings of the CoE.

| Table 1: Attendance in the meetings of the CoE | | | | |
|--|---------------------------|------------------------|------------|------------|
| Sl. No. | Name of Member / Invitee | In the Meeting Held on | | |
| | | 12/09/2019 | 24/10/2019 | 23/11/2019 |
| Members of the Committee of Experts | | | | |
| 1 | Dr. M. S. Sahoo | ✓ | ✓ | ✓ |
| 2 | CA. Prafulla P. Chhajed | ✓ | ✓ | -- |
| 3 | CMA. Balwinder Singh | ✓ | -- | -- |
| 4 | CS. Ranjeet Pandey | ✓ | ✓ | ✓ |
| 5 | Mr. B. Sriram | ✓ | -- | -- |
| 6 | Dr. R. Narayanaswamy | ✓ | ✓ | -- |
| 7 | Mr. Ajay Bahl | ✓ | ✓ | ✓ |
| 8 | Mr. Manoj Pandey | ✓ | ✓ | ✓ |
| Invitee Experts | | | | |
| 9 | Mr. Vinay Goel | NA | ✓ | ✓ |
| 10 | Mr. Kriti P. Budhbhatti | NA | ✓ | ✓ |
| 11 | Mr. Varun Gupta | NA | ✓ | ✓ |
| 12 | Mr. Somasekhar Sundaresan | NA | ✓ | ✓ |
| 13 | Mr. Nitin Kapoor | NA | ✓ | -- |

Forty Issues

2.22 In the first meeting, the CoE identified the following Forty Issues having a bearing on design of the institutional framework and decided to engage with the stakeholders with the help of a structured questionnaire to understand their needs and perspectives better:

- (1) Vision for valuation profession
- (2) Review of valuation profession internationally
- (3) Review of valuation profession in the country
- (4) Review of other professions in the country
- (5) Market for valuation education
- (6) Market for research and knowledge management
- (7) Market for valuers
- (8) Market for valuation services
- (9) Exclusivity
- (10) Profession vis-a-vis technology
- (11) Statutory regulation Vs. Self-regulation Vs. Regulated self-regulation
- (12) One-tier Vs. Two-tier regulation
- (13) Regulation Vs. Development Vs. Standards
- (14) Role of each tier in regulation / development of valuers / market
- (15) Scope and approaches of development
- (16) Scope and approaches for research
- (17) Scope and approaches of regulation
- (18) Governance of each tier
- (19) Accountability of each tier
- (20) Independence of each tier
- (21) Resources of each tier
- (22) Scope of statutory legislation
- (23) Scope and manner of making subordinate legislation
- (24) Scope and manner of making byelaws
- (25) Monitoring and enforcement
- (26) Scope and manner of quasi-judicial functions
- (27) Scope and manner of making valuation standards
- (28) Eligibility to be a valuer: qualification, experience, entity
- (29) Independence and accountability of a valuer
- (30) Code of conduct and ethics
- (31) Protections for valuers
- (32) Dealing with grievances of valuers
- (33) Dealing with grievances against valuers
- (34) Reputation of the profession
- (35) Phasing (short / medium / long term)
- (36) Grandfathering
- (37) Transitional arrangement for IBBI
- (38) Transitional arrangement for RVOs
- (39) Transitional arrangement for RVs, and
- (40) Malleability of framework.

Engagement with Stakeholders

2.23 The CoE is acutely conscious that its work must serve the interests of the stakeholders and that it may not have the best understanding of the ground realities, as much and as early as the stakeholders have, particularly in a dynamic environment. To understand the ground realities, and to design an institutional framework that meets the aspirations of the stakeholders, it engaged with the stakeholders intensively and extensively, in different formats.

2.24 There are 11 RVOs registered with the IBBI under the Valuation Rules. The IBBI discussed each of these issues with them and gathered their views. Their views are at Annexures E1 to E11.

2.25 The IBBI, with the help of FICCI, ICAI and ICoAI, organised eleven roundtables between 26th September, 2019 to 11th October, 2019 in nine cities (Ahmedabad, Bengaluru, Chandigarh, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi, and Raipur) to facilitate discussion with stakeholders and solicit their views on the forty identified issues dealing with developmental and regulatory needs of the valuation profession. The summaries of the views received at these roundtables are at Annexures F1 to F11.

2.26 The IBBI provided an electronic platform for online receipt of the views of the stakeholders on the forty identified issues. About 2000 stakeholders submitted their views on this platform. A summary of the views received on the platform is at Annexure G.

2.27 The CoE received several mails making suggestions for design of the institutional framework of the valuation profession. Detailed suggestions were received from the following:

- (a) Indian Association of Investment Professionals (A Member Society of CFA Institute) vide their mail dated 30th October, 2019 (Annexure H);
- (b) The Institution of Surveyors (India) received vide their mail dated 31st October, 2019 (Annexure I);
- (c) Corporate Professionals vide their mail dated 1st November, 2019 (Annexure J); and
- (d) CII (The Confederation of Indian Industry) vide their mail dated 5th November, 2019 (Annexure K).

The views received from stakeholders are summarised hereunder.

2.28 Valuation Profession

- (a) Valuation service should be exclusive domain of qualified and registered valuation professionals like any other profession.
- (b) It should be a profession of choice. It should have the respectability of professions such as Doctors, and CAs. Efforts should be made to build a respectable image of the profession.
- (c) There should be a unified regime for valuation profession. Different statutes / regulators must not provide for a dedicated regime for their needs only.
- (d) A focussed and concerted effort is necessary to develop the profession and its competence.
- (e) The regulator and RVOs should undertake advocacy to build stakeholder confidence and create awareness about benefits from the profession.
- (f) Technology should be used intensively and extensively in conduct of valuation, valuation

education, valuation research and regulation and monitoring of valuers. However, technology / machines should only supplement valuation professionals, and not supplant them.

2.29 Development of Profession

- (a) The regulator should prescribe entry norms for educational courses keeping in view the entry norms for the profession.
- (b) The quality of education, training, research and examination needs to be improved. The present arrangements in this regard are awfully inadequate.
- (c) There may be three asset classes, as presently provided in the Valuation Rules, to start with. However, each asset class may enable for specialisation in niche areas. Some stakeholders were, however, in favour of having more asset classes at the initial stage itself.
- (d) A person should have multiple routes for registration as valuer. He may: (i) have a university degree or professional qualification and then undergo a bridge / top-up course of 1 - 2 years duration; (ii) complete a 4-5 year dedicated valuation course after class XII, or (iii) have a degree / professional course in a related field and have training programme and examination, as provided under the Valuation Rules. The principal regulator may accredit institutions (universities and RVOs) to provide education courses for all three options.
- (e) The admission for options (i) and (ii) may be through a common screening examination. Practical exposure should be a major component of valuation education. All the three options should have a strong component of internship.
- (f) Some stakeholders, however, expressed a view that a long 4-5-year full-time course may not be feasible. The I-Star Institute, which delivers a two-year course, has delivered not more than 400 pass outs in its existence of more than 10 years. Some others held a view that full time dedicated course should be the only route to become a valuation professional in the interest of quality.
- (g) There should be a requirement of continuing professional education (CPE).
- (h) The principal regulator should undertake and promote valuation related research.

2.30 Regulation of Profession

- (a) There should be no minimum or maximum age limit for entry to the profession. Nor should there be a maximum age limit for practicing valuation profession. Some, however, favoured an upper age limit for admission to valuation courses to attract talent.
- (b) An internship of 2 years with a valuer should be mandatory for registration as a valuer.
- (c) An experience of 10 years, similar to registration of valuers under the Wealth Tax Act, 1957 should be mandatory for registration as a valuer. This experience should be in valuation of assets and not experience in specified discipline such as engineering.
- (d) For a person, who has qualifications as per the Valuation Rules but does not have experience, should undergo a valuation specific one-year dedicated course for registration as a valuer.
- (e) Entry to non-technical applicants has compromised the quality of professionals. Only persons with qualification in valuation should be allowed to provide valuation services.
- (f) The 'fit and proper' criteria prescribed under the Valuation Rules, 2017 should be continued.
- (g) There were two views as to whether a subsidiary, joint venture, or associate of another company or body corporate should be valuers. While some favoured this, majority opposed.

(h) There were two views about the requirements for entities (companies, LLPs, partnership firms) to be valuers. While some preferred that all directors/partners of the entity should be individually valuation professionals, the majority preferred that a majority of the directors/partners of the entity should be valuation professionals in their individual capacity.

(i) In case of entities, both individual valuer and the entity should be allowed to practise as in the case of CS/CA currently. The choice should be left with the client to engage a valuer.

(j) Wherever an entity is engaged, the valuation report should be signed by a partner / director, who is a valuer of the concerned asset class.

2.31 Market for Valuation Services

(a) The scope of valuation services, unlike the present regulatory structure, should not be limited only to valuations under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016. It should cover all valuation related services in the country.

(b) Any valuation required under any law in the country and any valuation required for a decision by Government, a public authority or a financial institution should be conducted only by a RV.

(c) There were two views as regards fee for valuation services. Some stakeholders suggested that the fee should be prescribed by the regulator as fee undercutting is often resorted to secure work which has potential to compromise professional independence. They submitted that it is regulated in Australia; CBDT has a scale of fee for valuation of various assets; and the Architects Act, 1972 has recommendatory slabs for fee. However, majority preferred that the fee be determined by market forces in the interest of competition which reduces cost and improves quality.

(d) The valuers follow different practices for valuations under different laws or for different purposes. They follow divergent practices for valuation even for different banks. The law should bring in homogeneity of practices. To make the valuation profession a highly respected one with zero tolerance for lack of objectivity in performance, India-centric, uniform valuation standards should be laid down by the regulator. An independent committee should be constituted to prescribe and review these valuation standards from time to time. The standards should be set in the manner similar to secretarial standards and accounting standards.

(e) The independence of valuers may be ensured by: (i) requiring every assignment to be in writing, (ii) ensuring that Appointing Authority is not a related party, and (iii) prohibiting the beneficiary from bearing the fee of valuers.

(f) There were two views as regards indemnity. Some suggested that the valuers should be required to have insurance to protect against professional liabilities for actions taken in good faith. The majority preferred that it should be left to market practice.

2.32 Regulatory Architecture

(a) It should be a hybrid of the regulatory models of chartered accountancy, medical science, etc.

(b) Self-regulation holds the potential for alleviating the strain on regulators. However, it has a number of inherent conflicts that must be addressed in order to remain credible. There is a need to improve existing SRO governance structures to enhance market and investor trust.

(c) There were three views: (i) there should be only one regulator like IBBI; (ii) there should be one statutory regulator and one front-line regulator; and (iii) there should be one statutory regulator and many competing front-line regulators. While a few preferred only one statutory

regulator for the country, majority preferred a two-tier structure comprising a principal regulator having predominantly regulatory responsibilities and RVOs having predominantly developmental responsibilities and competing with one another.

(d) The Governing Board of the principal regulator should have a Chairperson, a few Whole-time Members and a few eminent citizens as Part-time Members. It should be supported by an Advisory Committee comprising of valuers representing RVOs. The Governing Board must mandatorily consider the views of the Advisory Committee. Some stakeholders, however, suggested that the governing body should comprise elected representatives and government nominees, similar to that of ICAI, ICSI.

(e) The legislation should spell out: (a) role of the principal regulator and its governance structure; (b) role of the RVOs; (c) offences and penalties, including appellate mechanism; (d) manner of exercising quasi-legislative, executive and quasi-judicial functions by the principal regulator and the RVOs, as an extended arm of the principal regulator.

(f) The principal regulator should be funded by government grants, yearly contribution by valuers as well as other stakeholders. RVOs may charge reasonable fees from its members. The fee levied by them should be capped.

(g) Grievances of and against a valuer should be dealt with by the principal regulator. Some stakeholders felt that grievances against valuers should be dealt with by the RVOs as they are better placed to appreciate the conduct of a valuer rather than a non-valuer assessing the role of a valuer.

(h) Regulations should be made after public consultation. They should be periodically reviewed.

2.33 Transition

(a) The new institutional framework should be implemented in a phased manner over 1-3 years. It may take about a year for the first-tier regulator to come up and take over the task from IBBI.

(b) The valuers under the Valuation Rules should automatically be valuers under the new regime.

(c) The existing RVOs should automatically be VPOs. There should be a minimum net worth and infrastructure requirement for them.

(d) Some suggested that every practising valuer under section 34AB of the Wealth Tax Act, 1957 should be allowed to enter automatically in the new system, while others suggested an examination and minimum training for the purpose of grandfathering. Some suggested entry should be allowed based on evaluation of valuation reports prepared by an individual in the preceding five years, irrespective of his qualification and experience. However, majority suggested that the Valuation Rules may have a sunset clause of three years. The individuals meeting the eligibility requirements under the said Rules may seek registration till sunset of the Rules.

2.34 Other suggestions: This summary section does not capture views made by a lone or few stakeholders. A few noteworthy suggestions among them are:

(a) The ambit of valuation profession should be enhanced to cover social and environment implications of valuation, apart from their core economic purposes.

(b) The valuers having membership of global valuation associations (American Society of Appraisers, USA and RICS) should be allowed direct entry in the new system, as they are globally certified.

(c) The valuation profession should not be an exclusive domain for RVs. The exclusivity of valuation profession only to a specific set of valuation professionals would impact inclusiveness and competitiveness.

(d) The model of Malaysia Valuer's Act or New Zealand Valuer's Act (particularly features like full-fledged valuation education and single tier regulation) should be considered for the new regulatory framework for valuation professionals of India. The presence of private bodies as regulator in the form of second tier regulator would lead to competition amongst them which might lead to corruption in the frontline regulator and impede professionalism in the valuer members.

(e) Valuation is not a stand-alone profession, unlike advocates, doctors, etc. Depending upon where it is used, it draws upon the body of knowledge of other fields. For example, a machinery valuation would require a good engineering knowledge. Further, valuation is not an exact science, unlike medical profession or law. It involves far more subjectivity by very nature of it.

(f) No developed country is regulating the valuation profession in the way that India is trying to do. Instead, SROs/RVOs should be encouraged to strengthen standards to improve the profession.

(g) Considering that valuations are intrinsic to various fields, parallel regulators cannot be avoided. SEBI should regulate valuations which involve merger of listed companies and RBI should regulate valuations used for valuing collaterals for loans.

(h) There should be a mechanism for not reprimanding judgments made by a Valuer in good faith.

(i) There should be no restriction on legal or ownership structure of the organisation for conducting valuation or other restrictions like all the partner/directors should be eligible to qualify as Valuer in practice etc. The regulations in respect of ownership of firms are too stringent and not inclusive.

(j) To ensure accountability, the valuation report should be signed by an individual valuer.

(k) Partnership firms / companies should not be registered as valuers.

(l) The International Valuation Standards (IVS) should be adopted with necessary carve outs.

(m) Valuation services should be defined.

Evolution of Institutional Framework

2.35 The CoE studied the major attempts made in the past for regulation and development of valuation profession, including (a) Report of the Expert Group (Shroff Committee) on Guidelines on Valuation of Corporate Assets and Shares in 2003 (Appendix III), (b) Attempts made under the Companies Act, 2013 to provide a framework, and (c) the Draft Valuers Bill, 2008, (Appendix V). It also studied the Companies (Registered Valuers and Valuation) Rules, 2017 (Appendix XI) and progress in its implementation, which is discussed in the next section.

Expert Group, 2003

2.36 The then Ministry of Finance and Company Affairs constituted an Expert Group under chairmanship of Mr. Shardul S. Shroff in 2003 to suggest guidelines on valuation of shares in connection with amalgamation, merger, demerger, acquisition, buy-back, etc. of shares and / restructuring of capital of companies. The Expert Group (MoF, 2003) noted that as an extended principle of corporate governance, the norms of valuation processes would enhance the

credibility of Indian corporates and Indian capital markets. It recommended mandatory and directory provisions for valuation in certain circumstances and a chapter in the Companies Act, 1956 for valuations, preparing rules and regulations for licensing of valuers, their code of conduct, adjudicatory rules for fines and penalties. It made the following key recommendations:

(a) Department of Company Affairs (DCA) should be the sole regulator for valuers and valuation related issues as the scope of valuation concerns both listed and unlisted companies.

(b) Valuers need to be licensed and regulated. The Central Government should publish a Register of RVs from 1st May, 2003 specifying particulars of valuers in practice and valuers who have passed the entrance examination conducted by the DCA for registration and licensing. The Central Government may make rules or regulations for registering firms or companies as RVs. The Expert Group recommends that at least two persons associated with the firm / company proposing to be registered as valuer and who are partners, directors or employees are RVs or valuers in practice, as recognised by the DCA.

(c) RVs shall strictly adhere to the Code of Conduct and the companies owe a duty to an independent valuer to be fair and to provide accurate information about the company.

(d) The Central Government should prescribe rules/regulations/procedure for proceedings against valuers for breach of licensing conditions, code of conduct, or other applicable rules and regulations or provisions of the Act as may be applicable to valuers. The licensing and registration authority shall carry a condition that the valuer shall submit to the regulatory and disciplinary authority/jurisdiction of DCA. The RV will be subject to civil and/or criminal liability in case of mis-conduct or other wrong.

(e) Considering the competing claims for a full disclosure versus business confidentiality consideration, two kinds of reports should be prepared: (i) summarised valuation report that sets out certain essential features of the final report and is made available for inspection, and (ii) detailed valuation report that covers all material relevant matters and more detailed reason and analysis which have been masked in the summarised valuation report for confidentiality considerations.

(f) The chairman of the Audit Committee should appoint the valuer. He is required to verify whether the valuer has an advisory mandate and has past association with the company management. He shall verify the independence of the valuer to ensure independent valuation.

(g) There should be a two-tiered review mechanism for complaints. The complaints should be referred to a Screening Committee comprising of valuers not in active practice. Where the Screening Committee forms a prima-facie opinion (no personal hearing allowed) that the complaint merits examination, it shall forward the same for review by the Peer Review Committee, comprising RVs who are undertaking or have undertaken mandatory valuations.

Developments in Company Law

Expert Committee on Company Law, 2005

2.37 The Expert Committee on Company Law, headed by J. J. Irani, recommended (MCA, 2005) that there should be recognition of principle of valuation of shares through an independent valuer whenever company causes an exercise of merger/ restructuring to safeguard minority interests. The independent valuer should be appointed by the Audit Committee where such a Committee is mandated or by the Board in other cases. The shareholders should have the right to approach the Court / Tribunal if they perceive the process to be unfair. The Expert Committee recommended that valuation of the shares of companies involved in schemes of mergers should

be mandatory. In case of unlisted public companies, preferential allotment should be made subject to valuation by an independent valuer. The law should specifically provide that a public company shall not allot shares as fully or partly paid-up other than in cash, unless the consideration is independently valued by a valuer appointed by the company in consultation with the allottee and the valuation is made known to the allottee and the concerned regulator.

The Companies Bill, 2008

2.38 The Companies Bill, 2008 provided that where valuation is required to be made in respect of any property, stocks, shares, debentures, securities, goodwill or net worth of a company or its assets, it shall be valued by a RV appointed by the Audit Committee or in its absence by the Board of Directors of that company. It further provided that the Central Government shall maintain a register of valuers where it shall enter the names and addresses of persons registered as valuers. A person who is a CA, CMA, or CS or possesses the prescribed qualification can apply to the Central Government for being registered as a valuer. However, no company or body corporate should be eligible to be registered as a valuer. A RV shall not charge at a rate exceeding the rate as may be prescribed. It anticipated fit and proper requirement by requiring a RV or the applicant for registration to furnish particulars of cases where he is sentenced to a term of imprisonment for any offence or found guilty of misconduct in his professional capacity by an association or institute, immediately after such conviction or finding to the Central Government, which could remove the name of any person from the register of valuers.

The Companies Bill, 2009

2.39 The Companies Bill, 2008 lapsed due to dissolution of the Fourteenth Lok Sabha. It was re-introduced as the Companies Bill, 2009 along with the provisions relating to valuers. The Bill was referred to the Standing Committee on Finance (SCF), which in its Twenty-First Report (SCF, 2009) recommended that firms or body corporate having professionals such as chartered accountants, company secretaries, etc. as well to be registered as valuers. It also recommended that the prescription of having only RVs as partners in a partnership firm may be dispensed with to include other professionals such as CAs, CSs, etc. as partners. It observed: *“The stance taken by the Ministry for excluding such entities from registering as valuers is primarily based on the Acts regulating the professions of chartered accountants, company secretaries etc., which prohibit practice of their members in body corporate form. Considering the reasoning of the Chambers of Commerce, the Committee recommend that the provisions of clause 219 be re-visited with a view to entitling firms or bodies corporate having professionals such as chartered accountants, company Secretaries etc. as well to register for carrying out the exercise of valuation.”* It further observed: *“The Committee also desire that the rules regulating the valuers/profession of ‘valuation’ and the independent legal framework proposed for the profession are put in place expeditiously.”*

The Companies Act, 2013

2.40 In view of the large amendments proposed by the SCF, and suggestions of the stakeholders, the Companies Bill, 2009 was withdrawn and was re-introduced as the Companies Bill, 2011. Clause 247 of the said Bill provided for valuation by a valuer in accordance with the Rules as may be prescribed. The Bill was also considered by the SCF. Subsequently, this Bill became the Companies Act, 2013. Section 247 (2) of the Companies Act, 2013 mandates that a valuer shall (a) make an impartial, true and fair valuation of any assets; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with the Valuation

Rules; and (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

Report of the Companies Law Committee, 2016

2.41 The Companies Law Committee, 2016 (MCA, 2016), known as Tapan Ray Committee, felt that the provisions of section 247 have far reaching ramifications and the Government may decide on the framework after taking into account views of all stakeholders. It also felt that a valuer ought to be disqualified for valuing any asset, if he had any interest in such an asset, at any time during three years prior to his appointment, and three years after his cessation as a valuer.

The Companies (Removal of Difficulties) Second Order, 2017

2.42 A difficulty was observed that there were several different organisations dealing with various, distinct group of assets, such as land and building, machinery and equipment, having separate set of valuers for valuation. Unless these different organisations are recognised, it would be difficult to ensure the required level of regulation for the valuers by registering them directly with the Central Government. The Order amended section 247 (MCA, 2017c) to provide that valuations required under the Companies Act, 2013 shall be undertaken by a person, who, having necessary qualifications and experience, and being a valuer member of a RVO, is registered as a valuer with the Authority. This recognised and provided for a role for RVOs.

The Companies (Amendment) Act, 2017

2.43 Section 247 of the Companies Act, 2013 prohibited a RV from undertaking valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. The Amendment Act prohibited a RV from undertaking valuation of any asset in which he has direct or indirect interest or becomes so interested at any time during three years prior to his appointment as valuer or three years after valuation of assets was conducted by him.

Draft Valuation Professionals Bill, 2008

2.44 Simultaneous with the provisions proposed in the Companies Bill, 2008, Government drafted Valuation Professionals Bill, 2008, which provided for the constitution of the Council of Valuation Professionals inter alia for development, regulation, certification of qualification and quality of the valuation professionals engaged in providing valuation services. It envisaged a two-tier statutory self-regulated model with the Council as the principal regulator and Recognised Institutes (RIs) as the frontline regulators. The Council was empowered to recognise institutes, who would double up as self-regulatory organisations (SROs) as well as educational institutions. A person after completing the curriculum and training with a RI and having a certificate of practice (CoP) would practise as a Certified Valuation Professional (CVP).

2.45 The salient features of the Draft Bill are as under:

(a) Governance: The Council shall be composed of nominees of RIs and of the Central Government. The President and Vice-President shall be elected by the Council from amongst these members. The Council shall dissolve after the expiry of four years from the date of its first meeting and a new Council shall be constituted. It shall be supported by five standing Committees

of its members, namely, (i) Executive Committee, (ii) Finance Committee, (iii) Disciplinary Committee, (iv) Academic and Standards Committee, and (v) Professional and Ethical Standards Committee. The RIs shall have independent governing boards.

(b) Powers and Functions: The Council would have powers and duties to: (i) issue standards of valuation; (ii) set standard of education and prescribe syllabus; (iii) set standards for training professionals; (iv) approve qualification and experience; (v) approve fees to be levied by the RIs; (vi) monitor disciplinary proceedings by RIs; and; (vii) grant or revoke CoP through the RIs. The RIs shall be responsible for: (i) registering and imparting education to persons desiring to become CVPs, (ii) conduct of examinations as per standards set or approved by the Council; (iii) imparting training to persons in valuation; (iv) maintenance and publication of a register of persons qualified to practice as CVP in the relevant discipline; (v) the removal / restoration of names from the register, and (vi) setting up a disciplinary mechanism and carrying out disciplinary action against CVPs accused of professional misconduct.

(c) Disciplinary Mechanism: The RIs shall have a Disciplinary Directorate, a Board of Discipline and a Disciplinary Committee. The Disciplinary Directorate shall undertake investigations and support the Disciplinary Committee and a Board of Discipline. The Bill provided for two schedules of misconduct. The Board of Discipline would deal with misconduct listed in Schedule A. The Disciplinary Committee would deal with misconduct listed in schedule B or in both the schedules. The Appellate Authority constituted under the Chartered Accountants Act, 1949 would be the Appellate Authority for appeal against the disciplinary orders.

Institutional Framework for Professions

2.46 The CoE considered the institutional framework in place for other professions such as law, medical science, insolvency, company secretaryship, etc. and such framework for valuation profession in India and other jurisdictions. It studied the regulatory architecture and governance of agencies responsible for development and regulation of professions. It perused the recommendations of the committees such as the Committee set up by the ICSI to review the Company Secretaries Act, 1980 in 2014 (Appendix VIII), the Bankruptcy Law Reforms Committee (Appendix IX), and the High-Level Committee constituted by MCA to review the disciplinary mechanism of the three Institutes (Appendix X), having a bearing on professions. It also studied two recent legislations, namely, the Insolvency and Bankruptcy Code, 2016, and the National Medical Commission Act, 2019, which provide institutional framework for professions and prescribe norms for governance, independence and accountability of regulators.

Other Professions in the Country

Legal profession

2.47 The Advocates Act, 1961 (GoI, 1961) governs legal profession. The Act envisages a two-tier structure, with the Bar Council of India (BCI) at the central level and several State Bar Councils (SBC) at the state level. The SBCs consist of elected members and ex-officio members. The BCI consists of members elected by the SBCs from among its members and ex-officio members. It exercises general supervision and control over SBCs, apart from developmental functions, including recognition of institutes whose degree in law shall be a qualification for enrolment as an advocate with one of the SBCs. The admission to the course is usually based on an entry examination. After receiving the qualification from a recognised institute, an individual enrolls himself with one of the SBCs and takes an examination conducted by BCI to obtain a certificate of practice. The law envisages only an individual and not any entity to practise as an Advocate. The

SBCs perform developmental functions, enrol advocates, safeguard rights, privileges and interests of advocates and determine cases of misconduct against advocates. The BCI lays down the procedure to be followed by its disciplinary committee and the disciplinary committee of each SBC. It exercises appellate jurisdiction from the disciplinary orders of the SBCs. It may withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any SBC and dispose of the same. The appeal from the BCI lies in the Supreme Court.

Company Secretaries Profession

2.48 The Company Secretaries Act, 1980 (GoI, 1980) was enacted to provide for the regulation and development of the profession of company secretaries. It establishes the Institute of Company Secretaries of India (ICSI), which functions under the overall control, guidance and supervision of a Council. The Council comprises elected members and a few nominees of the Central Government. It is assisted by elected Regional Councils and chapter management committees. It is reconstituted every four years by election, while President and Vice-President are elected every year from amongst elected members of the Council. The Council approves academic courses and their contents, prescribes qualifications for entry in the Register, issues guidelines for granting or refusal of CoP; regulates and maintains the status and standard of professional qualifications of members of the Institute, etc. The ICSI offers courses and conducts examinations, while market offers oral coaching. It has recently introduced an entry examination for admission to the CS course (ICSI, 2020). The course has a built-in longish internship. Any university can impart education on the subjects covered by the academic courses of the ICSI, however, they cannot provide designation that resembles and is identical to the one awarded by it. A person completing the CS course enrolls himself as member with the Institute. He practises the profession after having a CoP. A member may practise, individually or in partnership with other members of the same profession or in partnership with members of other recognised professions. The ICSI lays down professional standards and code of conduct for CSs. The ICSI and similar regulators like ICAI and ICoAI deal with emerging issues in education and professional practice through subordinate legislation.

2.49 In case of professional misconduct, an information/ complaint may be filed with the Director (Discipline). On consideration of an information or complaint, the Director (Discipline) arrives at a prima facie opinion on the occurrence of the alleged misconduct. Where he is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he places the matter before the Board of Discipline. Where he is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he places the matter before the Disciplinary Committee. The Board of Discipline consists of a person with experience in law as its presiding officer, one member of the Council elected by the Council, and one member nominated by the Central Government. The Disciplinary Committee consists of the President or Vice-President of Council as presiding officer, two members elected from amongst the members of council and two members nominated by the Central Government. Where the member is found guilty after an opportunity of hearing is provided, the Board of Discipline or the Disciplinary Committee, as the case may be, can reprimand the member, remove his name from register, or impose fine. A person aggrieved by the decision of the Board of Discipline or Disciplinary Committee may appeal to the Appellate Authority. The Appellate Authority consists of a person who is or has been a judge of High Court as Chairperson, two members from amongst the persons who have been members of the Council for at least one full term and who is not a sitting member of the Council, and two members nominated by the Central Government.

Committee to Review the Company Secretaries Act, 1980

2.50 Keeping in view the changing market dynamics, more particularly liberalisation since 1992, and evolving role of company secretaries, a Committee to Review the Company Secretaries Act, 1980 (CRCS), set up under chairmanship of Justice B. N. Srikrishna, comprehensively reviewed (ICSI, 2014) the Company Secretaries Act, 1980. The CRCS recommended replacement of the Companies Secretaries Act, 1980 with the Governance Professional Act that would provide for the establishment of the Institute of Governance Professionals of India. The Institute shall operate under the supervision, control and direction of a Board of Governors. The Board of Governors shall comprise eight members elected from amongst the Governance Professionals, four representatives of corporate sector nominated by Board, one officer each nominated by the MCA and MoF and the Chief Executive Officer (CEO) of the Institute. The Board of Governors shall make regulations, while Adjudication Panel shall deal with disciplinary matters.

2.51 The Institute, as an SRO, must operate within the bounds set by the statute. Such statute should be 'anti-professional' in that it must be designed to protect the interests of society rather than the interests of the profession. It will regulate and develop the profession of governance professionals. It will develop the syllabus and conduct examinations in relation to the governance professionals. It will be responsible for delivery of academic, training, CPE, and setting standards for governance services. It will have two types of memberships, namely, fellow and associate. A member shall be conferred fellow membership through a process of recognition of professional achievement and reputation. A firm can register itself with the Institute to render governance service.

2.52 The Institute will perform quasi-judicial functions through the Adjudication Panel. The Chief Regulatory Officer (CRO) may file an application before the Adjudication Panel, where he is of a prima facie opinion (after inspection, audit or investigation) that the governance professional or the firm failed to comply with any provision of the law or regulations, or failed to discharge the responsibilities assigned to a governance professional under any law. The Adjudication Panel shall dispose of the matter in adherence to principles of natural justice. It can impose on the erring professional or firm, as the case may be, sanctions such as warning, reprimand, cease and desist, disgorgement of unlawful gain made, imposition of a penalty ranging from twenty-five thousand to twenty-five lakh in case of a governance professional and rupees five lakh to rupees twenty-five crore in case of a firm, suspension of registration for a period ranging from a week to three years and cancellation of the registration. Any person aggrieved by an order of the Panel may prefer an appeal to the Appellate Authority. Punishments should not only be meted out but publicly shown to have been meted out.

Insolvency Profession

2.53 Keeping in view the role of IPs in an insolvency regime, the Code envisages a two-tier regulated self-regulation comprising of IPAs, as the frontline regulators, and IBBI, as the principal regulator of IPs. The IBBI functions under the overall control, guidance and supervision of a Governing Board, which consists of a chairperson, WTMs, ex-officio members, and PTMs, all appointed by the Central Government. IPAs, which are section 8 companies, comply with the specified governance norms specified by IBBI.

2.54 The Code prohibits a person from rendering services as an IP unless he is: (a) enrolled as a member of an IPA, and (b) is registered with IBBI. It empowers IBBI to specify the categories of professionals or persons possessing such qualifications to be eligible for registration as IPs. The IBBI has specified two alternate sets of qualifications and experience for registration as an IP. An

individual having 10 years of post-membership experience (practice or employment) as CA, CS, CMA or Advocate or having 15 years of post-qualification managerial experience, after receiving a bachelor's degree, is eligible for registration as an IP. Since a CA or Advocate becomes an IP, an IP is usually a member of two professions simultaneously. An individual, who has completed the Graduate Insolvency Programme (GIP) approved by IBBI is also eligible for registration. One is eligible for admission to GIP if he has a professional qualification or a master's degree in specified subjects. An individual having the required qualification and experience needs to have certain hours of pre-registration training and pass the limited insolvency examination conducted by IBBI before seeking registration as an IP. He needs to be a fit and proper person at the time of registration and must continue to remain so for continued registration. He must also undertake CPE.

2.55 The IBBI and the IPAs monitor IPs on an ongoing basis and take disciplinary actions against errant IPs, wherever required. The IPAs perform various regulatory and developmental functions for their members such as laying down standards of professional conduct, granting CoP, conducting CPEs, monitor performance of member professionals, redressal of grievances against the member professionals. The disciplinary committee of the IPA takes disciplinary action against their members for their professional misconduct. One may appeal against the orders of the disciplinary committee to the appellate panel of the IPA. The IBBI exercises general supervisory and monitoring functions over the IPAs and has a duty to develop and regulate the profession by way of recognition of IPAs, conducting entry examinations, etc. A disciplinary committee comprising one or more WTMs of the IBBI disposes of disciplinary matters against the IPs.

2.56 The BLRC (MoF, 2015) explains the rationale for the two-tier regulatory structure: *“Thus, the Committee believes that a new model of “regulated self-regulation” is optimal for the IP profession. This means creating a two-tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary.”* This combines the benefits of statutory regulation and self-regulation and promotes competition among the IPAs

Medical Profession

2.57 The National Medical Commission Act, 2019 (GoI, 2019) is the latest legislation relating to a profession. It replaced the Indian Medical Council Act, 1956 which failed to deliver quality health services. The Standing Committee on Health and Family Welfare in its ninety-second Report endorsed separation of functions by forming four autonomous boards and recommended appointment of regulators through selection rather than election. The 2019 Act moves away from statutory self-regulation to state regulation, and has considerable focus on protection of consumers, and access to equitable and universal healthcare.

2.58 The Act envisages a two-tier state regulation for medical professionals: the National Medical Commission (NMC) at the Central level and State Medical Councils (SMCs) at the State level. State Governments are required to establish an SMC if no such Council exists in that State. The NMC consists of a Chairperson, ten ex-officio Members, and twenty-two part-time Members, all appointed by the Central Government. It lays down policies in relation to the medical education,

medical institutions, medical researches, and medical professionals. It is advised by the Medical Advisory Council on issues related to medical education, training and research. It has regulatory oversight over four autonomous boards (Under-Graduate Medical Education Board, Post Graduate Medical Education Board, Medical Assessment and Rating Board and Ethics and Medical Registration Board for various activities in the ecosystem.

2.59 The Ethics and Medical Registration Board deals with registration of professionals and has appellate jurisdiction of SMCs. The SMCs take disciplinary actions in respect of professionals in accordance with the regulations framed by the NMC. Where the SMCs are not present, the complaints and grievances are dealt by the Ethics and Medical Registration Board. An appeal against the decisions of Ethics and Medical Registration Board lies before the NMC.

2.60 The NMC conducts the National Eligibility-cum-Entrance Test for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions. It also conducts a common final year undergraduate medical examination, known as the National Exit Test, for granting licence to practice medicine as medical practitioners and for enrolment in the State Register or the National Register, as the case may be. The National Board of Examinations (NBE) grants broad speciality and super-speciality qualifications.

High-Level Committee

2.61 The High-Level Committee on Transforming the Disciplinary Mechanism in three Professional Institutes, constituted by MCA under chairmanship of Ms. Meenakshi Datta Ghosh, studied the disciplinary mechanism of the three professional institutes (ICAI, ICSI, ICoAI). Some of its key recommendations are -

(a) There should be smooth and speedy disposal of disciplinary cases. For this purpose, the committee made several suggestions: model time-line for each stage of the disciplinary process, implementation of first-in first-out rule for complaints to ensure transparency in process and procedure, screening and bifurcation of complaints into actionable and non-actionable complaints by a three-member panel of relevant professionals, time bound mechanism for placing of complaint before the Disciplinary Committee by the investigative body, digitisation of disciplinary process and procedure, curtailment of frequent adjournments by adjudicating bodies, merging of Board of Discipline with Disciplinary Committee, and dispensing the system of prima facie opinion of Director (Discipline).

(b) The disciplinary mechanism should be independent of the Institutes. In this regard, it suggested that the offices and secretariat of appellate authority, adjudicating bodies and disciplinary directorates should be shifted away from each Institute. The Disciplinary Committee should consist of five members of which two are government nominees, two reputed professionals who are not Council members and one legal professional. The members of the adjudicating bodies should be disqualified from contesting elections to the Council or other regional bodies. There should be a mechanism of suo moto cognizance of any professional misconduct by a member.

(c) The ambit of disciplinary mechanism should be expanded to cover persons who have completed all the eligibility requirements but have not taken membership of the Institute, and also, to firms. The Institutes should have access to the MCA 21 portal to track and trace professional misconduct.

(d) The professionals should be mandated to undergo CPE.

Valuation Profession in Foreign Jurisdictions

Appraisal Practise in USA

2.62 The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) (GU, 1989) provides appraiser regulatory system in the US. It authorises The Appraisal Foundation (TAF), a private non-profit organisation, as the source of appraisal standards and qualifications. TAF sets the Congressionally authorised standards and qualifications for real estate appraisers as well as qualifications for personal property appraisers and provides voluntary guidance on recognised valuation methods and techniques for all valuation professionals. It advances the profession by ensuring that appraisals are independent, consistent, and objective. It has two independent Boards: (a) Appraiser Qualifications Board (AQB) to establish minimum appraiser qualification criteria to be followed by the Appraisers and the States in their respective regulatory programmes; and (b) Appraisal Standards Board (ASB) to establish uniform appraisal standards known as Uniform Standards of Professional Appraisal Practice (USPAP).

2.63 The FIRREA authorises states to establish appraiser regulatory programs to ensure effective supervision of certified and licensed appraisers eligible to perform appraisals for federally related transactions. The Appraisal Subcommittee (ASC), an independent executive branch federal government agency, within the Federal Financial Institutions Examination Council (FFIEC), provides oversight to the appraiser regulatory system. It monitors and reviews the practices, procedures, activities, and organisational structure of The Appraisal Foundation. It consists of designees of the head of the Federal financial institutions regulatory agencies and is headed by a chairperson elected by the Council. The Association of Appraiser Regulatory Officials (AARO), a non-profit organisation, facilitates communication between regulators and others involved with the appraisal profession.

2.64 An individual, who satisfies the requirements for state certification in a State, meets minimum criteria for certification issued by AQB and has passed a suitable examination administered by the State (consistent and equivalent to the Uniform State Certification Examination issued or endorsed by the AQB) is eligible for certification and licensing (Certified or licensed appraiser). Only such certified or licensed appraiser is authorised to undertake appraisal for federally related transactions. Complaints against such certified or licensed appraisers are reported to State Agencies for necessary disposal under information to the referrer or complainant, as the case may be.

Royal Institution of Chartered Surveyors (RICS)

2.65 Incorporated by the Royal Charter in 1881, Royal Institution of Chartered Surveyors (RICS) is probably the oldest, largest and the most respected professional body of valuers. It has a membership of about 1.3 lakh, providing valuation services in the area of real estate across the World, including India. It promotes and enforces international standards in valuation management and development of land, real, estate, construction and infrastructure. It monitors, guides and assists members and firms to comply with the rules, regulations and ethical standards. It reviews and investigates complaints and, where appropriate, takes disciplinary action in cases where members and/or regulated firms fall short of what is expected of them, to protect the public interest or to uphold standards. The consequences of the disciplinary action range from cautions to expulsions or the de-registration of regulated members. It provides advice and guidance to members and firms to help meet regulatory requirements, and subsequently to manage risk effectively in their operations.

2.66 The Governing Council of the RICS performs the functions as management of the Royal Charter obligations and sets the top-level directions and strategy. It is supported by the two key sub-divisions: (a) Management Board which assists in the management of operational activities and is responsible for the day to day performance and delivery of the business plan; and (b) Regulatory Board which defines strategy and policies, oversees operational delivery and ensures that RICS's approach to regulation serves the public interest.

The Companies (Registered Valuers and Valuation) Rules, 2017

2.67 Section 247 of the Companies Act, 2013 came into force on 18th October, 2017. On the same day, the Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules) were notified to provide for a complete framework for development and regulation of the profession of valuers. The Valuation Rules, inter alia, provide for: (a) registration of valuers, who may be individuals or partnership firms or companies, with IBBI for conduct of valuation of different classes of assets under the Companies Act, 2013; (b) recognition of Registered Valuers Organisations (RVOs) to enrol valuer members, enforce a code of conduct on them, and conduct training and educational courses for its members; and (c) mechanism for notification and modification of valuation standards based on the recommendations of the "Committee to advise on valuation matters". The Central Government delegated its powers and functions under section 247 of the Act to the IBBI and specified it as the Authority under the said Rules. The Valuation Rules envisage a two-tier architecture, with Central Government / Authority as the principal regulator and RVOs as the front-line regulator.

2.68 Only a person registered with the Authority as an RV can conduct valuations required under the Companies Act, 2013 and the Code. Subject to meeting other requirements, an individual is eligible to be an RV, if he: (a) is a fit and proper person, (b) has the necessary qualification and experience, (c) is a valuer member of an RVO, (d) has completed a recognised educational course as member of an RVO, (e) has passed the valuation examination conducted by the Authority within three years preceding the date of making the application for registration, and (f) is recommended by the RVO for registration as a valuer. The individual is required to have either a post-graduate qualification in the specified discipline and three years' experience, or a bachelor's degree in the specified discipline and five years' experience.

2.69 A partnership entity or a company is eligible to be an RV subject to certain norms. However, in terms of rule 3(2), a subsidiary, joint venture or associate company is ineligible to be an RV. On challenge, (Delhi High Court (2019) held that this rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation. Accordingly, it held: *"..making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of registration as valuer, a separate class has been carved out based on classification which is founded on intelligible differentia and as such the Rule cannot be faulted."*

2.70 The Valuation Rules provide for the recognition of RVOs. A company registered under section 8 of the Companies Act, 2013 or section 25 of the Companies Act, 1956 or a professional institute is eligible for recognition as an RVO. It is required to conduct educational courses in valuation in accordance with the syllabus determined by the authority, grant membership or CoP of individuals, conduct training before issuance of CoP, lay down and enforce the stipulated code of conduct for member valuers, provide CPE to members, monitor and review functioning

(including quality of service) of members, have a mechanism to address grievances, and conduct disciplinary proceedings against members. The Valuation Rules provide for the cancellation or suspension or certificate of registration or recognition of RVO, after following due procedure.

2.71 The Committee to advise on Valuation matters has reiterated (MCA, 2019a) that the RVOs may provide CPE on valuation matters, including valuation standards and practices through workshops, seminars, conferences and online courses for their members to enhance their capacity and competence. RVs may be exposed to the best international and national practices, so as to enrich and upgrade their knowledge.

Valuation Standards

2.72 Emphasis on valuation standards assumed greater prominence in the last quarter of the 20th Century as a result of the financial collapses which was traced to property related valuations /transactions. The concern to avoid such collapses led to the emergence of valuation standards, first on a national and then on an international level (Gilbertson & Preston, 2005). RICS responded to the 1970s property crash in the UK by publishing the Red Book, setting out standards of valuation and professional conduct expected of valuers, while the Federal Government in the USA responded to the “savings and loan” crisis of the late-1980s by insisting on uniform appraisal standards and the licensing of valuers in each State.

2.73 Two sets of standards, namely, International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC), and the Royal Institution of Chartered Surveyors (RICS) Red Book, command great respect among the stakeholders. In addition, there are standards issued by national valuation professional organisations for their members. IVS comprises five 'General Standards' and six 'Asset-specific Standards'. The General Standards contain standards applicable to valuation of all asset classes, covering scope of work, investigations and compliance, bases of value, valuation approaches and methods, and reporting. The Asset-specific Standards include requirements related to specific types of asset valuation, including background information on the characteristics of each asset type that influence value and additional asset-specific requirements regarding common valuation approaches and methods used. These cover businesses and business interests, intangible assets, plant and equipment, real property interests, development property and financial instruments. IVS allows flexibility to meet national requirements. Reportedly, some countries have adopted IVS as national standards, and some have adopted IVS with amendments to meet the requirements of national legislations. Professional organisations have adopted parts or all IVS for their members in many countries.

2.74 RICS Red Book adopts and applies IVS. The standards take three forms: (a) professional standards centred around ethics and conduct, (b) technical standards centred on common definitions and conventions, (c) performance or delivery standards centred on rigour in analysis and objectivity of judgement. RICS also allows departures to meet local statutory or regulatory requirements. Red Book with departures is called national association valuation standards, which have been published in some countries. RICS Valuation Standards – Global and India issued in May 2011 provides four India-specific guidance notes: (a) valuation for financial statements, (b) valuation for secured lending, (c) development land in India, and (d) valuation for tax purposes in India. It is understood that RICS is working on a national supplement to Red Book for India for valuations undertaken subject to Indian jurisdiction.

2.75 The Valuation Rules mandate that an RV shall, while conducting a valuation, comply with the valuation standards as notified or modified by the Central Government. Until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per (a) internationally accepted valuation standards; or (b) valuation standards adopted by any RVO. Rule 18 of the Valuation Rules enables the Central Government to notify and modify, from time to time, the valuation standards based on the recommendations of the Committee to advise on valuation matters.

2.76 Rule 19 of the Valuation Rules empowers the Central Government to constitute a committee to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and RVs. The Central Government constituted the Committee to advise on valuation matters on April 23, 2018 under Dr. R. Narayanaswamy, Professor of Finance and Accounting, IIM, Bangalore. While the Committee is developing standards, the ICAI laid down valuation standards for use by Chartered Accountants to ensure uniformity in approach and quality of valuation output. These valuation standards, as stated by the ICAI, are effective for valuations reports issued on or after July 1, 2018 till valuation standards are notified by the Central Government under the Valuation Rules.

Valuation Landscape

2.77 The valuation profession has a long, evolving history in India. An authentic chronicle of its history is probably not available. It appears that laws existing prior to independence provided for valuation of properties, especially the laws concerning land acquisition for granting compensation². The Land Acquisition Act, 1894 also provided that the 'market value' of the land will be considered while determining compensation. The valuation tables prepared by Miram (1928) hold relevance till today and are utilised by the valuers. In his book, Parks (1942) notes that India then had thousands of so-called valuation experts. However, there was no pool of dedicated professionals performing only valuation profession, across all legal regimes. The professionals of different streams performed valuations in niche areas. Reportedly, in the absence of any Act to regulate valuer's profession, anyone and everyone connected with civil construction, styled himself as a valuer and did valuation work of land, building and even plant and machinery. The different legal regimes, acting as separate islands, recognised valuation professionals according to their self-prescribed eligibility criterion.

Provision of Valuation Services

Valuation organisations

2.78 Though there was demand for valuation service for long, it appears that the process of institutionalisation of the profession started only after independence. The Institution of Surveyors (IOS) came up in 1950 with the primary objective of advancing and regulating the science of various disciplines of surveying, including valuation surveying. It provides for multiple categories of membership, including associate members, members and fellows. Presently, it has a membership of about 12,000 members, including student members. It conducts examinations and grants degree in the courses on valuation surveying. In 1975, the Ministry of Education & Social Welfare recognised the final/direct final examination of the IOS in the branch of valuation surveying for the purposes of recruitment to superior posts and services under the

2 Regulation I of 1824 Bengal Code, Act VI of 1857, and Land Acquisition Act, 1870.

central government in the appropriate field³. IOS is managed by the council of corporate members and is assisted by a few Committees and sub-Committees. It has laid down a code of professional conduct of its corporate members and stipulates scale of professional charges for quantity surveying and valuation⁴.

2.79 Further, in 1968, Institution of Valuers (IOV) came up as a society of valuers with branches at multiple places across India. It has three types of members, namely, honorary members, corporate members (Fellows and Associates) and non-corporate members (Licentiates and Students). It provides for a code of conduct for members and prescribes scale of fees to be charged for valuation and proforma for valuation reports. It is governed by an elected council. Thereafter, in 1999, the Practising Valuers Association (India) (PVAI) came up as a society of valuers and others interested in valuation profession. It offers multiple types of memberships, for individuals as well as corporates. It provides for the Principles of Valuation Practice and Code of Ethics of its members. It considers practices such as contracting for or acceptance of any contingent fee, advocacy, advertising and soliciting as unethical and unprofessional. Other major functional valuers' associations/organisations are the Institution of Government Approved Valuers, Indian Institution of Valuers and Centre for Valuation Studies, Research and Training.

2.80 Most of the valuation professionals are members of self-regulatory valuer organisations, which are non-governmental organisations/associations formed by the private sector to set standards, monitor compliance, and enforce their rules. These SROs have played a major role in the development of the valuation profession. Though there is no statutory mandate requiring registration with such SROs, the market requires membership of an SRO for ensuring the quality and the standards of the valuation services. A member of the SRO complies with the bye-laws and the code of conduct, if any, prescribed by the SRO. The SROs suspend or expel members by following the due process.

Number of Valuers

2.81 The size of market for valuation services or the number of valuation professionals is not precisely known. Reliable information on the size of valuation profession in India is not easily available (MCA, 2019a). The CII believes (Annexure K) that the number of RVs in India is only about 2600. It further believes that within this small number, there are a very few who are exclusively undertaking valuations only for a living and the overall market from a service fee perspective is less than Rs.1000 crore.

2.82 Under section 34AB of the Wealth Tax Act, 1957, various categories of valuers are registered by Income Tax Department all over India. In the absence of any other legislation or government formed association for valuers, valuers registered by Income Tax Department are considered to be government registered valuers. As of February, 2011, there were a total of 9751 valuers across the country as presented in Table 2. It is understood that the indicative number of valuers registered under Section 34AB of the Wealth Tax Act, 1957 as of 2016 is 7482 (Agricultural land: 54, Immovable property: 5163, Jewellery: 119, Plant & machinery: 935 and Shares & debentures: 132).

³ Ministry of Education and Social Welfare (Department of Education) Letter No. F.18-60/61-T.2 dated 9 January, 1975 and amended wide Ministry of Human Resources Development (Department of Education) Notification No. F.18-20/83/T.12/T.7/T.13 dated 11 July, 1988 <iosindia.in/notifications/> accessed 21 December, 2019. See also Ministry of Education & Social Welfare (Department of Education) vide Letter No. F. 32-1/2008-TS. III dated 02 February, 2008 clarified that (i) Building and quantity surveying and (ii) Valuation Surveying are two separate courses (equivalent to degree in engineering) for the purpose of employment to superior posts and services under the Central Government in the appropriate field. Further, it was clarified that no separate approval of All India Council for Technical Education/UGC is required for this purpose.

⁴ Institution of Surveyors, 'Awards' <http://iosindia.in/awards/> accessed 21 December, 2019.

Table 2: Valuers Registered under Section 34A of the Wealth Tax Act (February, 2011)

| State | Number of Valuers in: | | | | | | | | | | Total |
|----------------------|-----------------------|-----------|----------|----------|----------|------------|-------------|-------------|-----------|----------|-------------|
| | Cat-I | Cat-II | Cat-III | Cat-IV | Cat-V | Cat-VI | Cat-VII | Cat-VIII | Cat-IX | Cat-X | |
| Andaman & Nicobar | 1 | | | | | | | | | | 1 |
| Andhra Pradesh | 532 | | | | | | 109 | 38 | | | 679 |
| Arunachal Pradesh | 1 | | | | | | | | | | 1 |
| Assam | 69 | | 1 | | | 1 | 14 | 7 | | | 92 |
| Bihar | 107 | | | | 1 | 2 | 13 | 4 | | | 127 |
| Chandigarh | 119 | | | | | 1 | 10 | 2 | | | 132 |
| Chhattisgarh | 71 | | | | | | 11 | 18 | | | 100 |
| Dadar & Nagar Haveli | 2 | | | | | | | | | | 2 |
| Daman & Diu | 3 | | | | | | | | | | 3 |
| Delhi | 517 | | | | | 1 | 112 | 185 | | | 815 |
| Goa | 62 | 6 | | | 1 | 1 | 16 | 3 | | | 89 |
| Gujarat | 777 | 21 | | | | 17 | 150 | 195 | 7 | | 116 |
| Haryana | 187 | | | | | | 5 | 4 | | | 196 |
| Himachal Pradesh | 47 | | | | | | | 1 | | | 48 |
| Jammu & Kashmir | 18 | 1 | | | | | 3 | | | | 22 |
| Jharkhand | 52 | 1 | | | 1 | | 7 | 8 | | | 69 |
| Karnataka | 625 | 9 | 1 | 1 | | 2 | 117 | 41 | | | 796 |
| Kerala | 227 | 24 | 1 | | | | 40 | 8 | | | 300 |
| Lakshadweep | | | | | | | | | | | |
| Madhya Pradesh | 283 | 1 | | | | 5 | 22 | 38 | | | 349 |
| Maharashtra | 1423 | 23 | | | | 60 | 296 | 463 | | 1 | 226 |
| Manipur | 1 | | | | | | | | | | 1 |
| Meghalaya | 2 | | | | | | | | | | 2 |
| Mizoram | | | | | | | | | | | |
| Nagaland | 2 | | | | | | 1 | | | | 3 |
| Orissa | 50 | | | | | 4 | 17 | 3 | | | 74 |
| Pondicherry | 17 | | | | | | 3 | 4 | | | 24 |
| Punjab | 199 | 1 | | | | 1 | 11 | 35 | | | 247 |
| Rajasthan | 225 | | | | | 8 | 36 | 63 | 1 | | 333 |
| Sikkim | | | | | | | | | | | |
| Tamil Nadu | 712 | 7 | 3 | 4 | 1 | 1 | 178 | 112 | | | 101 |
| Tripura | 2 | | | | | | | | | | 2 |
| Uttar Pradesh | 430 | 2 | | | | 13 | 82 | 104 | | | 631 |
| Uttarakhand | 50 | | | | | | 5 | 20 | | | 75 |
| West Bengal | 58 | | | | | 6 | 11 | 5 | 7 | | 87 |
| Total | 6871 | 96 | 6 | 5 | 4 | 123 | 1269 | 1361 | 15 | 1 | 9751 |

Source: Directory of Government Registered Valuers

Legends: I: Valuer of Immovable Property; II: Valuer of Agricultural Land; III: Valuer of Plantations; IV: Valuer of Forests; V: Valuer of Mines and Minerals; VI: Valuer of Stocks; VII: Valuer of Plant and Machinery; VIII: Valuer of Jewellery; IX: Valuer of Works of Art; X: Valuer of Life Interest, Reversions and Interest in Expectancy.

2.83 It is believed that the IOV is the largest VPO and most members of other RVOs are also its members. It had a membership of over 28,000 valuers of multiple disciplines in 2018 as presented in Table 3.

Table 3: Growth of Membership at IOV

| Year | Number of Members | | | | |
|------|-------------------|-----------------|-------------------|-------------------------------|------------|
| | Total | Land & Building | Plant & Machinery | Securities & Financial Assets | Others |
| 1968 | 000 | 000 | 000 | 000 | 000 |
| 1973 | 800 | 580 | 212 | 004 | 004 |
| 1978 | 1298 | 359 | 134 | 003 | 002 |
| 1983 | 2087 | 568 | 213 | 004 | 004 |
| 1988 | 3036 | 701 | 238 | 005 | 005 |
| 1993 | 4875 | 1348 | 475 | 009 | 007 |
| 1998 | 8230 | 2435 | 866 | 040 | 014 |
| 2003 | 13378 | 3699 | 1350 | 075 | 024 |
| 2008 | 19155 | 4238 | 1418 | 095 | 026 |
| 2013 | 23571 | 3182 | 1100 | 115 | 019 |
| 2018 | 28274 | 3459 | 1099 | 125 | 020 |
| | 28274 | 20569 | 7105 | 475 | 125 |

Source: Institution of Valuers.

2.84 Though a precise number of valuers in India is not available, the number appears relatively less as compared to the numbers in other jurisdictions. According to a study by Mr. Budhbhatti (Invitee Expert), the global scenario of number of real estate valuers practicing across the globe, as of 2011, is presented in Table 4. He believes that if numbers in respect of USA and Europe, that is, 16 valuers per lakh of population is adopted, India having population of 1240 million would need at least 2,00,000 academically qualified valuers, as against guesstimate of less than 4000.

Table 4: Real Estate Valuers in Different Countries

| Country | No. of Valuers | Population (in Million) | Valuers / Lakh of Population |
|-------------|-----------------------------|--------------------------|------------------------------|
| New Zealand | >2,500 | 4.50 | 55 |
| Australia | >7,500 | 18.00 | 42 |
| England | >45,000 | 65.00 | 69 |
| America | >30,000* | 180.00 | 16 |
| Europe | >1,20,000 (24 countries) | 730.00 (50 countries) | 16 |

Source: Estimation by Mr. Kirit P. Budhbhatti

Valuation Education and Training

2.85 Since anyone could provide valuation without any accountability, there was no conscious effort to have tailor-made valuation courses. Parks (1942) describes the consequence: "In India today there must be thousands of so-called Valuation Experts and during the few years I have been in this country, I have heard many of them give evidence in valuation cases. The point which has most impressed me is the lack of knowledge possessed by these 'experts' of the principles governing

a simple straightforward valuation.”

2.86 Since the valuation profession was undertaken by the professionals of various professions such as Engineers, Chartered Accountants, etc., the parent regulators of these professions tried to build capacity of their members to undertake valuation, through short-term / certification courses or by adding a special paper to the regular course. The VPOs also took upon themselves the duty of providing relevant education and training for their members. They attempted to standardise and upgrade the skills of their members. IOS conducts course and examination on Valuation Surveying for its members, which is recognised by the Ministry of Human Resources and Development, as equivalent to degree level course. Later, some Universities started post graduate level courses specific to valuation such as Master of Science in Real Estate Valuation, Master of Science in Plant and Machinery, Master of Commerce in Valuation of Real Estate. These courses are generally provided in distance education mode which is preferred by the working professionals and very few provide it in regular classroom mode. However, such courses failed to attract adequate interest and some of them have discontinued the course. Sardar Patel University commenced in 1994 full time post graduate courses, Master of Science in Real Estate Valuation and Master of Science in Plant and Machinery. However, the intake of these courses is minimum. It has so far produced about 400 valuation professionals. The demand for and supply of tailor-made valuation courses is lukewarm probably because anyone can provide valuation services without any accountability in the absence of a legislation.

2.87 RICS, in association with Amity University, started its School of Built Environment in 2013 to deliver specialised undergraduate and postgraduate programmes. At undergraduate level, it offers Bachelor of Business Administration in Real Estate and Urban Infrastructure and at post graduate level it offers MBA in Real Estate and Urban Infrastructure, MBA in Construction Project Management, MBA in Construction Economics and Quantity Surveying and Post Graduate Diploma in Facilities Management. The total enrolment of students in these courses till date is reportedly 2500. Apart from these degree level courses, there are several short-term courses / programmes on valuation being organised by several institutions such as Valuation Certificate Programme conducted by IICA, Certificate course in Valuation conducted by ICSI, Executive Diploma in Business Valuation by ICoAI, Certificate Course on Valuation by ICAI, etc. Research in valuation is negligible.

2.88 While implementing the Valuation Rules, the IBBI has been prescribing syllabus for valuation examinations. In order to prepare students to take valuation examinations, CVSRTA prepared detailed, world class study materials for two asset classes, namely, (a) Land and Building, and (b) Plant and Machinery, each running about 2000 pages. These materials are available on the IBBI web site and several websites across the world, including the website of the European Group of Valuers' Associations, as reference material for their members. IOV prepared study material for the asset class, securities and financial assets, which is also available on the IBBI web site. There are several India-specific high-quality textbooks on different valuation subjects by Indian authors.

Judiciary vis-à-vis Valuers

2.89 Notwithstanding the limitations, the profession has earned reasonable credibility. Over a period of time, due recognition to the opinion of the valuers has been part of emerging jurisprudence and their opinions have evidentiary value before a court of law. Valuers are

considered to be an expert in their field and their opinions ought not to be rejected without proper consideration⁵. Valuation is a question of fact and is required to be determined fairly and reasonably⁶. The Supreme Court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record and the method adopted by the authorities for the purpose of valuation is based on relevant materials⁷. The court may rely upon valuation report if the data or material on the basis of which such report is based is produced before the Court, and the authenticity of the same is made good and the method of valuation adopted therein is correct⁸.

2.90 The correct principles of valuation applicable to a given case is a question of law⁹. It is the Court's obligation to be satisfied that the valuation was in accordance with law and it was carried out by an independent body¹⁰. The Supreme Court elaborated¹¹ the scope of court's jurisdiction to interfere with the opinion of a valuer: *"If the valuer adopts the method of valuation prescribed, or in the absence of any prescribed method, adopts any recognised method of valuation, his valuation cannot be assailed unless it is shown that the valuation was made on a fundamentally erroneous basis, or that a patent mistake had been committed, or the valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter. Where a method of valuation is prescribed the valuation must be made by adopting scrupulously the method prescribed, taking into account all relevant factors which may be enumerated as relevant for arriving at the valuation."*

2.91 A valuer is supposed to know as to which method or mode should be adopted for the purposes of valuing particular property having regard to a large number of factors involved therein¹². Further, a valuer being an expert in his field, can rely on his own knowledge, experience and judgment to come to the conclusions regarding aspects of the acquired property such as the type of material used in the construction and place from which materials were procured¹³.

Demand for Valuation Services

2.92 Unlike CAs, CSs, CMAs, Advocates and medical professionals, there is no legislation which provides for the development and regulation of the profession of valuers. However, post-independence, several legislations or rules and regulations framed thereunder either explicitly or impliedly recognise and demand valuation services provided by valuers. The role ascribed to valuers under some of the major enactments is discussed in Table 5.

5 Nelson Fernandes Vs. Special Land Acquisition Officer, (2007) 9 SCC 447, para 28.

6 Ram Kishun Vs. State of U.P., (2012) 11 SCC 511, para 24.

7 Duncans Industries Ltd. Vs. State of U.P., 1995 Supp (2) SCC 168.

8 Special Land Acquisition Officer Vs. Sidappa Omanna Tumari, 1995 Supp (2) SCC 168, para 15-17.

9 Commr. of Gift Tax Vs. Executors and Trustees of the Estate of Late Shri Ambala Sarabhai, 1988 Supp SCC 115: 1988 SCC (Tax) 165, para 11.

10 Hindustan Lever Employee's Union Vs. Hindustan Lever Ltd, 1995 Sup (1) SCC 499, para 3

11 G. L. Sultania Vs. Securities & Exchange Board of India, (2007) 5 SCC 133, p.148. It was also observed that Renuka Datla (Dr.) Vs. Solvay Pharmaceutical B.V. (2004) 1 SCC 149 lays down that if the valuer applied the standard methods of valuation and considered the matter from all appropriate angles without taking into account any irrelevant material or eschewing from consideration any relevant material, his valuation could not be challenged on the ground of its being vitiated by fundamental error. See also Bharat Hari Singhania v. CWT, 1994 Supp (3) SCC 46, it was a case which arose under the Wealth Tax Rules. It was observed that: The aforesaid rules provided only one method for assessing market value of unquoted equity shares, namely, the break-up method. In this context it was observed that where a method of valuation is prescribed by the rules, then notwithstanding the fact that there may be several methods of valuing an asset, and even assuming that there was another method which was more appropriate, still the method chosen by the rules, which was also one of the recognised methods, must be adopted. This was a case of determination of market value of unquoted equity shares.

12 Mahesh Dattay Thirthkar Vs. State of Maharashtra (2009) 11 SCC 141, para 49.

13 Dilip N. Shroff Vs. Joint Commissioner of Income Tax, (2007) 6 SCC 329 (Overruled on a different point in Union of India Vs. Dharmamendra Textile Processor, (2008) 13 SCC 369).

Tables 5: Valuation Services Required under Various Enactments

| Enactments | Nature of services provided by valuers and requirement for registration |
|--|--|
| The Banking Regulations Act, 1949 | <p>The banks and other financial institutions maintain a panel of valuers to assess the market value of security, provided against a loan or advance. In order to standardise the process of empanelment, the Indian Banks' Association (pursuant to reference from the Reserve Bank of India) set up a Working Group of senior executives of banks to deliberate and formalise a standard procedure to be followed by the banks for empanelment of valuers¹⁴. Some of the salient features of the report are as under:</p> <ul style="list-style-type: none"> • The purpose of valuation is to ascertain the value of property for the purpose of (a) ascertaining the value of the property offered as security, (b) periodically ascertaining the value of the property that has been mortgaged, whether it is increasing or decreasing over the mortgage period, (c) realising the value of non-performing assets (NPA), and (d) resumption of properties in cases of default. The banks and financial institutions are required to appoint external independent valuers for undertaking valuation of properties. • The report divides the assets in four types namely: (a) Land and Building, (b) Plant and Machinery, (c) Stocks and Trade, and (d) Agriculture Land. It stipulates the educational qualification and previous work experience of the valuer based on the type of asset, in order to make him eligible to be empanelled as valuer. The valuer is required to be a member in good standing of any one of the valuer associations. • The report provides for categorisation of valuers - low value assignments are handled by relatively junior valuers and high value assignments by senior valuers. Further, registration with the Government is desirable but not compulsory. The report also provided for the procedure and duration of empanelment. • Where a valuer's performance is not satisfactory, he can be removed from the Panel at the discretion of the Bank. The valuer is required to comply with and abide by the stipulated standards, procedures and code of conduct. The valuer shall act with independence, integrity and objectivity and is required to update his knowledge base. |
| The Estate Duty Act, 1953 (since repealed) | The Estate Duty Act, 1953 provided for the levy and collection of an estate duty. It also provided for appointment of qualified persons as valuers and fixation of scale of charges by the Central Government. |
| The Wealth Tax Act, 1957 | The valuation of assets other than cash is required to be made for imposition of wealth tax. It provides for registration of qualified persons for this purpose. It prohibits a company or body corporate from practising as a registered valuer. It provides for scales of fees to be charged and the form of valuation report to be submitted by the valuer. The registered valuers can also appear on behalf of a person before any wealth-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset. |
| The Income Tax Act, 1961 | <p>The Direct Tax Enquiry Committee (Wanchoo Committee, 1971) noted that the evasion of direct taxes is closely linked with the practice of undervaluation of properties by the taxpayers and proper valuation machinery is required in the Income-tax department (MOF, 1971).</p> <p>The services of registered valuers under the Wealth Tax Act, 1957 can be utilised by an assessee for valuation of the assets, and they can represent an assessee/person before any income-tax authority or the Appellate Tribunal in connection with any matter relating to valuation of any immovable property or any matter relating to the valuation of any asset respectively.</p> |

¹⁴ See IBA, Working Group Report on Standardisation of Procedure for Empanelment of Valuers by Banks (Revised on 17 November, 2016). See also Procedure for Empanelment of Valuers by Banks, Letter No. OPR/CIR/2043 dated 04 February, 2017, Indian Bank's Association.

Tables 5: Valuation Services Required under Various Enactments

| Enactments | Nature of services provided by valuers and requirement for registration |
|---|--|
| | Where the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under the Income Tax Act, 1961 finds that a registered valuer has furnished incorrect information in any report or certificate, the registered valuer shall be liable, by way of penalty, for a sum of ten thousand rupees for each such report or certificate. |
| The SARFAESI Act, 2002 | In case of sale of immovable assets, before effecting the sale of immovable property, the authorised officer is required to obtain valuation of the property from an approved valuer. The approved valuer is a person registered as a valuer under section 34AB of the Wealth Tax Act, 1957 and approved by the Board of Directors or Board of Trustees of the secured creditor. |
| The Limited Liability Partnership Act, 2008 | The contributions by each partner is required to be valued by inter alia an approved valuer from the panel maintained by Central Government. In case of winding-up, a partner who is not in favour of transfer of business or property can sell his interest to liquidator and the price can be determined by a registered valuer. Further, in case of winding up or voluntary winding up, a valuer is required to do valuation of the assets and valuers can be appointed by liquidator for assistance. |
| The Foreign Exchange Management Act, 1999 | The Foreign Exchange Management (Transfer of Issue of Security by a Person Resident Outside India) Regulations, 2017 provides for the valuation of capital instruments. Further, under Schedule 6 of the Regulations, the investment in a Limited Liability Partnership either through capital contribution or acquisition/transfer of profit shares, cannot be less than fair price worked out as per any valuation norm which is internationally accepted/adopted as per market practice. |
| The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 | The fair market value of the undisclosed foreign income and assets is determined for imposition of tax under the Act. The approved valuers (valuers registered under section 34AB of the Wealth-Tax Act, 1957) can appear on behalf of an assessee before any tax authority or the Appellate Tribunal, in connection with any matter relating to the valuation of any asset. |
| The Securities and Exchange Board of India Act, 1992 | The regulations require valuation for the real estate investment trusts assets; infrastructure investment trusts assets; security receipts; fair value of the delisted equity shares; real estate assets held by a real estate mutual fund schemes, intellectual property rights or know-how conversion price, valuation of investments of certain categories of alternative investment funds; valuation of the properties of defaulters and submission of a certified valuation report by a RV under the Companies Act, 2013, a Chartered Accountant, a Merchant Banker, or a real estate valuer. |
| The Companies Act, 2013 | Under the Companies Act, 2013, valuation is required for the purpose of, inter alia, issue of further shares and securities by an unlisted company; non-cash transactions between a director and the company; compromise or make arrangements with creditors and members; purchase of minority shareholdings; submission of report by the Company Liquidator in case of winding-up order by NCLT; exclusions from deposits; market value of assets where company accepts deposits which are secured by charge on its assets; issue of sweat equity shares; return of allotment where securities allotted for consideration other than cash; valuation of shares purchased by its employees or by trustees for the benefits of its employees in a non-listed company. |

Tables 5: Valuation Services Required under Various Enactments

| Enactments | Nature of services provided by valuers and requirement for registration |
|---|--|
| The Insolvency and Bankruptcy Code, 2016, | In case of voluntary liquidation of corporate persons, the declaration from the majority of the directors of the company regarding its solvency is required to be accompanied by a report of the valuation of the assets of the company, if any, prepared by the RV. Further, while considering an application for avoiding a transaction as undervalue, the Adjudicating Authority may require an independent expert to assess the evidence relating to the value of the transaction. Additionally, Regulations framed under the Insolvency and Bankruptcy Code, 2016 also provide for RVs for the various services such as determination of fair value and liquidation value at the stage of Corporate Insolvency Resolution Process of a corporate debtor and during Fast Track Insolvency Resolution Process for Corporate Persons and valuation of assets intended to be sold during the liquidation process. |

Implementation of Valuation Rules

2.93 The IBBI performs the functions of the Authority under the Valuation Rules. It publishes the syllabus, format and frequency of the valuation examination for all three Asset Classes, namely, (a) Land and Building, (b) Plant and Machinery, and (c) Securities or Financial Assets, in consultation with the stakeholders. It conducts computer-based online valuation examinations every day from several locations across the country for all three Asset Classes. In order to facilitate the candidates to prepare for the Examinations, the study material prepared by CVSRTA and IOV have been made available at www.ibbi.gov.in for free download by the users.

2.94 The IBBI recognises RVOs and registers valuers and exercises oversight over them. The RVOs enrol eligible individuals and provide 50 hours educational course to them. The IBBI has specified the curriculum of educational course for the three Asset Classes. A member of an RVO is required to complete the course of the relevant asset class and then to pass the Valuation Examination of respective asset class, conducted by IBBI, to be eligible for registration.

Table 6: Registered Valuers as on 29th February, 2020**(Number)**

| Registered Valuer Organisation | Asset Class | | | Total |
|---|----------------------------|------------------------------|---------------------------------------|--------------|
| | Land & Building | Plant & Machinery | Securities or Financial Assets | |
| Institution of Estate Managers and Appraisers | 44 | 7 | 5 | 56 |
| IOV Registered Valuers Foundation | 991 | 159 | 112 | 1262 |
| ICSI Registered Valuers Organisation | 0 | 0 | 104 | 104 |
| The Indian Institution of Valuers | 93 | 28 | 29 | 150 |
| ICMAI Registered Valuers Organisation | 13 | 12 | 176 | 201 |
| ICAI Registered Valuers Organisation | NA | NA | 546 | 546 |
| PVAI Valuation Professional Organisation | 238 | 42 | 29 | 309 |
| CVSRTA Registered Valuers Association | 168 | 51 | NA | 219 |
| Association of Certified Valuers and Analysts | NA | NA | 1 | 1 |
| CEV Integral Appraisers Foundation | 29 | 12 | 0 | 41 |
| Divya Jyoti Foundation | 2 | 3 | 16 | 21 |
| Total | 1578 | 314 | 1018 | 2910 |

Table 6 presents the details of RVs, RVO-wise, as on 29th February, 2020. In addition, there are 17 entities (Partnership Entity / Company) registered as RVs as on that date. Further details of RVs are available in Tables 7 and 8.

| Particulars | Asset Class | Land & Building | Plant & Machinery | Securities or Financial Assets | Total |
|--------------|-------------|-----------------|-------------------|--------------------------------|-------------|
| 1 | Female | 93 | 3 | 158 | 254 |
| 2 | Male | 1485 | 311 | 860 | 2656 |
| Total | | 1578 | 314 | 1018 | 2910 |
| Average Age | | 50 years | 53 years | 43 years | 48 years |

| Particulars | Asset Class | Land & Building | Plant & Machinery | Securities or Financial Assets | Total |
|------------------|-------------------------|-----------------|-------------------|--------------------------------|-------------|
| 1 | New Delhi | 58 | 27 | 131 | 216 |
| 2 | Rest of Northern Region | 204 | 38 | 160 | 402 |
| 3 | Mumbai | 95 | 43 | 169 | 307 |
| 4 | Rest of Western Region | 444 | 82 | 151 | 677 |
| 5 | Chennai | 100 | 28 | 100 | 228 |
| 6 | Rest of Southern Region | 637 | 80 | 231 | 948 |
| 7 | Kolkata | 16 | 13 | 65 | 94 |
| 8 | Rest of Eastern Region | 24 | 3 | 11 | 38 |
| Total | | 1578 | 314 | 1018 | 2910 |
| Metro | | 269 | 111 | 465 | 845 |
| Non-Metro | | 1309 | 203 | 553 | 2065 |

Learnings and Nuances

Churning

2.95 Market usually discovers price, which reflects the worth of an asset (or liability). It discovers different prices for the same asset in different contexts and the parties exchange the asset at the price. Thus, price is not absolute; it is context specific. Often, it is neither feasible nor desirable to pass an asset through the market to discover its worth. At times, there may not even exist a competitive market for an asset. In such cases, worth of an asset, that is value, is estimated in a simulated context. If value of an asset is what the price ought to be in the given context, the valuation is perfect. A valuer typically competes with market and endeavours to estimate a value which is more authentic than price of an asset. While market may occasionally discover a dirty price failing to reflect the accurate worth of an asset, a valuer must always estimate an authentic value. If price converges with value in the simulated context, the price discovery is perfect (Sahoo, 2018). It is the endeavour of the CoE to have an institutional framework that would produce valuers who would estimate values which the market discovered price must converge with.

2.96 The parties need a value for exchange goods or services for which either market does not exist, or market discovers a spurious price for a variety of reasons, including manipulation. They

may also need value of an asset for a variety of purposes. Annexure R presents a list of purposes of valuation, prepared by CVSRTA RVA. Valuation is a key financial information relied upon by investors and used to support decisions in financial markets, having direct impact on the public interest (IVSC, 2014). The services rendered by valuers also helps in avoiding ‘market collapse’ due to imperfect information (Bartke & Reimund, 2015). Some of the NPAs in the banking system are attributed to decisions based on such valuations. The CoC may unjustly liquidate a company if it uses an inflated reference value for comparison with the value offered by resolution plans. Such decisions arising from use of inappropriate values has the potential to distort market and misallocate resources in a market economy. High-quality valuation professionals are necessary for efficient financial markets and public finance and administration. Sustainable economic growth can only be built on valuations that are trusted by investors, creditors, tax authorities, governments, regulators and others (MCA, 2019a).

2.97 Value, as a concept, is ambiguous. An asset has different values depending on the purpose or context. Thus an asset has several values: market value (amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing); fair value (amount that will fairly compensate an owner who was involuntarily deprived of the economic enjoyment of a property where there is neither a willing buyer nor a willing seller); liquidation or forced sale value (amount which may reasonably be expected to be obtained from the sale of a property within a time-frame too short to obtain a value under open market conditions); going concern value (amount ascribed to an established business, not to its constituent parts); investment value (value of a property to a particular investor, or a class of investors for specified investment objectives) (Banerjee, 2015).

2.98 Mathematical certainty or certainty of one output based on specific set of inputs is neither demanded, nor possible in valuation discipline. Being context specific, the value keeps on fluctuating. It is for the valuers to express the value attributed by them to the asset, which is estimated on the basis of the facts drawn from the evidence before them¹⁵. Valuation is an art more than a science and is an interdisciplinary study drawing upon law, economics, finance, accounting, and investment. It is a procedure, essentially, a bringing together of the economic concept of value and the legal concept of property¹⁶. Damodaran (2015)¹⁷ believes that valuation discipline is neither science nor an art; it is a craft, i.e., a skill that one learns by doing. The more one does it, the better one gets at it.

2.99 Despite divergent views on the nature of valuation discipline, it is an independent discipline requiring specialised knowledge and professional expertise. Generally, the valuation process has four parts. First, *pre-valuation process negotiations* where the valuer and the client agree on the terms of engagement. Second, *investigation* which is the formal or systematic examination or research undertaken on the property. Third, *data handling and interpretation* which requires processing and calculation of data, qualification and verification of data, and analysis of data. Fourth, *post-valuation process reporting*, which provides for a single value, presented in the valuation report. The valuation report *provides clients with an independent, comparable evidence and a written confirmation of the value of a property that is neither ambiguous nor misleading*. Further, the determination of the value and delivery of the valuation report is made by the valuer on the basis of a framework such as RICS Red Book or the IVS. These standards *inter alia* provide

15 Viscount Simon in *Gold Coast Selection Trust Ltd. v. Humphrey* (Inspector of Taxes) reported in [1948] 30 TC 209; [1949] 17 ITR (Suppl.) 19, 26 (HL) and quoted with approval by the Supreme Court of India in the case of *A.R. Krishnamurthy v. CTT* reported in [1989] 176 ITR 417; See also *Reliance Industries Ltd., In re*, 2009 SCC OnLine Bom 2183; (2009) 151 Comp Cas 124

16 Kelvin King, *Brand value what is your company really worth?* Available at: <http://www.acid.eu.com/news/06/2010/brand-value-what-is-your-company-really-worth/>

17 Aswath Damodaran, *Valuation: Art, Science, Craft or Magic–2015*. Available at: <http://people.stern.nyu.edu/adamodar/pdfiles/country/valallday Europe2016.pdf>

for the *bases of value* which are the *fundamental measurement assumptions on which values are based*, and the *approaches and methods* which are used to attain different valuation bases (RICS, 2017).

2.100 The above overview suggests that the valuation process is a complex process and requires multiple skills. In order to determine value, a valuer is required to make several judgments and must possess a mix of competencies (RICS, 2017). Valuation is considered as an independent discipline and is not understood as a subset or part of another discipline. The Gujarat High Court (2012) concluded that the services provided by a qualified engineer in the area of valuation is not in the nature of services in an engineering discipline, implying that valuation discipline is independent of the engineering discipline. It held: *“Qualified engineers who act as valuers will to the extent of valuation services rendered by them, not fall within the ambit of “consulting engineer” as defined in the Service tax Act.”* It observed: *“On a bare reading of the course prescribed for Master of Valuation in Real Estate, it is evident that the subjects pertaining to civil engineering are limited. In the first semester, except for elementary surveying which there does not appear to be any other subject related to the field of engineering. As regards the second and third semester, there are some subjects related to engineering, however, as rightly contended by the learned advocate for the petitioner, out of total credits of 34 in the second semester and 40 in third semester, the credits related to engineering are only eight in each of the semesters. Similarly, in the case of programme of Studies leading to the Master of Valuation in Plant and Machinery, the syllabus shows that the subjects related to mechanical or electrical engineering are limited to the extent of 8 credits out of 32 in the first semester; 10 credits out of 36 in the second semester and 7 credits out of 36 in the third semester. Thus, the syllabus makes it amply clear that the course in Master of Valuation does not predominantly pertain to any discipline of engineering.”*

2.101 Professions are not created overnight and its installation in a market involves four steps. First, articulation of a body of specialised knowledge that is required to address a pressing problem of the society. Second, the profession gains control over the entry requirements through education and accreditation processes. Third, the profession provides for ethical standards and routine to govern the behaviour of the practitioner. Fourth, the authority to self-regulate is gained from the state by the professional organisations. Further, these professional associations/ organisations act as systems to support difficult transactions involving abstract, procedure and embodies knowledge which is required to sustain growth and solve problems afflicting communities (Boyce, 2007).

2.102 Goode (1960) identifies the historically constant factors in the emergence of a new profession. As an occupation becomes more professionalised, it acquires several traits: (1) The profession determines its own standards of education and training. (2) The student professional goes through a more far-reaching adult socialisation experience than the learner in other occupations. (3) Professional practice is often legally recognised by some form of licensure. (4) Licensing and admission boards are manned by members of the profession. (5) Most legislation concerned with the profession is shaped by that profession. (6) The occupation gains in income, power, and prestige ranking, and can demand higher calibre students. (7) The practitioner is relatively free of lay evaluation and control. (8) The norms of practice enforced by the profession are more stringent than legal controls. (9) Members are more strongly identified and affiliated with the profession than are members of other occupations with theirs. (10) The profession is more likely to be a terminal occupation. Members do not care to leave it, and a higher proportion assert that if they had it to do over, they would again choose this type of work.

2.103 Most jurisdictions require registration of individuals with the required qualification, usually a basic degree in the relevant discipline, and certain years of experience. Some also require pre-registration training and a screening examination, and post-registration continuing professional education. Valuers have voluntarily organised themselves into associations which promote their calling and prescribe valuation standards. Such associations and market offer a variety of courses and programmes to develop the capacity of would-be valuers as well as practising valuers. They also regulate conduct of their valuer members. There are thus 'n' associations in any jurisdiction and each such association has a unique model of developing and regulating the profession of valuers.

2.104 Valuation profession has a long history in India, probably of more than a century. Different statutes - banking, securities, tax, company, insolvency - require valuation for a variety of purposes. The users generally focussed on demand side - what needs to be valued, who can render valuation services and the manner of such valuation - and even punished the valuers who failed to value in the manner required. Though they often demanded quality, they did not focus on supply of side of valuation services. The self-regulating organisations generally tried to build expertise to meet the needs of users. Since anyone could provide valuation services, market does not offer many courses on valuation. Individuals of different background, as an extension of their existing vocation, or after retirement from service, provide valuation services. In the absence demand for qualified valuers and the respectability of the profession, there is not enough demand even for the limited seats available in valuation courses in the country. There is a sort of vicious circle having attained equilibrium at a low level of the profession and the link between development and regulation is broken. It is difficult to have a precise idea about the number of valuation professionals and size of the market for valuation services. Considering the number of valuers enrolled with IOV in 2018 and the variety of valuations required under different legislations, the market appears to be very large. Considering the number of valuers per lakh of population in advanced jurisdictions and the size of the Indian economy along with its growth rate, the potential for valuation profession seems promising if it has regulatory comfort.

2.105 The valuer has an important responsibility. He must estimate value which is more authentic than price. He must possess the required capability and integrity for the job. This calls for an institutional framework comprising three key elements, namely, standards for valuation, development of profession, and regulation of profession of valuers. These three elements feed on one another in a virtuous circle. Building a cadre of competent and accountable valuers, therefore, requires work on all three fronts simultaneously (Sahoo, 2018). This also calls for an institutional arrangement to cross-pollinate these three elements. A comprehensive legal framework for the valuation profession is necessary to regulate the work of valuers. It is time to think of a separate law to regulate the valuation profession in India. The law should cover the education, training, licensing and disciplining of valuers (MCA, 2019a). From the above exposition, the CoE learnt as presented hereunder.

Learning

2.106 Valuation Profession

(a) India is a large and growing, market economy. She needs a variety of institutions, including valuation profession, to service sustainable growth. There is a need for high quality valuation professionals for efficient financial markets and allocation of resources in the economy.

(b) There is no precise estimate of the number of valuers serving the economy. Nor is there any reliable estimate of the size of the market for valuation services. The number of valuers in

relation to the size of population or size of economy appears to be much less in India, as compared to the same in advanced jurisdictions.

(c) The valuation profession is at very low level of equilibrium. The users have standalone legal regimes that recognises valuers and specifies manner of valuation to meet their specific valuation needs. The valuation organisations have generally tried to build the capacity of their members through short term courses with minimum regulation.

(d) The educational courses on valuation are not many. Most of the persons rendering valuation services do not have tailor-made professional qualification in valuation. Nor are they subject to a modern regulatory dispensation. For many of them, it is a part-time or post-retirement vocation, as an extension of their primary vocation / profession.

(e) A relatively higher percentage of valuers started the profession late in life. Consequently, the valuation profession does not enjoy much respectability. The Valuation Rules have made a difference to the profession and received a very encouraging response.

(f) There is an urgent need for a comprehensive statutory institutional framework for regulation and development of valuation profession. The framework should engender world class valuers for all asset classes and cater to the need for all kinds of valuation services required under any law or by the market on its own.

(g) The institutional framework must protect the interest of the society and serve public interest rather than the interests of the profession. It must be statutory.

(h) The institutional framework usually comprises three elements, namely, standard for valuation, development of profession and regulation of the profession which feed one another in a virtuous circle. An agency whether created by the regulated or the State brings cohesion among the three elements.

2.107 Development of Profession

(a) Professions take time for development. Development and regulation are two sides of the same coin and they feed each other in a virtuous circle.

(b) Valuation is an interdisciplinary study that draws upon engineering, law, economics, statistics, finance, and accounting. It needs to be developed as an independent discipline.

(c) Valuation is an independent profession and not an extension of another profession / vocation. It needs to be developed as such. In course of time, valuation professionals should be full-time valuation practitioners just like doctors, lawyers, CAs, CMAs and CSs.

(d) A regulator of a profession typically has twin responsibility of developing and regulating a profession.

(e) The regulator specifies the curriculum for educational courses, sets the standards of education, and recognises institutes for delivery of educational courses. There is an entry examination for admission to educational courses. The courses have practice orientation through longish internship.

(f) Recognised institutes conduct professional courses. Usually, there is a central examination for admission to such courses. However, any person may provide education and training on subjects covered by the professional courses.

(g) The professionals undertake continuing professional education to keep themselves relevant to the market needs.

2.108 Regulation of Profession

- (a) A profession is regulated to address market failures such as information asymmetry, externality and market powers and to protect users of professional services.
- (b) After undergoing the required educational courses, an individual qualifies an examination conducted by the regulator to demonstrate his competence for registration as a professional.
- (c) An individual need to be a fit and proper person for registration as a professional. Professionals are admitted as an associate member to start with. They graduate to the level of fellow member on demonstration of professional achievements
- (d) The right to practise a profession is a right to protect society and not a privilege for the benefit of holder.
- (e) The norms of practice enforced by the profession are more stringent than legal controls. The authorities act suo moto as well as based on a complaint / information to discipline the professionals.
- (f) There are elaborate arrangements to discipline an erring professional and to protect an innocent professional through provision of appeal and principles of natural justice.
- (g) The institutional framework aggressively builds and protects reputation of the profession from day one.

2.109 Market for Valuation Services

- (a) Professional service is an exclusive domain of qualified and registered professionals.
- (b) Only a regulated professional can provide professional services. A professional having CoP is allowed to practise as a professional.
- (c) An entity (firm of professionals and company) is allowed to provide valuation services subject to certain conditions.
- (d) A professional is required to maintain independence and avoid conflict of interest.
- (e) The regulator lays down standards for professional services and conduct.
- (f) A professional is held accountable for deficiency in services.

2.110 Regulatory Architecture

- (a) The institutional framework for a profession usually provides for a two-tier or two-layer structure comprising a principal regulator and one or more competing frontline regulators. It is difficult to regulate a profession by a central authority, given the number of professionals and spread of the country.
- (b) There is a shift from traditional self-regulation to statutory self-regulation to regulated self-regulation to state regulation to co-regulation of professions. There is also a shift from governance by elected representatives to official appointees, to address the potential regulatory capture and to have people of right competence and reputation, who may shy away from elections.
- (c) The governing council of the newly established regulators comprises government appointees, ex-officio members and part-time members representing society. The regulator works under the supervision, guidance and control of the governing council. The law enables the regulator to remain grounded through access to professional expertise and intelligence.

(d) The statute provides the governance norms for the principal regulator, which, in turn, specifies the governance norms for the frontline regulators. It provides the manner of exercise of quasi-legislative and quasi-judicial powers. There is a broad separation of powers within the regulator. An authority within the principal regulator and not having official bias, deals with quasi-judicial matters in adherence to principles of natural justice. There is a provision for appeal against the orders of disciplinary authority.

(e) There is a trend towards slim legislations providing the essential legislative matters, leaving the details to be provided through subordinate legislation in sync with the dynamic environment and emerging needs. The SCF (2020) believes that over-legislation through a Bill must be avoided and the process of delegated legislation through formulation of rules be followed.

2.111 Transition

(a) A new institutional framework provides for management of transition. The existing professionals are provided an opportunity to come on board through a process after meeting certain requirements.

(b) The institutional framework should be the least disruptive and grounded on realities. A reform succeeds if it is least disruptive and builds on the existing institutional framework.

(c) The Valuation Rules has created several RVOs for development and regulation of valuation profession in the country and they have considerable expertise and experience. There are about 3000 valuers, who are registered with IBBI, after meeting the eligibility requirements and completing training and examination. They need to be taken in the fold.

2.112 Keeping in view the feedback of stakeholders, and learnings from the administration of institutional framework in respect of valuation profession and other professions, the CoE proposes to make recommendations on five sets of issues, namely, Development of Valuation Profession, Regulation of Valuation Profession, Regulation of Market for Valuation Services, Regulatory Architecture, and Transitional Arrangement and Implementation.

Nuances

2.113 Some elements of regulation are fluid and contextual. The formulation of regulations around them requires deep understanding of the context and their application needs to be nuanced. Primary legislations generally avoid these, while enabling the regulator to address them as and when required. Members of the CoE, Invitee Experts and one RVO did exploratory work on a few such elements as under:

(a) Mr. Nitin Kapoor prepared a note on Summary of Disciplinary Process of RICS and Outcomes (Annexure L);

(b) Mr. Varun Gupta prepared a note on Global Best Practices in respect of Registration of Companies as Valuers (Annexure M);

(c) Mr. Nitin Kapoor and Mr. Kirit P. Budhbhatti prepared a Code of Conduct and Ethics (Based International Practices) (Annexure N);

(d) Mr. Kirit P. Budhbhatti and Mr. Vinay Goel prepared a note on Role of RVOs (Annexure O);

(e) Mr. Varun Gupta prepared an illustrative List of Conflict of Interests (Annexure P);

(f) Mr. Somasekhar Sundaresan prepared a note on Regulatory Governance (Annexure Q);

(g) CVSRТА Registered Valuers Association prepared a note on Purposes of Valuation (Annexure R);

(g) Mr. Kirit P. Budhbhatti prepared a note on Outsourcing (Annexure S);

(h) Mr. Varun Gupta collected a sample of disclaimers (Annexure T); and

(I) CA. Prafulla P. Chhajed prepared an indicative list of contraventions and maximum penalties for valuers on the basis of contraventions for Chartered Accountants (Annexure U).



Profession is a vocation or occupation requiring special, usually advanced, education, knowledge, and skill;

Black's Law Dictionary (6th Edition).

3.1 Development and regulation are two sides of the same coin, one does not exist independent of the other. Unless a profession develops, it cannot be regulated. In the absence of regulation, a profession does not develop. Regulation is necessary to develop a profession and once the profession develops, it needs to be regulated. Thus, development and regulation feed on each other in a virtuous circle for an orderly growth of a profession. That probably explains why the general framework for governance of professions has been establishment of an authority with twin responsibilities of developing and regulating a profession. For example, the Company Secretaries Act, 1980, in the long title, states that it is an Act to provide for regulation and development of the profession of CSs and for this purpose, establishes the ICSI.

3.2 A regulator of a profession, such as ICSI, has exclusive authority in the space of regulation. Even though it is primarily responsible for development of the profession, it is not the sole agency in the space of development. Take the example of education, which is a major component of development of a profession. A student of company secretary course is required to study securities markets. The ICSI is not the only agency to impart education on the subject. It may not even be the best agency for the subject. Many agencies, domestic and international, may be equally, or even more, capable. In recognition of this, the Company Secretaries Act, 1980 allows any University to impart education on the subjects covered by the academic courses of the ICSI. Thus, development is not the exclusive domain of the ICSI. It is open for everyone and ICSI could well be a competitor in the space of development. Government, companies, academic institutions, researchers, and even professionals themselves have a role in the development of a profession. This realisation is important while designing a strategy for development of a profession.

3.3 There is some disagreement about import of the word 'development' in the context of regulation. Some believe that a regulator should actively develop the profession by inviting / incentivising the stakeholders to join the profession or to avail professional services, or secure mandate from authorities to use professionals. Some others believe that the regulator should improve the ecosystem such that the stakeholders feel comfortable to join the profession or avail professional services. In case of former, if it invites students to pursue a professional course, it would have obligation to secure work for them as they pass out. This may distort choice of people and contribute to market failure. Since development could mean incentivising stakeholders to change their behaviour, a view is emerging that both regulation and development should not be housed together (MoF, 2013). The CoE is of the view that the institutional framework may enable the principal regulator and others concerned to engage in advocacy and not lobby for the profession. There is a sea of difference between advocacy and lobbying. In advocacy, the regulator informs the market and the stakeholders about the skills of its professionals, the work they perform and the mechanism of their regulation and development. In case of lobbying, the regulator approaches the stakeholders to canvass work for the professionals. The CoE believes that while the former helps in the growth and development of the profession as well as builds confidence of stakeholders, the latter approach creates negative perception in the market about

the profession. It is often self-defeating as it creates doubts about the efficiency and worth of the profession to the effect that it is unable to attract work from the market.

3.4 According to Black's Law Dictionary, profession is a vocation or occupation requiring special, usually advanced, education, knowledge, and skill. To establish his competence, a professional valuer must demonstrate: (a) professional knowledge, (b) professional skills, and (c) professional values, ethics, and behaviour (IVSC, 2012). Such competencies can be gained by an individual at two stages - Initial Professional Development (IPD) and Continuing Professional Development (CPD). At the IPD stage, before recognition, the professional valuer should receive: (a) formal education and successful examination to the level of a university degree, or the equivalent (practical experience accompanied by formal or informal study); (b) education on valuation that includes subjects such as economic theory and principles, financial markets, valuation concepts and principles, theory and application of valuation methods used in the market in which they intend to operate, legal framework of the relevant market, and knowledge of technical standards and guidance of the relevant market; (c) training in the fundamental principles of ethical conduct; and (d) experience in applying the aforesaid in a supervised work environment. The CPD can be accomplished by a combination of attendance at recognised or approved training events and self-study.

3.5 The development should aim to educate and upskill valuers to become 21st century professionals. The advancement of technology is inevitable, and it is believed that the development of big data, blockchain, artificial intelligence and automated valuation models will impact the industry and change the role of the valuer. As per RICS, technology will improve and speed up the valuation process, but the human element will remain in two distinct roles: (a) gathering the data and performing an initial assessment to ensure that the data that goes into the valuation process is of the required quality; (b) senior/experienced professionals who assesses the information that comes out of the automated process and can present this clearly to the clients (RICS, 2017). The valuers are now required to offer more specialised services and undertake more specialised work for the clients. They are required to develop a broader, adaptable and flexible skill set as compared to the improvement of one narrow skill set. In today's world, professionals are required to be outcome focussed, with good oral and digital communication skills. The problems faced by the professionals are of greater complexity and, therefore, they are required to possess advanced problem-solving skills. Such skills should be embedded within the education programmes and need to be developed to much more advanced levels. The solutions for these complex problems are likely to involve inter-disciplinary working and transdisciplinary working. Alongside the inter-disciplinary and trans-disciplinary approaches, it will be necessary to develop skills associated with a collaborative approach (Wilkson & Others, 2017).

3.6 Knowledge and skills are two key elements that are relevant to the future of the valuation profession. A study conducted to analyse the new knowledge, emerging trends and practises concerning the future of the Australian valuation profession suggests that the following types of knowledge and skills will be required for the valuation profession in future, and the same are even relevant for the valuation profession in India: (a) valuers/graduates need greater knowledge of the fundamentals required in a valuation and to better understand the methodology principles; (b) develop more inter-disciplinary skills; (c) to be able to value large property portfolios and acquire a good understanding of the management of large portfolios; (d) knowledge and skills for valuers in understanding "business strategy" and some soft skills which are lacking; (e) develop more market forecasting skills and a better awareness of property cycles

and forecasting trends; (f) develop advance data analysis techniques; (g) develop more skills in the use of advance technology and to understand the basic input methodology mechanisms behind each programme; (h) to be able to work with mobile software; (i) specialisation in more than one area of valuation as over-specialisation in only one are causes potential damage to valuers' capacity and employment opportunities; (j) to be able to collect data in a much wider range of sources for valuation; (k) need to develop new skills in aged care, pubs and large complex residential development projects; (l) standard terminology and valuation reports (Wilkinson & Others, 2017, Wilkinson & Others, 2018).

3.7 The strategy of development should ensure special, advanced education, knowledge and skill among the professionals. Such a strategy usually entails a complementary set of five measures: (a) Education to enable individuals to acquire knowledge and skills to perform professional services; (b) Continuing Professional Education (CPE) to enable the professionals to learn new knowledge and skills to remain relevant for the times; (c) Awareness to enable the stakeholders to understand about the uses of professional services and the manner of using them; (d) Research and publication to promote the profession as discipline of knowledge; and (e) Standards to ensure the quality of each of the four preceding measures.

Education

3.8 In the preceding chapter, the CoE noted that valuation is an interdisciplinary study that draws upon engineering, law, economics, statistics, finance, and accounting. It is an independent discipline and is not an extension of another profession or discipline. It also noted that there are few post-graduation courses available in the country. High quality study material for valuation examinations and many textbooks are also available in the country. It further noted that regulations can ensure a minimum qualification for the individuals entering the profession. However, this will not improve professional standards if it is not combined with changes in the valuation education or curriculum at the higher levels. If the level of education or curriculum remains at the substandard level, mere prescription of minimum qualifications cannot lead to significant gains in the professional standards (Mooya, 2015). Keeping these in view, the CoE wishes to recommend an institutional framework that imparts special and advanced knowledge, and skills in the inter-disciplinary discipline of valuation to the would-be valuers.

Asset Classes

3.9 The market needs valuation of each asset. Expertise required for valuation of each asset varies. It may not be possible to have a valuer for each asset, in terms of a body of knowledge relevant for the asset, feasibility and viability of educational courses in respect of the asset, the size of the market for valuation services related to the asset and regulation of the valuers of the asset. It is not also possible to have a valuer for all assets, which are heterogenous and require different skill sets for their valuation. The solution is having a valuer for a group of assets. For the purpose of learning and professional practice, the practice has been that the assets displaying similar characteristics are grouped into classes. Such classification is not very rigid and the assets covered in a class may change with time. The CoE is of the view that while the framework may enable valuation of all kinds of assets, to start with, the courses as well as registration of valuers should be available for three asset classes, namely, Land & Building (L&B), Plant & Machinery (P&M), and Financial Assets. Within each class, there could be specialisation. For example, a student of asset class L&B may have a specialisation in Forestry & Plantation. There would always be some assets which may not fit into any class, but do not justify a separate class. That asset

needs to be included in the closest asset class. The framework should enable the Institute to add / subtract an asset class to valuation profession as well as increase / decrease the scope of an asset class, with changing needs.

Educational Courses

3.10 The framework should define broad entry norms for the profession in terms of educational qualifications. There are individuals who are practising as valuers for years, but do not have relevant qualification. The norms of entry to the profession should not leave them in the cold. Nor should the ecosystem miss their expertise. It is advisable to let them undergo a short-term capsule course of four hundred hours to update their learning about the valuation of the asset class and then join the profession. Since the profession is being opened up now, those who have completed first degree in relevant discipline or are members of PIs and wish to pursue a career in valuation, should have an opportunity to join the profession. They should be able to undergo a two-year programme to learn the valuation of the asset class and then join the profession. Some individuals may make a career choice after their first degree. Those who choose valuation at this stage should undergo the two-year course to join the profession. This is something like a graduate joining CA programme mid-stream or joining a three-year LL.B. Course.

3.11 An enduring and enviable profession requires induction of young talent. The valuation profession may not attract many young people as higher profile careers as many accredited universities do not offer valuation related degree programmes or they are a relatively new phenomenon (Coyle, 2015). The lack of interest in the field of valuation among graduates may be related to the lack of public profile associated with the valuation profession. Even the universities that offer valuation education are under increased pressure as small, niche programs such as valuation are struggling for their survival since universities have been looking carefully at their own cost management (Baxter, 2007). With the ageing membership, it is vital to attract new talented individuals into the profession (Wilkson & Others, 2017). The CoE, therefore, proposes a framework that enables and attracts such talent to join the profession. Students should consider valuation profession as an option, while making a career choice after 10+2 level. This is akin to a 10+2 pass out joining a 5-year LL.B. course.

3.12 The CoE noted that in addition to numerous short-term courses, many jurisdictions offer both undergraduate and post graduate courses in valuation. In recognition of multi-disciplinary character of valuation service, RICS recognises 684 courses (286 undergraduate courses and 396 post graduate courses) for the purpose of according membership. These courses include disciplines such as Building Control, Building Surveying, Commercial Property, Commercial real estate, Construction, Corporate real estate, Dispute resolution, Environment surveying, Facilities Management, Geomatics, Infrastructure, Management Consultancy, Mineral & waste management, Personal property/Arts & Antiques, Planning & Development, Project Management, Property Finance & Investment, Quantity Surveying & Construction, Residential & Rural valuation, General valuation and Valuation of Businesses & intangible. In valuation discipline alone, about 200 undergraduate and post graduate courses are available. A list of undergraduate and post graduate courses in valuation across select geographies is at Annexure V.

3.13 The CoE, therefore, recommends that an individual may join the profession on completing any of the courses:

(a) national valuation programme, a four-year integrated full-time professional course, which includes an internship of one year, if he has passed class 10+2;

(b) graduate valuation programme, a two-year full-time professional course on valuation, which includes an internship of one year, if he has a degree or equivalent qualification in any of the identified disciplines relevant for an asset class; or

(c) limited valuation programme, a four-hundred-hour professional course, if he does not have relevant qualification, but has been rendering valuation services as a valuer for at least five years. The eligibility through this programme shall be available only for two years.

3.14 In order to avoid any ambiguity and variance of education amongst the professionals, the Institute should design the courses and specify syllabus, standards of education and manner of delivery. These courses should imbibe a sense of professionalism and inculcate appropriate behaviour, in addition to providing theoretical and practical knowledge and skills.

Internship

3.15 The CoE noted the importance of experiential learning in the field of valuation. Most of the professional courses have a longish training / internship. An internship integrates the knowledge and theory acquired by a student in classroom studies, with practical application and skill development in professional setting. This enables an individual to gain valuable applied experience which makes him/her capable to meet the minimum quality standards to render valuation services¹. The CoE, therefore, recommends that the long-term courses (national and graduate valuation programmes) should have an internship of one year. In the initial years, it may be difficult to arrange internship for all students, as there may not be enough valuers with capacity to train interns. Therefore, the internship of one year may include a six-month component of project work in initial years. Since the course itself has an in-built practical experience, no further experience should be required for registration as a valuer.

Course Delivery

3.16 The CoE noted that delivery of educational course is an important constituent of development of profession. It considered two broad models of education. One is adopted by the NMC and BCI, where the principal regulator accredits institutions and universities for delivery of educational courses, which qualifies an individual to enrol as a Doctor or an Advocate. The NMC / BCI specify standards of education including course content and manner of delivery. The second is adopted by the three PIs (ICAI/ICSI/ICoAI), who themselves conduct the educational courses (provide study material and optional oral coaching at regional and local centres), which qualifies an individual to enrol as a CA/CS/CMA. As stated earlier, the statute allows any university and even anyone affiliated to the Institute to impart education on the subjects covered by the educational courses. Further, coaching centres have mushroomed all over the country to prepare students to take these examinations. Though these models are apparently different, several agencies, whether accredited or not, all over the country deliver education and prepare students for examinations. Most such agencies in case of CA/CS/CMA course are unregulated tuition centres. Yet students flock to them, probably because they do not have access to coaching of the Institute. Both the models recognise the role of external agencies and use them for delivery of education. Given that the student population of valuation course is large, they are spread all over the country, valuation is a multi-disciplinary study which entails quite a bit of class room and practical learning, the healthy competition among education providers improves the quality of pass outs, and since the capacity of the regulator to deliver courses is limited, it is advisable that the course is delivered by regulated entities as per strict quality control norms. The CoE therefore recommends broadly the first model where the NIV recognises universities / institutes / VPOs as

¹ A definition and criteria to assess opportunity and determine the implications for compensation. Position Statement: U.S. Internships, National Association of Colleges and Employers.

valuer institutes on being satisfied of their credentials, lets them deliver courses strictly as per the prescribed norms and compete among themselves for excellence, and monitors and reviews their performance.

3.17 These courses are normal academic courses. These are professional courses enabled under the Statute of the profession. They should not require any approval of any agency other than the Institute.

3.18 It is necessary that the development has to be orderly. This requires, in a very limited sense, regulation of development. The Institute should specify the curriculum and mode of delivery of education and ensure that valuer institutes deliver courses strictly as per norms.

Valuer Institutes

3.19 The course is as good as it is delivered. The same course, say MBA, is delivered by many Institutes. The pass out from one Institute is sought after by the market while a pass out from another may have difficulty in getting a job. It is, therefore, necessary that the courses are delivered through such organisations, who have track record of delivering similar courses or otherwise have resources matching the requirements of the course. Only institutions registered by the regulator and no one else shall deliver education courses. The NIV should register such organisations as valuer institutes who have the specified experience and resources in terms of faculty, research, training, library, etc. and where promoters, directors, shareholders and persons in control of the organisation are fit and proper persons. An undesirable and incapable organisation should not be registered as valuer institute to impart knowledge and skills required to practice the profession of valuation. The students would fail to clear the exit examination and those who somehow clear the examination, may not be able to render the best professional services.

3.20 In the long run is it evident that the valuation profession needs a strong academic back up. All higher education in the field of valuation should be backed by a combination of advances in theory and systematic empirical research. With a backup from research it will be motivated to give courses in valuation at the master level and write doctoral thesis in the subject area. (Gustafsson & Others, 2008). One of the conditions of registration as a valuer institute should be that the it shall produce certain minimum research every year so that the discipline of valuation is continuously enriched and Indian valuers have a global presence. The NIV should promote competition among valuer institutes who should compete in terms of excellence of their pass outs. It should help develop capacity for the valuer institutes to deliver courses. It should review the performance of valuer institutes, most probably, every year. Performance of students in exit examination, and quantity and quality of research publications could be elements of performance review of valuer institutes. The registration of an institute, where the percentage of students who pass the exit examination is consistently below a specified percentage, should be revoked. Wherever such revocation happens, students should be accommodated in other institutes to facilitate seamless completion of course.

Course Fee

3.21 The Committee deliberated on the necessity of regulating the fee to be charged by valuer institutes. It believed that there should be no subsidy or cross subsidy of course fee. A student should pay a fee for the value he gets. A valuer institute should deliver value for the fee. However, no deserving student should fail to undertake study for want of money. A reference was made to

the Graduate Insolvency Programme (GIP) where the course fees is about Rs.12 lakh. IIMs charge a fee of about Rs.20 lakh. These courses have financial support in terms of scholarship or student loans. The CoE, therefore, recommends that the fee charged by a valuer institute accredited institution should be market driven. However, the institute should arrange financial support in case of a deserving student and the regulator should intervene if a valuer institute charges an unreasonable amount of fee.

Examinations

3.22 Right persons should get into educational courses and right persons should get into the profession.

Entry Examination

3.23 The quality of profession depends on quality of students joining the educational courses. There should be a test for admission to ensure that only the best students, with right aptitude and competence and having potential to complete the course, join the courses. It should also screen students for ethics. The test would ensure right inputs and consequently right outputs. It may not be advisable to admit anyone and everyone, and put them through the course, most of whom may not complete the course. It is observed from the model followed by the three PIs that they had a total of 13.5 lakh students registered with them as on 31st August, 2017. Most of them may not complete the course. Those who do not complete the course, even after investing 3-5 years of their youth, are likely to be frustrated. Assuming that they would complete the course and become professionals in the next five years, it is doubtful if the market can absorb 3 lakh additional professionals every year, as against a cumulative number of registered professionals of 3.5 lakh.

| Members and Students of the three Professional Institutes (As on 31st August, 2017) | | | | |
|---|-------------|-------------|--------------|--------------|
| Particulars | ICAI | ICSI | ICoAI | Total |
| No. of Members | 276344 | 46674 | 32339 | 355357 |
| No. of Registered Students | 793532 | 303942 | 250000 | 1347474 |
| <i>Source: Report of the High-Level Committee on Transforming the Disciplinary Mechanism in three Professional Institutes</i> | | | | |

3.24 It would be waste of time of the student as well as of the ecosystem to allow entry of students to professional courses, without verifying their potential. Probably on realisation of this, the ICSI (2020) has commenced Company Secretary Executive Entrance Test for admission to the CS course. There is a central admission test for medical profession. There is also a central admission test for leading law institutes. This explains why a very low percentage of students complete the CS/CA/CMA courses, while a very high percentage of students complete medical or legal courses, which are not less difficult. The CoE recommends that admission to the national valuation programme should be made through a centrally administered entry examination conducted by the Institute. Admission to graduate valuation programme should also be made through an entry examination, which could be conducted centrally or by the respective valuer institute. This will ensure transparency, while providing a common yard stick to measure the potential of every applicant, irrespective of background, for the valuation profession.

Exit Examinations

3.25 On completing the courses, a student should pass an examination to demonstrate his

learning and competence for registration as a valuer. This should be conducted centrally by the Institute to maintain the quality standard for the profession, while monitoring performance of valuer institutes.

3.26 While the valuation is multi-disciplinary, many of the disciplines are common to valuation of every asset class. A valuer of any asset class should have some basic knowledge of law, economics, finance, statistics, mathematics, ethics, etc. that apply to all assets. He also needs asset specific knowledge. The knowledge contents of the professional are basically two-fold: asset specific and that of market analysis. While asset-specific knowledge is technical and would vary from one asset category to the other, the second category embrace the general tools of professional valuation – valuation concepts and theories, economic principles, market behaviour and analytical methods, legal framework and so on (Ashaolu, 2015). A person, who has completed national valuation programme in the asset class of L&B and wishes to study the national valuation programme of the asset class of P&M, need not repeat the courses which he has already studied as part of national valuation programme of the asset class L&B.

3.27 This means that the educational courses should be delivered in modular form and a student should earn the required credits to complete a course. An individual enrolled in the national valuation programme and graduate valuation programme should be required to earn three types of credits being: (a) generic subject credits which is common to every asset class, (b) specific subject credits for a particular asset class, and (c) practice credits for a particular asset class. An individual shall be considered to have completed national valuation programme in the asset class L&B, if he has acquired X subject credits common to every asset class, Y subject credits specific to L&B, and Z practice credits specific to L&B. An individual, who has completed national valuation programme in the asset class L&B shall be considered to have completed national valuation programme in the asset class P&M, if he has acquired Y subject credits specific to P&M, and Z practice credits specific to P&M. The same is true for the graduate valuation programme. The programmes, therefore, should be designed and delivered in modules.

Continuing Professional Education

3.28 A professional renders services in a dynamic market environment. Both the market and valuation discipline are changing. Much of the work which was earlier done by professionals is now being done by machines or technicians. Take the example of traders in stock market. They were sought after and highly paid professionals. They used to apply complicated mathematics and algorithms to arrive at trading strategies. Now, machines do this. What is left for professionals now is what can't be programmed and what requires application of mind, as through an ethical mind (Sahoo & Krishnan, 2014). But what requires application of mind today may be programmed and delivered by machines tomorrow. Similarly, the frontiers of knowledge are expanding. What one had learnt a decade back has become redundant today. The Companies Act, 1956, which had been the bible for last 60 years for company secretaries, gave way to the Companies Act, 2013. Simultaneously, the old environment is also disappearing. For example, dematerialisation of securities came in; with this the work relating to transfer of shares

disappeared. The new knowledge and new environment are forcing professionals to be always on the learning curve. The authorities, in their regulatory role, should require the members of the profession to continuously learn, unlearn and relearn, and in their non-exclusive developmental role, provide opportunities for such learning.

3.29 Continuing professional education (CPE) is a planned and systematic attempt to introduce,

review, or alter the competencies and thereby improve the performance of professionals. It meets post-registration professional development needs of a professional. A professional needs to top up his knowledge and continuously upgrade himself through CPE to remain relevant to present times and provide value added services. He needs to attend today's work with today's technology. An anecdote from an unknown source illustrates the objective. There was a woodcutter who had been cutting wood for years. But he never got a raise. Others who joined later to him were getting raises every year even though some of them took rest in between, and some others took off for weeks. He met his boss with resentment. The boss replied: "You are cutting the same number of trees today you were cutting five years ago. How can we give a raise?" The woodcutter went back, worked harder, put in longer hours, but not much improvement. He consulted his colleagues and learnt that they took five minutes break each time after cutting a tree. Still they cut more trees. How? They use those five minutes to sharpen the axe. Some of them use tools sharper than axe. The woodcutter realised his folly that he had never sharpened his axe for years, nor tried to use sharper tools. He sharpened the axe and the productivity improved; he got a raise. He learnt to use mechanised tools and productivity improved further. He got further raise.

3.30 The CoE noted that there are broadly two approaches to undertake CPE. The first is the examination which a professional is required to pass at periodic intervals. The second is the certifications where a professional obtains certificates for participation in specified learning programme (seminars, conferences, workshops, training, etc.) for specified hours. Professionals generally have flexibility to earn credit hours of CPE, online and offline, over a block of years subject to a minimum number of hours every year. The ICAI has classified CAs into four categories for the purpose of CPE: CAs under the age of 60 years and having certificate of practice, CAs under the age of 60 years and not having certificate of practice, CAs above the age of 60 years and having certificate of practice, and CAs above the age of 60 years and not having certificate of practice. Each category must complete CPE of specified hours over a rolling period of three years, subject to certain minimum hours every year. An IP can have Authorisation for Practice only if he has completed the required CPE.

3.31 The Financial Industry Regulatory Authority (FINRA) of the USA mandates the registered individuals to undergo continuing education programme to continue as traders on the NASDAQ exchange. The continuing education has two components - (a) Regulatory Element, which focuses on compliance, regulatory, ethical and sales practice standards. Its content is derived from industry rules and regulations, and accepted standards and practices in the industry. It requires all registered individuals to complete a computer-based training session within 120 days of the second anniversary of their initial registration date, and every three years thereafter. (b) Firm Element, which requires broker-dealers to establish a formal training program to keep covered registered persons up to date on job and product-related subjects. In planning, developing and implementing the Firm Element, each broker-dealer must consider its size, structure, scope of business and regulatory concerns.

3.32 In Malaysia, one of the conditions for renewal of the Authority to Practice of a registered valuer, appraiser and estate agent, by the Board of Valuers, Appraisers and Estate Agents, is the requirement to submit the CPD hours². The IVSC (2012) recommends a minimum of 50 hours of structured CPD in any three-year period. Irrespective of the format of CPE, which itself would keep evolving, valuers should be required to continuously learn and evidence the learning. Anyone having authorisation from the principal regulator should provide CPE. Given that VPOs are interested in their members, they should offer CPEs at least or their members.

2 Guidelines on Continuing Professional Development (CPD) For Registered Valuers, Appraisers And Estate Agents (Third Edition 2017), accessed at http://lppch.gov.my/WP2016/wp-content/uploads/2017/02/cpd-finalized-guidelines_6feb2017.pdf on November 20, 2019

Valuation Professional Organisations

3.33 The developmental needs of a profession are multifarious, dynamic and continuous. It may be difficult for the principal regulator alone to shoulder the entire responsibility for the expected number of valuers across the country. The front-line regulators need to share the responsibility, at least in respect of their members, particularly through CPE and improvement of ethical conduct. They should be competing among themselves to deserve a premium for services of their members. They should play an important role in advocacy, research and publication. If they are eligible and interested, they could become even valuer institutes. Their presence in the entire value chain of development of the profession would help wholesome development of profit while allowing decent revenue for discharging their responsibilities.



Right to regulate practice comes from right of the people to protect themselves.

Lionel Browne, 1935.

4.1 The regulation of a profession arises from the need to balance the rights of professionals to practise a profession in a free and fair market with the rights of users to receive responsible professional services. If the rights of users are unreasonably stronger as compared to those of the professionals or vice versa, the profession is unlikely to have a healthy growth.

Rationale of Regulation

4.2 The purpose of regulation is not to displace competitive pressures, but to correct for market imperfections which produce sub-optimal outcomes and distort consumer choice. Once effective competition is in place, less rather than more regulation is required (Doyle, 1997). Competition may substitute the regulator in course of time. In that respect regulation reinforces the efficiency of competition rather than impede it. The rationale behind regulation, therefore, is to increase the efficiency of markets and is based on three principal strands of analysis (Liewellyn, 1995): (a) The correction of identified market imperfections and failures that reduce consumer welfare and distort competitive and market mechanisms; (b) There are potentially substantial economies of scale to be derived from collective regulation and supervision of the regulated; and (c) Signalling minimum standards of quality enhances confidence in markets.

4.3 Economists believe the only reason for state intervention is market failure, which occurs where the market has presence of any of the three ingredients, namely, information asymmetry, externalities and excess market power. Market for services rendered by most professions have all the three ingredients of market failure, though of different intensity. Information asymmetry arises because the professional has all the information but no clear incentive to provide the same to the user. The user needs the information, but his access to the same is limited. Even where he has access, he may not have the competence to assess the quality of service offered and evaluate pricing, given that the services are highly specialised. Further, professional services are 'experience goods' / 'trust goods', the quality of which cannot be observed until the service is used. The user often cannot inspect the service prior to the purchase. Externalities, not of the typical kind, arise when the impact of services provided by a professional goes much beyond the professional and the user. Businesses make finance/investment and other strategic decisions based on valuations. Viability of businesses and their very existence are assessed based on values determined by professionals. Financial crises are often attributed to faulty valuations. There were instances of abuse of market power, particularly in case of self-regulated professions, where there was a quantitative restriction on the number of practitioners. Fellow professionals, formally organised or not, tend to act in the interest of one another giving them control over quality and prices. Organised professional firms, particularly networked ones, could have market power. When juxtaposed with the position of the professionals, the user is almost powerless. Regulations need to address market failures arising from all three ingredients.

4.4 An additional consideration weighs in favour of regulation of professions. The consensus understanding is that users of professional services could be inadequately informed and unwise, and hence susceptible to manipulation by professionals. The users are unaware of the options available to them; they often do not know how to assess the quality of and price for a service; they

are misled by advertisements and promotions; they are not an organised group; they lack bargaining power; etc. Specialisation and advances in knowledge make it increasingly difficult for them to judge the quality of professional services. The regulator, as an agent of all existing and prospective users of professional services, is expected to protect their interests. A recent example is the National Financial Reporting Authority (NFRA) which has only one mandate¹, that is, to protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors. This probably explains why the right to practise a profession carries a duty to protect the society and it is not a privilege for the benefit of holder.

4.5 There are a host of standard measures to address market failures. Information asymmetry is addressed by provision of information such as disclosures, including disclosure of conflict of interests, minimum standards of services by professionals and measures to protect users even where they do not have competence to process information. Externality is addressed by provision of capable, public spirited and fit and proper persons joining the profession and holding them accountable for their services. Market power is addressed by provision of free entry to the profession whereby an individual meeting the eligibility norms joins the profession, and no one has market power. A host of proactive and remedial measures are taken to protect the interests of users, including disgorgement of unlawful gains from the erring professional and compensating the losing users. An increase in the liability risk, including criminal liability, over and above the reputational risk often deters a professional from being negligent. An all-encompassing measure having potential to address all kinds of market failure is the prescription of qualifications for entry into and disqualifications for exit from the profession along with continuous monitoring of conduct of professionals. The proposed institutional framework uses a mix of these measures to address market failures inherent in the market for valuation services.

4.6 It is, however, grossly insufficient to assert that the existence of market failure justifies a case for regulation. Wolf (1978) reiterates that market failure is only a necessary, but not a sufficient condition, for state intervention. He has doubts about effectiveness of regulations and even feels that government failure may be of the same order as market failure. Regulation should be brought in only if there is a specified set of criteria or procedures for deciding what fits within the scope of the enunciated policy, and an administrative apparatus for implementing the policy (Krueger, 1990). It should address the targeted market failures and do no more. Stigler (1971) argues, regulation is acquired by the industry and designed and operated primarily for its benefit in contrast to benefits of the public at large. There is also a possibility of regulation stifling innovation and thereby causing dynamic inefficiency. Novelty is a disturbing experience for the established players including the authorities and regulators, as it upsets tidiness of life (Goodhart, 1988).

4.7 Implementation of regulation imposes direct and indirect costs on stakeholders. Economists emphasise four reasons why regulation is costly (Gowland, 1990). First, there are costs that arise from moral hazard, which refers to changes in private sector behaviour which, occurring in response to some institutional or other change, usually produce counter-productive effects. Secondly, there are direct and indirect costs of compliance with regulations both by the regulator and the regulated. Datar (2014) argues that India has a unique combination of three crippling liabilities, namely, excessive rules and regulations, egregious level of corruption, and an embarrassingly hostile and irrational tax system. Third is the loss of economic welfare caused by participants carrying out fewer transactions than they would otherwise. It might even divert

¹ Sub-rule (1) of rule 4 of the National Financial Reporting Authority Rules, 2018

business from the over-regulated sector / economy to less-regulated sector / economy. Fourthly, regulation acts as a barrier to change and preserve an inefficient structure of services and their provisions. By all accounts, regulation is not a cost-less exercise. This realisation is important to avoid excessive or unwarranted regulation, particularly for the principal regulator and the frontline regulators proposed under the institutional framework. A good policy requires a balance between Governments and markets that is crafted with intelligence (Basu, 2006). This rationale guides the discussion in this chapter as well as in the next chapter dealing with market for valuation services.

4.8 A professional has right to practise a profession. It is a privilege for a professional to serve the society rather than serve his own interest. It can be taken away if he abuses this right. It may be lost for the violation of the law under which it is given or may be summarily taken away by legislative action (Browne, 1935). Provisions for regulation of professions is found in the oldest written code of laws in the world, which was promulgated by Hammurabi, King of Babylon, about 4000 years ago. Some provisions for regulation of medical profession, as reproduced hereunder, give a flavour:

“215. If a doctor has treated a gentleman for a severe wound, with a bronze lancet, and has cured the eye of the gentleman, he shall take ten shekels of silver.

216. If he (the patient) be the son of a poor man, he shall take five shekels of silver.

217. If he be a gentleman’s servant, the master of the servant shall give two shekels of silver to the doctor.

218. If the doctor has treated a gentleman for a severe wound, with a lancet of bronze, and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman, with the bronze lancet, and has caused the loss of the gentleman’s eye, one shall cut off his hands.

219. If a doctor has treated the severe wound of a slave of a poor man, with a bronze lancet, and has caused his death, he shall render slave for slave.”

Entry Regulations

4.9 The valuation profession would keep evolving. Valuation as a discipline of knowledge would be advancing. The taste and needs of users of valuation services would be changing. The menu of career choices for prospective professionals would also be changing. It is, therefore, advisable that the institutional framework lays down broad entry norms that must be fulfilled by potential professionals to practise a profession, keeping the interests of users in view and enables the principal regulator to modify them in sync with emerging needs.

Registration and Renewal

4.10 Every profession regulates entry into a profession through a mandatory registration procedure. This is not an entry barrier, but allowing only deserving people to enter a profession, which is a noble occupation. The BLRC, which envisaged insolvency professionals, observed (MoF, 2015): *“Licensing ensures that it is unlawful to perform certain activities without meeting the specified criteria. Occupational licensing may raise the average skill levels in the profession, thereby improving the quality of services.”* In some professions, even a numerus clausus on the number of practitioners applies, which means that there is a quantitative restriction on the number of practitioners that is allowed on the market (Maks, 2005). Restriction on number of professionals or a license to practise a profession is no longer a tool of regulation.

4.11 Only a registered person should be authorised to practise a profession². A person not having

registration should not be allowed to render professional services. The law must explicitly state so. Section 37 of the Architects Act, 1972 provides that no person other than a registered architect, or a firm of architects, shall use the title and style of architect. The Supreme Court (2020) held that section 37 does not prohibit the practice of architecture by unregistered individuals, though it certainly prohibits unregistered individuals from using the 'title and style' of architect. It observed: *"It is evident that the legislature did not intend to create a prohibition on the practice of architecture and associated activities by unregistered individuals. As opposed to the case of physicians or surgeons under the Indian Medical Council Act or advocates under the Advocates Act, the legislature consciously chose to employ a less stringent measure in the case of architects, merely prohibiting unregistered individuals from using the "title and style" of architect."*

4.12 A formal registration process ensures that the regulator satisfies itself as to the suitability of a person for the profession and ensure that only eligible, qualified and deserving individuals join the profession. It helps the regulator to maintain a register of the professionals entitled to render valuation services and to make available the register to enable the users pick up a professional when they need one. As part of freedom of entry, the Indian economy largely moved away from discretionary license to an entitlement of registration. This meant that there would not be any limit on the number of members a profession may have. Membership would be available on tap and it would not be necessary for a member to move out to enable a new member to come in. Any individual, who meets the pre-specified eligibility norms, shall be entitled to registration. If for any reason, he is to be denied registration, it must be done only through a reasoned, appealable order, after hearing him. The CoE noted that many individuals, some of whom do not have a registration and even proper training and qualification, are practising valuation. No profession can deliver on its mandate if anyone and everyone can render professional services without being subject to a system of registration and monitoring. The principal regulator should register eligible and interested individuals as valuers and issue certificates of registration to them.

4.13 For many valuers, valuation profession is a terminal occupation. When a valuer dies, his name needs to be struck off from the register. A valuer may find difficult to continue in the profession for some compelling reasons. He should have a way to surrender registration. He may fail to comply with the conditions of registration such as failure to pay annual fee. The NIV may suspend or cancel a certificate of registration granted to a valuer, where the valuer dies; or has made a request to surrender his certificate of registration or fails to meet the eligibility norms. Such suspension or cancellation shall not be a disciplinary proceeding.

4.14 A valuer has several ongoing obligations such as payment of fee, redressal of grievances of users, undertaking CPE, observance of Code of Conduct, etc. to keep the registration alive. The regulator should periodically verify if a valuer remains eligible to continue as a valuer. A valuer should be required to satisfy the regulator that he meets the eligibility norms and seek a renewal of his registration at intervals. The requirement of renewal ensures that the inactive, dormant or non-practising professionals are removed from the register of professionals.

Full-time and Part-time Practice

4.15 Many professions prohibit a person from practising two or more professions. The solemn objective behind such a requirement is that a professional must have undivided loyalty and unflinching attention towards his professional obligations. He is expected to devote his entire attention and loyalty for the profession. The Supreme Court (1996) has settled this in a matter where a person wanted to practise medical and legal profession simultaneously, in so many words: *"Under these circumstances as a practising advocate if he gives attention to his clients in his*

2 In the earlier days, one needed a license to practise a profession or carry on a business. Now-a-days, one needs a registration, which is a sort of entitlement of a person who meets the pre-specified eligibility norms, while license is often discretionary.

chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theater or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full-time occupation." The Supreme Court observed that legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He must be full time advocate or not at all. While it is necessary that an individual should not be riding two horses, a valuer practising valuation in two asset classes should not be considered as riding two horses or practising two professions.

4.16 The CoE notes that for many valuers, valuation is a part-time profession, as an extension of their primary vocation / profession. This is what happens with every profession in its infancy, at least till a formal institutional framework governing a profession is put in place. In the initial days of a profession, there is usually not enough work, as the profession is unknown. If individuals are forced to take it up full-time in these days, many may prefer not to join the profession. This would deprive the profession of the right talent and thereby restrict its quality and growth in the long run. For example, if the law had wanted only full-time insolvency professionals, probably many CAs, or CSs would not have left their existing profession to join an uncertain world of a brand-new insolvency profession. However, as the profession as well as the market for professional services matures, many would study the tailor-made professional course and join the profession on full-time basis. The CoE, therefore, recommends that it should not be necessary to practise valuation as a full-time profession in the initial years. It should, however, be mandatory, when the pass-outs of national valuation programme join the profession. That would give reasonable time to existing practitioners to take a call whether they would practise valuation profession on full-time basis.

Practice and Employment

4.17 Similar is the issue of, whether a valuer may be allowed to practise valuation profession while being in employment. The same logic that prohibits an individual to practise two professions simultaneously equally applies to an individual to take up employment and practise a profession simultaneously. The Bar Council Rules prescribe that an Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise. Many professions allow a professional to alternate between employment and practice – a professional surrenders his registration / CoP and then takes up employment or quits employment and then revives his registration / CoP. Otherwise the individual would have a conflict of duties and interest. A teacher is often barred from giving private tuitions after the official working hours. If he has option to give private tuitions, he may compromise the quality of education delivered at educational institute with a view to encourage more students to take up private tuitions with him. Importantly, the time of an individual in employment is at the disposal of his employer and he must use the time in the manner his employer desires. He cannot plan his time and allocate the same between his job and profession. As a professional, he must be the boss

of his time and must use his time in the way he considers appropriate to serve the clients. He cannot be subject to the disciplinary jurisdiction of his employer as well as that of the regulator of the profession. Accordingly, the CoE recommends that while a valuer may be registered while he is in employment, he cannot hold a CoP, while he is in employment of any person. This would create two classes of registered valuers - one class has a CoP and is entitled to practice and the other does not have a CoP and is not entitled to practice. This will make seamless shift from practice to employment and vice versa.

4.18 The Valuation Rules provide for registration of an entity (partnership firms and companies) as valuers. The CoE recommends continuation of the same. With a view to retain professional character of the entity, the Rules require that the majority of its directors and majority of its whole-time directors should be valuers having CoP. Since whole-time director is a position of employment, and no valuer can be in employment while in practice, it would not be possible to register an entity as a valuer with whole-time directors. It would not look very professional if an entity is registered as a valuer with only part-time directors. The CoE, therefore, recommends that a whole-time director of a company registered as valuer shall not be considered to be in employment. However, a valuer, who is in employment of a valuer entity, shall be considered to be in employment and cannot practise. This is akin to a law officer of an organisation, who cannot appear before a Court.

Asset Classes

4.19 An individual studies valuation, asset class-wise. Expertise required for valuation of each asset varies. On completing national valuation programme in the asset class 'Land & Building', he becomes eligible for registration as a valuer of the said asset. He may complete the educational course in the asset class 'Plant & Machinery' and seek registration as valuer in the said asset class. Therefore, an individual may be registered as a valuer and he may have a certificate of practice, asset class-wise. He may be registered as a valuer for more than one asset class and may have certificates of practice for more than one asset class simultaneously if he meets the requirements of the respective asset classes. While he may be registered and he may have CoPs, asset class wise, all his registrations and CoPs may be cancelled at one go through the prescribed disciplinary process. A serious misdemeanour in valuation of one asset class may attract cancellation of registration of the valuer for all asset classes.

4.20 The number of asset classes as well as the assets covered in an asset class would keep on changing depending on needs of the stakeholders. The CoE is of the view that the principal regulator is best placed to create or delete an asset class, merge or demerge asset classes, expand or limit the scope of an asset class, etc. to meet the emerging needs. However, the regulator should be guided by factors like viability and feasibility, in consultation with stakeholders.

Associate and Fellow Members

4.21 A professional learns on the job. Every assignment is a learning exercise for him. He may excel in the profession and contribute greatly to the discipline and profession of valuation. He may grow up in the profession and command respect and premium for his experience and talent. While market can identify and distinguish professionals of different abilities, there should be a formal way to differentiate them based on their calibre. This may enable a stakeholder to entrust a large and complicated valuation to a more experienced or high calibre valuer. This may encourage and incentivise the professionals to strive to graduate to the higher class of valuers. Chartered Accountants and Company Secretaries are differentiated as associate and fellow

members based on their professional experience. The designation of senior advocate is conferred on an Advocate if the Supreme Court or a High Court is of the opinion that by virtue of his ability - standing at the Bar or special knowledge or experience in law - he is deserving of such distinction. The profession of surveyors has adopted the classification of Licentiate, Associate and Fellow based on examination passed by the professionals.

4.22 It is advisable to differentiate the professionals on the basis of certain relevant parameters such as duration of experience, professional accomplishments, absence of any disciplinary action, worth of assets valued by the valuer, passing of examination etc. To start with, a person may be registered as an associate member. He may be registered as a fellow member on completing five years of experience and demonstrating professional excellence of a high order. An individual may be registered as an honorary member on recognition of his extra-ordinary contribution to the valuation profession. He should not be eligible to practise the profession.

Qualification and Experience

4.23 The regulations prescribe the eligibility norms to seek registration as a professional. These norms ensure that only a person, who has the necessary qualification and experience, is registered as a professional. A person is screened at the entry in terms of eligibility norms to assess his suitability for the purpose. The screening lets in only qualified and competent persons to a profession and prevents charlatans, or incompetents from joining the profession, with a view to protecting the public interest and safety by guaranteeing a minimum quality standard. It ensures homogeneity in the services rendered by the professionals as well as certain minimum quality of the services rendered by them, by maintaining uniformity in adherence to minimum threshold of knowledge and skill set of the practising professionals.

4.24 The institutional framework proposes to register an individual, who has evidenced his competence by passing the specified examination. An individual shall be eligible for registration as a valuer in respect of an asset class, if he (a) has completed the national valuation programme of the relevant asset class, after having completed higher secondary education; or (b) has completed the graduate valuation programme of the relevant asset class, after having a degree or equivalent qualification in any of the specified disciplines. Since these courses have built in one year of internship, no practical experience would be required for registration. In the initial years, an individual, who has passed the valuation examination of the respective asset class, having completed specified hours of training from a VPO and having prescribed qualification and experience shall be registered as a valuer. Even an individual who has passed the valuation examination of the respective asset class, having experience of rendering valuation services for at least five years and having completed the limited valuation programme of the relevant asset class shall also be registered. These are alternate, competing options and an individual may choose the option he is comfortable with. As stated in the earlier chapter, these educational courses and examinations ensure minimum, acceptable quality of members of the profession. It is important to note that the Institute shall conduct all these examinations to ensure entry of quality people into the profession.

Age Limits

4.25 The Committee felt that an enduring and enviable profession requires induction of right talent. The talent makes a career choice usually on completion of higher secondary education. A student should have option to consider valuation profession while making a career choice. If he

makes a choice in favour of valuation profession and completes the national valuation programme, he should be eligible for registration as a valuer irrespective of his age. Therefore, there should be no minimum age requirement to be a valuer. Similarly, there should be no upper age limit for joining the profession. Some people make a career choice after having a first degree or a professional qualification. Some such persons may choose valuation profession and complete graduate valuation programme. They may bring a different perspective and valuable experience. They may be allowed registration irrespective of age. Further, profession being a terminal occupation (Goode, 1960), and valuation being an intellectual exercise, the valuation profession should not have any age for retirement, particularly when the average age of valuers registered under the Valuation Rules as on date is 48. The CoE, therefore, felt that the age for entry to the profession is best left to the market.

Fit and Proper Person

4.26 A profession is as good as its members. It enjoys respectability of the stakeholders if its members are respected by the society. The members of a profession are respected if the profession itself is respected. There is a virtuous circle of respectability and vice versa. A virtuous circle has, however, potential to turn vicious rather quickly, while vicious circle takes a very long time to turn virtuous. If the profession has both good and bad professionals, the reputation of the profession takes a hit. Bad professionals may drive out good professional from the profession³ and discourage entry of good professionals into the profession. A rotten apple spoils the (whole) barrel. Reputation of a profession is impacted even when a member of the profession is acting in his personal capacity and not discharging his duties as a professional. Any action which brings disrepute to a profession is misconduct whether related to professional work or not (Supreme Court, 2018). That is why a profession usually allows entry of only those individuals who are fit and proper persons. It also requires him to remain fit and proper as a condition of continued registration. It lets only those individuals in, who the profession would feel proud of, and prevents entry of those individuals, who can bring disgrace to the profession. It keeps an individual, whose antecedents are doubtful or questionable, away from a profession. This is necessary to maintain and enhance the confidence of users in professionals. No profession can survive without the trust of its users. Since a profession usually acquires a reputation in its infancy, and once acquired, it is difficult to mend it, it is necessary to guard the reputation of the profession from day one. The reputation of a profession needs to be addressed at the entry stage and guarded aggressively.

4.27 The test of fit and proper has wide use in professions, employment and market. The requirement of fit and proper has strong foundations in market laws. An entity, its shareholders and its directors need to be fit and proper persons to be eligible for registration as an intermediary. The Securities Appellate Tribunal (2006) highlighted the importance of the requirement: “... they all have to satisfy the criteria of “fit and proper person” before they could be registered under any of the relevant regulations and this criteria they must continue to satisfy throughout the period of validity of their registration and throughout the period they associate with the market. The purpose of the Regulations is to achieve the aforesaid objects and make the securities market a safe place to invest. One bad element can, not only pollute the market but can play havoc with it which could be detrimental to the interests of the innocent investors. In this background, the Board may, in a given case, be justified in keeping a doubtful character or an undesirable element out from the market rather than running the risk of allowing the market to be polluted.”

³ Gresham's law is a monetary principle: 'bad money drives out good'.

4.28 Application of fit and proper person test is probably a century old. Reportedly, it was applied when Mahatma Gandhi was being admitted as an Advocate in South Africa⁴. It is also applied to determine the suitability of individuals to be directors of the English football clubs. It has been adopted in various countries and professions, on the realisation that norms of educational qualification and professional experience, though necessary, may not be sufficient for a profession. An academically qualified individual, who accords priority to self-interest over public interest, may indulge in malpractices to promote self-interest. He may not always discharge his responsibilities with independence and objectivity and without fear or favour. Many professions such as insolvency profession insist on test of fit and proper person. The Valuation Rules provide for entry regulations that allow only registered valuers to practise valuation profession and register as valuers only those persons who are fit and proper persons.

4.29 While emphasising the relevance of verification of the character and antecedents of a person prior to employment, the Supreme Court observed⁵: *“It cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post.”* It further observed⁶: *“It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”*

4.30 The fit and proper test is used to determine honesty, integrity and reputation of an individual to confirm that he is fit and proper for the role of a professional. There is, however, no single infallible test, or ideal definition or a perfect set of objective parameters to determine if a person is ‘fit and proper’. It depends upon the profession as well as the circumstances: it usually takes its meaning from context. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur.⁷ These conducts may relate to professional service being offered or in the personal life of the professional, if such conduct has a negative bearing on the perception of the stakeholders with regard to his credibility. The good reputation including honesty, integrity and character of the professional would, however, be the necessary constituents of all such parameters.

4.31 The Securities Appellate Tribunal examined (2006) the amplitude of ‘fit and proper’ person: *“Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board (SEBI) in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that,*

4 Section 3 of the Admission of Advocates Act, 1964 (South Africa) provided that an applicant should be inter alia ‘fit and proper’ person. When Mahatma Gandhi applied to be admitted as an advocate of the High Court of Natal, his application was opposed by the Law Society of Natal because he was a Indian origin and as such not a “fit and proper” person to practise law. M. Slabbert, in ‘The Requirement of being a “Fit and Proper” Person for the Legal Profession’, <https://www.ajol.info/index.php/pej/article/view/68750>.

5 Avtar Singh Vs. Union of India, SLP [C] Nos.4757/2014 and 24320/2014.

6 Delhi Administration and Ors. Vs. Sushil Kumar (1996) 11 SCC 605.

7 Mason CJ in Australian Broadcasting Tribunal and Bond (1990) HCA 33

according to the Regulations, has to be good.” While dealing with a provision relating to fit and proper person, the Allahabad High Court, in its order dated 23rd May, 2014, observed⁸: “Financial integrity, reputation, character and honesty are matters which have a serious bearing on the objective, transparent and fair functioning of the securities market.”

4.32 The Valuation Rules require an individual to be a fit and proper person for registration as a valuer. For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria- (i) integrity, reputation and character, (ii) absence of convictions and restraint orders, and (iii) competence and financial solvency. There are two layers of screening for registration – one by the RVO while enrolling an individual as a member and the other by the Authority while registering him as a valuer. About two dozen applicants for registration as insolvency professional and valuation professional have been denied registration in the last two years on the ground that they are not fit and proper persons. The CoE recommends the same parameter for fit and proper person as provided in the Valuation Rules.

Individual and Entities

4.33 A profession, as compared to business, has three distinguished features: (a) it is critically dependent on the skill, knowledge and expertise of an individual; (b) the liability of a professional is unlimited; and (c) a professional provides a service and does not operate on commercial principles. In view of these features, professions were traditionally open only to individuals and not open for limited liability persons. Stock broking was considered a profession for long. On realising the limitations of individuals as brokers, gradually broking was thrown open to partnership firms and then to unlimited companies. In due course, it was opened for limited liability companies. Probably, it is now a business and no more a profession.

4.34 Some professions have followed this path of evolution. Most professions were reserved for individuals. Some professions were thrown open to partnership firms and companies. Some professions like Advocates are open only for individuals. Some other professions like CSs, or CAs are open to partnership firms, where professional service is rendered in the name of one of the partners, and both the firm and partners are liable for the same. While insolvency profession is open only to individuals, the professional invariably engages a firm to assist him in rendering service. The valuation profession under the Valuation Rules is open for partnership firms and companies. However, no profession is open for subsidiaries or joint ventures.

4.35 Such evolution has become necessary probably because both business and profession are becoming complex and it is beyond the capability of an individual professional to meet the vast and complex needs of a client fully, while the client often looks for one-stop solution for his needs. Further, it is at times beyond the ability of members of one profession to fully serve the needs of a customer. This has prompted members of different professions join hands in the form of Multi-Disciplinary Practices (MDPs) to offer multi-disciplinary approaches solving increasingly complex issues. It is important to note that most MDPs, partnership firms, or companies are often organisations of individual professionals, who actually render the service behind these organisations and both the organisation and the individual are held jointly and severally liable for the deficiency in service.

4.35 The CoE noted that the Expert Group (MoF, 2003) had recommended that the firms/companies engaged in valuation may be considered for registration as valuer in addition to individual valuers. It observed: *The Expert Group recommended that firms/companies engaged in*

⁸ U. P. Stock Exchange Brokers vs. SEBI (Civil Writ Petition 45893 of 2012).

valuations may also be considered for registration in addition to individual valuers as aforesaid. The Central Government may make rules or regulations for registering firms or companies as registered valuers. The Expert Group recommended that at least two persons associated with the firm / company proposing to be registered as valuer and who are partners, directors or employees are registered valuers or valuers in practice, as recognized by the DCA. Such firms or companies shall cause valuations covered by the guidelines to be carried out only under the supervision and control of registered valuers and the valuation reports to be issued only under the signature of such valuers, (even if other persons have worked on the valuation exercise under their supervision), to fasten professional liability on such persons. Service professionals, carry an unlimited liability for professional opinions generally. Even if valuers incorporate for discharging their professional activities, through corporate entities, the registered valuers or valuers in practice recognized by the DCA in such corporate entities, will continue to be professionally liable for their professional services and opinions rendered as valuers."

4.36 The CoE noted that the Valuation Rules make a partnership firm or a company eligible to be a registered valuer, provided that (a) it has been set up for rendering professional or financial services, including valuation services, (b) all the partners or directors, as the case may be, are eligible to be a valuer under the Rules, (c) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are registered valuers; and (d) at least one of the partners or directors is a registered valuer for the same asset class for which registration is being sought by the partnership firm or company. However, the Valuation Rules prohibit a company, which is a subsidiary, joint venture or associate of another company or body corporate from being a registered valuer. This provision prohibiting a subsidiary, etc was challenged on constitutional grounds. The Delhi High Court (2019), while upholding the said provision, observed that this provision obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation. It held: *"..making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of registration as valuer, a separate class has been carved out based on classification which is founded on intelligible differentia and as such the Rule cannot be faulted."*

4.37 The CoE also noted that the Wealth Tax Act, 1957 allows only individuals to register as valuers. SEBI registered merchant bankers are allowed/ licensed to carry out valuations for various requirements under FEMA regulations, SEBI rules, etc. and to provide fairness opinions in case of M&A transactions. SEBI allows 100% subsidiaries (including subsidiaries of foreign companies) to be registered as merchant bankers. The RBI allows 100% foreign investment in companies providing valuation and similar services.

4.38 The CoE considered the prevalent practice in other professions in this regard. It noted that a company, whether incorporated in India or elsewhere, is not allowed to practise as CA or CS or CMA in India. However, a CS or a CA may practise in partnership with one or more members of the respective Institute in practice or in partnership with members of other recognised professions. A CMA can practise in partnership with one or more members of the Institute in practice and not with members of other professions. Further, though firms, whether a part of network or not, provide professional services, networks as such are not allowed. In several foreign jurisdictions, the professionals can form a Professional Service Corporation (PSC) for rendering services. In United States, a PSC is an incorporated business under state law that gives some kind of service that requires the work of licensed professionals. Some states require businesses offering professional services to form PSCs. Most States, however, make it an option. A PSC needs to pass two tests: (a) the function test which requires that substantially all of the

business activities of the PSC involve services within specific occupations in specified professional service area, and (b) the ownership test which requires that the shareholding of the corporation has to be held by the professionals, the profession in which the corporation is engaged. The Valuers Act, 2003 of New South Wales (Australia) allows a corporation to practise as a valuer⁹ subject to a condition that at least one director or an employee is a registered valuer and the valuation report has to be signed by such director or employee. In Malaysia, a partnership or corporate body can practise valuation subject to a condition that all partners or all directors and shareholders are valuers. The shares of the body corporate in such case must be held solely by the registered valuers¹⁰.

4.39 In this background, the issue was whether valuation professionals should be allowed to form an entity for the purpose of providing valuation services. The CoE considered the advisability of allowing (a) partnership firms, (b) companies, and (c) subsidiaries of companies, as valuers. There was detailed discussion about the ability of an individual to compete with a corporate valuer and ability of a standalone company valuer to compete with company valuers in a network, domestic or overseas. The CoE noted that there are several advantages of an organised form of rendering professional services. The professionals prefer this in view the advantages in terms of tax advantages, sharing of liability (not liability arising from malpractice) and professional resources and expertise. The customers prefer it as they get one stop service for the most complex issues. It is reassuring for them as they deal with an entity which has perpetual existence, and which has many professional under one roof. They can have effective protection in terms of compensation, which an organisation can better afford as compared to an individual. The CoE also noted that many professions in India such as CS, CA, and CMA and many professions abroad, including valuation profession, allow organised form of professional service, subject to certain conditions that retain the professional character of the service. Keeping in view that the proposed institutional framework should produce valuers who can compete in the world stage, the CoE decided that a partnership entity or company (other than a subsidiary) should be eligible for registration as a valuer, if (a) its primary objective is to provide valuation services; (b) all its partners or directors are eligible to be a valuer; (c) majority of its partners, or majority of directors and majority of whole-time directors are valuers having certificate of practice; (d) none of its partners or directors is a partner or director of another partnership entity or company, which is a valuer; and (e) at least one of its partners or directors is a valuer of the asset class for which the partnership entity or company is seeking registration. The valuation reports shall be signed by a partner or director, who is a valuer of the relevant asset class; and the partnership entity or company and all its partners or directors, who are valuers, shall be jointly and severally liable for all acts of omission and commission of the partnership entity or company, in respect of valuation services.

4.40 There were, however, two views whether a subsidiary of a company should be registered as a valuer. One, it should not matter whether a valuer is a standalone company or a subsidiary of another company. Subsidiary valuer may enable leveraging 'network effect' and improve quality of service. Second, exposing domestic valuation firms to global competition may not be advisable at least in initial years as it is not conducive to develop capacity within the country. An invitee expert, Mr. Budhabhatti strongly felt that the view taken by the Delhi High Court is correct and the proposed institutional framework should not allow a subsidiary to be registered as valuer. Two invitee experts, namely, Mr. Varun Gupta and Mr. Nitin Kapoor strongly advocated in favour allowing subsidiaries as valuers. They submitted that there is no jurisdiction which prohibits a subsidiary from being a valuer. A subsidiary as a valuer does not compromise the objectives of the regulation that aims to (a) hold individual professional accountable, and (b)

9 Valuers Act, 2003, Section 7 (New South Wales).

10 Valuers, Appraisers and Estate Agents Act, 1981, Section 23 (Malaysia).

provide compensation in case of negligence or wilful misconduct. Mr. Varun Gupta submitted a note on Global Best Practices in respect of registration of companies as valuers (Annexure M).

4.41 The CoE noted that competition from global firms is inevitable and, therefore, domestic valuation firms should develop capacities to deal with such competition and establish their footprints globally. The fear that Indian firms may not be able to compete is misplaced going by the example of merchant bankers who conduct valuations. After a long debate, a view emerged that it may not be desirable to prohibit a subsidiary from serving as a valuer. It may not either explicitly provide a framework for registration of a subsidiary as a valuer. The statute may enable the NIV to consider providing a framework for registering a subsidiary as a valuer, when the market warrants it, with appropriate safeguards, that preserve the professional character of the valuation service. Similar is the view of the CoE in respect of MDPs. Valuers and other professionals should be able to join hands to provide several services and the statute should enable the NIV to come up with an appropriate framework when it considers necessary. The CoE, however, makes it clear a firm formed by valuers of different asset classes shall be considered as partnership firm and not an MDP. If a particular organisational form for delivery of professional services is in the interest of the stakeholders and the profession, there should be no inhibition to allow that organisational form, after proper study of the implications and putting in appropriate safeguards, if warranted.

Monitoring and Oversight

4.42 A professional stands on two pillars, namely, competence, and conduct. Either one, separately is not adequate. The authority has established his capability while granting registration. It has tested him if he is a fit and proper person. However, there is no guarantee that after registration, his conduct would be above board. It is necessary to keep continuous watch on his conduct. The framework for monitoring and oversight would, however, keep on evolving. The statute should enable the regulator to provide a framework and modify the same with changing needs. Hence, the CoE has left it open for the NIV to develop an efficient mechanism for the monitoring and oversight of the valuers in this regard.

Code of Conduct and Ethics

4.43 A valuer, like any other professional, faces several challenges and even threats. He must not allow any external influence to impact his work. He must abide by a Code of Conduct, which lays down norms of practice, which make the valuer more objective in his approach and therefore increases the accountability quotient. The norms of practice enforced by professions are usually more stringent than legal controls (Goode, 1960). Unlike legislations and subordinate legislations, the Code of Conduct and Ethics provide broader sets of principles that are designed to inform specific laws or government actions.¹¹ The Code of Conduct provides benefits to:

- (a) the public, as they build confidence in the profession's trustworthiness;
- (b) clients, as they provide greater transparency and certainty about how their affairs will be handled;
- (c) members of the profession, as they provide a supporting framework for resisting pressure to act inappropriately, and for making acceptable decisions in what may be 'grey areas';
- (d) the profession, as they provide a common understanding of acceptable practice which builds collegiality and allows for fairer disciplinary procedures; and
- (e) others dealing with the profession, as the profession will be seen as more reliable and easier to deal with¹².

¹¹ <https://www.oecd.org/mena/governance/35521418.pdf>

¹² <https://www.iaa.govt.nz/for-advisers/adviser-tools/ethics-toolkit/professional-ethics-and-codes-of-conduct/> accessed on November 09, 2019.

4.44 The Code of Conduct should require a valuer professional to maintain integrity by being honest, straightforward, and forthright in all professional relationships. He must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation or not. He must maintain complete independence in his professional relationships and should conduct the valuation independent of external influences. Any failure to abide by the Code of Conduct should invite penal consequences.

4.45 According to the Australian Council of Professions, *“It is inherent in the definition of a Profession that a code of ethics governs the activities of each Profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Further, these codes are enforced by the Profession and are acknowledged and accepted by the community.”* Many professions also prescribe Code of Ethics, in addition to Code of Conduct. The Code of Ethics prescribes a set of principles to the professionals which help them in taking decisions during situations of moral conflicts, whereas the Code of Conduct applies these ethical principles to relevant situations and prescribes the standards of behaviour expected from the professional. A stakeholder with vested interest may like to influence a valuer to manipulate the value of the asset in his own favour. The valuer must resist temptation to any allurements. The Institute should lay down a model Code of Conduct and Ethics and modify it to keep it relevant with time. The VPOs may adopt the model and even improve upon the same for their members. An illustrative Code of Conduct and Ethics, prepared by invitee experts, Mr. Nitin Kapoor and Mr. Kirit P. Budhbhatti is at Annexure N.

Conflict of Interests

4.46 A valuer must not allow his own interest to take precedence over the that of his customers and interest of customers over that of the Society. A valuer shall not conduct a valuation where he has any conflict of interest. He must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment. The Institute should specify and modify the circumstances or instances of conflict of interest for guidance of valuers. An illustrative list of conflict of interests, prepared by an invitee expert, Mr. Varun Gupta is at Annexure P.

Disclosure and Disclaimers

4.47 Information asymmetry is largely addressed by disclosures. The regulator ensures disclosure of full and accurate information, based on which users take informed decisions and assume responsibility for their own decisions. The statute obliges a valuer to make disclosures regarding valuations services, and a VPO or a valuer institute to make disclosures regarding its activities. It also obliges a valuer to make disclosures where he engages one or more experts to assist him in valuation. It enables the Institute to specify the content and manner of disclosure and modify the same to keep it relevant.

4.48 A valuation report should not carry a disclaimer, which has potential to dilute the responsibility of the valuer or makes the valuation unsuitable for the purpose for which the valuation was conducted. The valuation reports should be capable of being tested through the crucible of legal evidence in judicial proceedings. The Institute or VPOs may guide the valuers on what kind of disclaimers are acceptable and what are not. A sample of disclaimers collected by Mr. Varun Gupta is at Annexure U.

Outsourcing

4.49 An authority registers an individual as a valuer on being satisfied that he has competence and is responsible for valuation. This only means that he shall conduct valuation himself and not outsource any of its duties and responsibilities to a third person. It should not be that he secures valuation assignments and gets the valuation conducted by third parties - other valuers, other professionals or even charlatans. Therefore, the law should prohibit a valuer from outsourcing valuation services, in the interest of accountability. However, if an assignment requires services of valuers of other asset classes or any other professionals, he may hire such services.

4.50 A valuation assignment invariably entails a series of activities, some of which a valuer can perform and must perform and some of which he must necessarily take help of other professionals or advisers. For example, a valuation may require clarity on the title of the property for which a valuer may take assistance of an advocate. It may not always be possible to demarcate the activities related to a valuation into two neat categories, namely, valuation services and other services. What should not be outsourced are activities related to the rendition of valuation services that would normally be undertaken by a valuer, and not the activities that are generally not expected to be carried out by a valuer. The Institute may enable outsourcing of some activities which are not core to valuation. An illustrative list of activities which should not be considered outsourcing, prepared by invitee expert, Mr. Budhbhatti is at Annexure T.

Complaints and Grievances

4.51 Right to regulate practice comes from right of the people to protect themselves (Browne, 1935). A statute governing a profession should be 'anti-professional' in that it must be designed to protect the interests of society rather than the interests of the profession (ICSI, 2014). The law should enable a stakeholder aggrieved by the service provided by a service provider to file a grievance or a complaint against it to the Institute. It should enable the Institute to frame Regulations to provide for an objective and transparent procedure for disposal of grievances and complaints, that does not spare a mischievous service provider, but does not harass an innocent service provider.

4.52 A stakeholder may file a grievance that shall state the details of the conduct of the service provider that has caused the suffering to the aggrieved; details of suffering, whether pecuniary or otherwise, the aggrieved has undergone; how the conduct of the service provider has caused the suffering of the aggrieved; details of his efforts to get the grievance redressed from the service provider; and how the grievance may be redressed. It may file a complaint in the specified form along with a fee. A complaint needs to state the details of the alleged contravention of any provision of the Code, or rules, regulations, or guidelines made thereunder or circulars or directions issued by the Institute by a service provider; details of alleged conduct or activity of the service provider, along with date and place of such conduct or activity, which contravenes the provision of the law; and details of evidence in support of alleged contravention. If the complaint is not frivolous or malicious, the fee should be refunded. Where the Institute is of the opinion that there exists a prima facie case, it may order an inspection or investigation or issue a show cause notice, as may be warranted.

Inspections and Investigations

4.53 Inspections and investigations are standard mechanism to verify facts as to compliance with applicable provisions of law. Based on such verification, appropriate enforcement actions, if

required, are initiated. The legislations relating to valuation profession abroad and other professions in India enable inquiry, inspection and investigation, including search and seizure without / without warrants in some cases. The examples the Valuers Act, 1948 of New Zealand; the Valuers, Appraisers and Estate Agents Act, 1981 of Malaysia; the Valuers Act of 2003 of New South Wales; the Company Secretaries Act, 1980, the Insolvency and Bankruptcy Code, 2016.

4.54 Since inspection and investigation entail infringement of freedom of service providers and also costs and the outcome of such inspection and investigation could be an enforcement action, there should be clear governance principles to minimise the pains of inspection and investigation to concerned stakeholders and also to avoid unwarranted enforcement actions. The statute should provide a transparent and accountable framework for inspection and investigation and enable the Institute to frame detailed procedure for conducting inspection and investigation.

4.55 The statute should enable the Institute to conduct inspection of such number of service providers every year, as may be decided from time to time to monitor compliance with the provisions of the Act, and the rules and regulations made thereunder. It should also enable the Institute to conduct an inspection of records of a service provider, where it has reasonable grounds to believe, on the basis of the material available in an information received or otherwise available on record, that the service provider has contravened any of the provisions of the Act or the rules or regulations made or directions issued by the Institute thereunder. For these purposes, the Institute should issue an order appointing an Inspecting Authority to conduct an inspection of records of a service provider for specified purposes. The order should indicate the scope of inspection; composition of Inspecting Authority; timelines for conducting the inspection; reporting of progress in inspection; submission of inspection report, etc.

4.56 Whenever the Institute has reasonable grounds to suspect, on the basis of complaint or grievance or material otherwise available on record, that the affairs of a service provider are being conducted in a manner detrimental to the users of valuation services; or the service provider has contravened any of the provisions of the Act or the rules or regulations made or directions issued thereunder, it may direct an Investigating Authority by an order to conduct an investigation of the affairs of the service provider. The order should specify scope of investigation in terms of records, activities, places, and persons; composition of Investigating Authority; timelines for conducting investigation; reporting of progress in investigation; submission of investigation report.

4.57 The CoE took note of the regulation 29 of the SEBI (Credit Rating Agencies) Regulations, 1999, given that valuation is an opinion as much credit rating is. It is of the view that the inspections ordered by the Institute shall not ordinarily go into an examination of the merits or appropriateness of the valuation arrived at by the valuer. Inspections to judge the appropriateness of the valuation should be ordered by the Institute, only in case of prima facie evidence of mala fides or gross negligence, wilful misconduct, or reckless behaviour. Inspections should be carried out by officers who have relevant experience or expertise in the area of operations being inspected.

4.58 The Institute and the Inspecting / Investigating Authority should make every effort to keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection / investigation. The Regulations should provide the manner of conduct of inspection/investigation and consideration of inspection/investigation report, including disposal of show cause notice wherever issued. The Inspecting / Investigating

Authority may submit an interim inspection / investigation report to the Institute, if it considers appropriate, keeping in view the nature and progress of inspection/ investigation. If the Institute is satisfied from the interim inspection / investigation report that prima facie, there is a gross contravention of the provisions of the Act, or the rules or regulations made thereunder, by the service provider and an immediate action is warranted, the Institute shall refer the matter to the Administrative Law Member for appropriate action. Every effort should be made to avoid issue of an interim order. Wherever it is issued, it must have a life not more than 90 days.

Schedule of Contraventions

4.59 The rule of law requires that the law must compel observance of or compliance with a law, rule, regulation or obligation, if it is not voluntarily done, to induce the desired conduct of professionals. This usually includes four elements, namely, facilitation, supervision (inspection, investigation, surveillance, inquiry, and audit), adjudication and prosecution. While the first two activities are administrative actions to encourage compliance of regulations and detect possible violations of law, the adjudication is a quasi-judicial action of the regulator to penalise the delinquent for violation of law, and the prosecution is a judicial action initiated by the regulator against the delinquent before a court of law.

4.60 Adjudication and prosecution are initiated on finding a contravention of law. What amounts to contravention should not be subjective. To avoid any ambiguity and limit the scope of subjectivity, the law should provide upfront a schedule of contraventions, which should attract adjudication or prosecution. It should list out all possible contraventions and misconduct by a service provider along with possible penal/remedial consequences, including warning, penalty and cancellation and prosecution, disgorgement of unlawful gain made, etc. The list would serve as a guide for the regulator, the regulated and the users of valuation services. Invitee expert, Mr. Nitin Kapoor provided a summary of disciplinary process of RICS against its valuer members (Annexure L). Member of the CoE, CA. Prafulla P. Chhajed provided an indicative list of contraventions and maximum penalties (Annexure U). Keeping these in view, four Schedules of contraventions warranting adjudication are attached to the Valuers Bill. The contraventions warranting prosecution are specified in the Bill itself.

4.61 The CoE believes that with development of the profession, a general understanding would evolve in the market as to what is proper and what is not. What is considered proper in one context may not be so in another. What is considered proper today may be considered so tomorrow. Therefore, the four schedules of contraventions need to be revisited at intervals. The Bill enables the Government to alter any of the entries and provisions contained in the four Schedules. Based on the facts found through investigation or inspection or on material otherwise available on record, the Institute should issue a show cause notice to the service provider who has allegedly contravened the provisions of law, and dispose of the same, by a reasoned, appealable order, in adherence to principles of natural justice. This aspect has been elaborated further in chapter 5. To avoid any conflict of interest, the penalty should be deposited in the Consolidated Fund of India.

Presumption of Bona Fide

4.62 While a valuer should be liable for his misconduct, he must not be liable for something which gives an impression of misconduct. For example, the value arrived at by a valuer could be different from what a customer expected or what another valuer arrives at. By definition, divergent views are possible in the field of valuation. Choices made by clients of valuers are

intended to be informed choices, informed by and relying on the opinions of the valuers. If expressions of opinion on the value are lightly interdicted or punished, it would have a chilling effect on free expression of such opinion and be counterproductive to the objective of developing a vibrant market for valuation services and the regulatory objective of having predictable and safe environment for bona fide expression of opinion on value. Therefore, there should be a presumption of bona fide for the valuation conducted by a valuer in case of disciplinary proceedings, similar to credit ratings, as cited earlier.

Single Authority

4.63 When service provided by a professional does not meet the expectations of a stakeholder or affects his interests adversely, it is natural that the stakeholder files complaints against him at every possible forum. It is, therefore, important that only one authority, having legal and professional competence, monitors and adjudicates the conduct of a professional and awards appropriate punishment, and he is not harassed by many agencies for the same alleged offence. Someone filed a FIR against an IP. While considering this in the matter of *M/s. Alchemist Asset Reconstruction Co. Ltd. Vs. M/s Hotel Gaudavan Pvt. Ltd., the Adjudicating Authority (AA) observed: "If, there is any complaint against the Insolvency Professional then the IBBI is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, after investigation 'IBBI' finds that a criminal case has been made out against the Insolvency Resolution Professional then the 'IBBI' has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the IRP in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the 'IBBI' as is evident from a perusal of section 236(1) (2) of the code."* Similarly, once a disciplinary proceeding is initiated by the regulator, it alone should conclude the process. In the matter of *Insolvency and Bankruptcy Board of India (IBBI) Vs. Shri Rishi Prakash Vats & Ors.*, the NCLAT held: "...once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for the Disciplinary Authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority/ (National Company Law Tribunal), the Adjudicating Authority cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the Adjudicating Authority/ National Company Law Tribunal." These ratios should apply to the valuation profession also. This is consistent with the spirit of fundamental right provided to a citizen to practise a profession of his choice under Article 19(1)(g) read with Article 19 (6) of the Constitution of India.

Unified Regime

4.64 The market requires a range of valuation services for a variety of purposes, some of which are statutorily required and some others are market driven. Chapter 2 lists the various statutes which require valuations. Further, there are many instances where, although there is no legal requirement, valuation is done on voluntary basis, to facilitate the decisions. The CoE considered the note provided by CVSRTA Registered Valuers Association on the various purposes of valuation (Annexure R).

4.65 Different legal regimes, acting as separate islands, recognise valuation professionals according to their self-prescribed eligibility norms. Such islands of valuation profession in a country is not conducive to holistic development of the profession. It is costly to develop, regulate and maintain each island and yet not have the best, which is possible if there is a unified regime,

which of course meets the needs of each different regime, while facilitating cross learning. Many of these islands are too small to maintain or provide livelihood to a cadre of valuers. Most of them do not have capacity, incentive or motivation to enrich the valuation discipline. There is an institutional framework for CAs instead of separate regimes for CAs in manufacturing companies, CAs in financial companies, or CAs in service industries. There is an institutional framework for Advocates instead of separate regimes for Advocates for securities laws, advocates for tax laws, advocates for corporate laws, or advocates for criminal laws. Similarly, it is desirable to have a unified institutional framework for valuers instead of separate regimes for valuations under securities laws, valuations under corporate laws, or valuations under fiscal laws. It is not as if the art and science and the skill required for valuations under tax laws are different from those required for valuations under the corporate laws. The unified institutional framework should produce valuers, who may specialise in valuations in different areas, as much as CAs or Advocates specialise in different industries or laws. This would provide level playing field to all valuers and promote wholesome development of the profession that India deserves. Therefore, the proposed institutional framework should not limit to valuations under the Companies Act, 2013 (Act) and the Insolvency and Bankruptcy Code, 2016 (Code) only. It should cover every valuation required under all laws in the country in a phased manner, depending on experience and the needs of the time.

4.66 In order to ensure minimum quality of valuation services, only valuers registered under the proposed institutional framework should be permitted to render valuation services. A person, who is not registered as a valuer, must be prohibited from rendering valuation services, howsoever qualified and competent one may be. It should be mandatory, to start with, for valuation services under the Act and Code, followed by phased inclusion of valuation services under other laws. The exclusivity of the market attracts younger talent to the profession and maintains discipline in the market for valuation services. In case of other professions too, the exclusivity is maintained. For example, only an IP can provide insolvency services under the Code. The same is the case with other professions such as CAs, Advocates and Company Secretaries.

4.67 Keeping the above in view, the Valuers Bill lists out several central enactments, which presently require valuations. It would enable the Central Government to notify any of those enactments as and when it decides that the valuations required under an enactment should be conducted by a valuer under the Valuers Bill. It also enables the Central Government to prescribe any other enactment, any provincial enactment or a new enactment, which may come into force at any time in future, for the purpose of valuation under the new framework. The CoE is conscious that an enactment requiring valuation may itself have provisions about the manner of valuation, which could be inconsistent with the provisions in the Valuers Bill. In that case, the said enactment needs to be amended to apply provisions in the Valuers Bill for valuations under that enactment. To avoid this difficulty, the Valuers Bill provides that the provisions in the Bill shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This would enable valuations required under an enactment to be conducted either under the provisions of that enactment or under the Valuers Bill, depending on decision of the Central Government.

Valuation Standards

4.68 The valuation of an asset is an estimate of worth of that asset, arrived at after factoring in multiple parameters and externalities. This may not be the actual value of that asset and the market may discover a different price for that asset. Often different valuers arrive at different

estimates of value for the same asset. While this may be possible when the purposes of valuation are different, such variance is observed even when the purposes are the same. This may be because of lack of uniform approach to valuation. It is quite natural that valuers adopt different approaches. But they cannot be using different approaches in the same circumstance. If every valuer gives a different value by using different approaches in the same circumstance, a customer may be worse off with a valuation and the valuer, who has arrived at the right valuation, may find it difficult to defend his position. The market may question the ability of the valuers and the integrity of the valuation process. Accountability and liability of the valuers may be severely restricted. Such a situation is not in the interest of the market where various crucial economic and commercial decisions are taken on the basis of the valuation reports. The CoE felt the necessity of having uniformity in approach to valuation to reduce the scope of deviations between the valuation reports of different valuers. This should be prescribed through standards, which the valuers should apply while conducting valuations.

4.69 The CoE noted that internationally, International Valuation Standards and RICS Red Book are widely adopted by valuers. In addition, in some geographies, the VPOs prescribe standards for their members. Several countries have also prescribed their own valuation standards, such as US (Uniform Standards of Professional Appraisal Practice), Malaysia (Malaysian Valuation Standards), Australia and New Zealand (Australia and New Zealand Valuation and Property Standards), etc. However, in recent years it has been seen that countries are either moving towards IVS or intending to do so (Saini, 2019). The CoE also noted that many other professions have professional standards. The three professional institutes (ICAI, ICSI and ICoAI) prescribe respective standards to be followed by their members. With regard to the valuation profession, recently ICAI has come up with standards for valuation of securities or financial assets for its valuer members. Government has set up a Committee to advise on valuation standards under the Valuation Rules.

4.70 The standards gain more authenticity and acceptance from the professionals when prescribed by the regulator as compared to the professional associations. Owing to the dynamic nature of valuation, valuation standards may need frequent modification. The incorporation of valuation standards in the primary legislation is, therefore, not advisable. The Statute should provide a mechanism for formulation of standards, considering the interests of stakeholders, and enable the regulator to notify and modify the same.

Professional Fee and Indemnity

4.71 The CoE noted that some stakeholders had suggested that a minimum fee for valuation services be fixed by law or regulator. While deliberating on the issue, it took note of the recommendations of the BLRC (MoF, 2015) over the regulation of fee of IPs: *“The Committee is of the view that there should be no constraints on RP fees. In a competitive market for the insolvency professionals, the fees for managing the insolvency resolution process will converge to the fair market value for the size of the entity involved. While the market is evolving, the Code tries to ensure that there is as much transparency about the behaviour and the performance of individual insolvency professionals that the professional, creditors and debtors are incentivised to behave optimally. For example, the fees charged by the professional is collected as part of the records of the IRP, which is maintained in a public database by the Regulator. Since this will be recorded and disseminated for all professionals across all resolution cases, the potential customers can compare fees across professionals, along with all the other performance measures that are also maintained. This includes size of the insolvency being resolved, the days taken for resolution, the frequency with which entities are resolved and turn out to be successful turnarounds and the frequency with which*

entities are resolved but eventually turn up for liquidation. Then, customers will be able to carry out a fee-performance when choosing among professionals to engage for other cases. The Committee feels it is prudent to allow the market to develop and competition to drive charges of the RP rather than setting these in the Code, or in regulations. In any competitive market, we expect that there will be a range of services available for a range of problems.....”

4.72 The CoE endorses the views of the BLRC. No profession prescribes a fixed fee for their members. Any fixed fee is prone to two problems. First, the price fixed by the regulator may not be the market clearing price. In that case, either some valuers would be deprived of work or users would be deprived of valuation service. This would be counter-productive for both the market as well as the profession. Second, the minimum fee has the tendency to be the maximum fee and the maximum fee has the tendency to be the minimum fee for the market participants. In that case, market would not clear. It needs to be appreciated that no two valuations are equal or two valuers are equal. It may not be possible to standardise valuation services in terms of size and complexity of asset to be valued and the quality of the valuer, so that a standard fee could be fixed. A valuer would not have incentive to excel in service if he is assured of a certain fee, irrespective of his performance. It may become an administrative nightmare to monitor that fixed fee is being paid and there are no under the table payments. The CoE is, however, firm that a valuer should not charge fee in the form of success fee or convenience fee or an ad valorem fee, as it has the potential to compromise the integrity and reputation of the profession. Also, a valuer should not charge an unreasonable amount as fee. The Authority should intervene only where the fee charged is unreasonable. What is reasonable would depend on facts and circumstances and cannot be defined.

4.73 The actual price of an asset may not necessarily match the value estimated by a valuer for a variety of reasons, most of which are not on account of improper conduct of valuation on the part of the valuer. This may raise an actionable claim against the valuer. The legal cost of defending such claims may often be prohibitive. A professional may be exposed to abuse of the system and needs to be protected. At the same time, a service user may have incurred loss on account of wrong valuations and also needs to be compensated. Such compensations are often beyond the financial means of the valuer. Therefore, it may be necessary for him to cover his liability through a professional indemnity insurance. The professional indemnity insurance will have a cost on the valuer. It may not be the appropriate to mandate such costs on a valuer in the infancy of valuation profession. It may not be prudent for the regulator to mandate such requirement through Regulations. It is best left to the judgment of the valuer whether he wants to cover himself with professional indemnity insurance. Possibly, as the profession develops and the market form professional indemnity matures in India, it should be affordable for a valuer to take the cost of insurance. In light of the above, the CoE recommends that since a valuer renders service under a contractual arrangement with a client, the need for a professional indemnity or insurance should depend on negotiation between the parties and hence is not a matter to be addressed in the proposed framework.



Governance through statutory regulators constitutes the most important governance reforms in the last century.

Anonymous.

5.1 As discussed in the preceding Chapters, valuation profession needs regulation to protect the interests of users of valuation services in India and to promote the development of, and to regulate the profession of valuers as well as the market for valuation services, but to the extent required to address market failures. While the regulations should be enabling and facilitating (Moosa, 2015), the laws governing a regulator should mandate it to be responsive (Burman & Zaveri, 2018). Unlike many developing countries, India has a record of sustaining credible institutions, among them are the Supreme Court, the Election Commission and the Securities and Exchange Board of India (Dhume, 2010). This Chapter attempts to design a regulatory architecture which is responsive and credible enough to be bracketed along with the Supreme Court as an institution and will catapult the valuation profession to the global level.

Statutory Regulation Vs. Self-Regulation

5.2 There are broadly four institutional forms of regulation, namely, self-regulation (regulations made by the users themselves voluntarily), statutory / regulated self-regulation (regulations made by users consistent with the provisions in the statute), state regulation, and co-regulation (mix of market regulation and state regulation). Self-regulation is understood as a regulatory process whereby the industry-level organisation (such as a professional society), as opposed to a governmental level organisation, sets and enforces rules and standards relating to the conduct of firms in the industry (Gupta & Lawrence, 1983). A profession generally starts with self-regulation; it comes up with its own regulations and standards to govern relationships and the conduct of professionals. Such regulation is generally forward looking and embedded on the ground and carries the legitimacy and commitment of implementation. It uses the experience and expertise of the regulated; helps in risk identification; quick adaptability for changes and innovations. It derives strength from the ethical character of the profession and is administered by the professionals ordinarily through professional associations and societies. It works well where competition is vigorous, structure of firms is relatively simple, services are well-defined and information is largely available in public domain (Doyle, 1997). It may be most appropriate when the government lacks ready access to information about regulatory problems and their possible solutions (Coglianese & Mendelson, 2010).

5.3 Self-regulation fails as profession becomes impersonal, large and complicated and thereby fails to address inherent conflict of interests. It usually focuses on the benefit of the regulated and fails to protect the interest of the consumers and other stakeholders. It is vulnerable to regulatory capture and can be used by interested parties to orient the regulations to their advantage. It generally provides inefficient enforcement mechanisms against violators of its standards and principles. It lacks modern accountability mechanisms as the decisions are taken through a non-transparent process and are not reviewable (Ong, 2010). In recent times, there is a trend of decline of self-regulation and growth of statutory regulators (Davies, 2004). Three developments have contributed to declining role of self-regulation. First is the conflict of interests between public interest and private interest. Where the latter gets precedence over the former, self-regulation breaks down. This gets manifested in under-regulation, lenient enforcement, free riders, collusion, etc. Second is the emergence of empowered statutory regulators who are

continuously in search of new turf. They tend to take over well-established institutions and practices from self-regulatory organisations (SROs). The third is the limited reach of SROs whose writ is limited to its members. Statutory regulators, who generally have the authority of the State, can go beyond the professionals, when necessary. For example, an SRO cannot penalise a person for rendering deficient professional services if he is not its member. Given the limitations of self-regulation, literature suggests meta-regulation whereby outside regulators deliberately induce targets to develop their own internal, self-regulatory responses to public problems (Coglianese & Mendelson, 2010).

5.4 On failure of self-regulation in certain circumstances, state regulation steps in. This comes from the State and is exercised under the police power (Browne, 1935). For example, the accounting profession in the United States shifted from self-regulation to statutory regulation by the Public Company Accounting Oversight Board (PCAOB)¹ set up under the Sarbanes-Oxley Act, 2002. The NFRA Rules provide for one-tier state regulation of auditors of select companies for enforcement of auditing standards and ensuring the quality of audits. The medical profession moved away from statutory self-regulation to a two-tier state regulation, providing for appointment of regulators through selection rather than election. State regulation is carried on by a statutorily empowered regulator with detailed arrangements of accountability. The regulator usually does not have any conflict of interests, as its functionaries are not elected / appointed by the regulated, and it pursues only public interest. However, it remains susceptible to regulatory capture if it lacks understanding of the profession. The functionaries with regulators are quite sensitive to criticism in media and fearful of actions by vigilance agencies. They often fail to take prompt actions as they are one step away from the ground.

5.5 Since both self-regulation and state regulation have respective advantages and concerns, a blend of both is considered superior to either in isolation. A variant of the blend is regulated self-regulation, where self-regulation is subject to a statutory framework which enables monitoring, supervision, and control by the State. Generally, a statute lays down the manner of regulation by the professionals themselves. An example is the Company Secretaries Act, 1980 which provides a mechanism for the professionals elected from among themselves regulate the profession of CSs. Another example is the Advocates Act, 1961, which provides for two tiers of agencies of regulation, namely, BCI and SBCs, both of which consist of elected professionals, to regulate the legal profession.

5.6 BLRC (MoF, 2015) believed that the Indian experience on self-regulating professional bodies (such as ICAI, BCI, ICSI) has been reasonably positive in the development of their respective professions and professional standards. However, the experience as regards their role in regulating and disciplining their members has been mixed. In comparison, financial regulators (such as SEBI and RBI) have had greater success in preventing systemic market abuse and in promoting consumer protection. CRCS (ICSI, 2014) believed that in a 'club', standards of conduct are enforced by norms, not rules. The norms are flexible, and defaulters are treated kindly. The club is an appropriate model for an SRO in an early stage of its development and works well for small group of professionals. As the processes become technologised and standardised, and customers become empowered, club should be replaced by state, which is less discretionary, less cosy, and less forgiving to defaulters.

5.7 Since regulated self-regulation did not fully address the concerns of self-regulation, the approach shifted to co-regulation, where the regulations are specified, administered, and enforced by the two tiers of agencies - the first tier of which is usually a state agency and the

1 It is a nonprofit corporation that oversees the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. It also oversees the audits of broker-dealers, including compliance reports filed pursuant to federal securities laws, to promote investor protection.

second tier is a self-regulatory agency or a market entity. An example is regulation of securities market, where the state agency, SEBI and the self-regulatory agency, stock exchanges jointly regulate the brokers and trading on stock exchanges². An example in the context of professions is regulation of insolvency profession, where the first tier is a state agency, IBBI as principal regulator with many competing, private sector front-line regulators in the second tier.

The features of four broad institutional forms are summarised as under:

| Regulatory Approaches to Professions (With some approximations) | | | | | | | | |
|--|--|---|--|--|--|--|---|--|
| Description | Regulatory Approaches | | | | | | | |
| | Self-regulation (One Tier/ Two Tier) | Statutory Self-Regulation | | Co-Regulation (Two Tiers) | | State Regulation | | |
| | | One Tier | Two Tiers | State + Self* | State + Market | One Tier | Two Tiers | |
| Profession | Valuation in General | CA/CS/CMA | Legal / Valuation | Brokers | Insolvency# / Valuation# | Audit# | Medical | |
| Nature of Governing Law | Bye-laws | Statute Statute & Bye-laws | Statute / | Statute & Bye-laws | | Statute | Statute | |
| Governing Law | The Societies Registration Act, 1960 | The Chartered Accountants Act, 1949, etc. | The Advocates Act, 1961/ Draft Valuation Bill, 2008 | The Securities Contracts (Regulation) Act, 1992 The Valuation Rules, 2017 | The Insolvency and Bankruptcy Code, 2016/ Rules, 2018 | The National Financial Reporting Authority | The National Medical Commission Act, 2019 | |
| Nature of Regulator | Tier 1 Tier 2 | Voluntary Association | Statutory Association | Statutory Association | State Statutory Association | State Market | State State / Statutory Association | |
| Regulator | Tier 1 Tier 2 | Valuers' Association | ICAI, ICSI, ICoAI | BCI/Council SBC/RI | SEBI Exchanges | IBBI IPAs/RVOs | NFRA NMC SMC | |
| * Only for example. It has undergone substantial change along with demutualisation of stock exchanges. # Since these are extensions of another profession, the regulator of the parent profession also regulates them. For example, where a CA is also an IP, the professional is subject to regulatory jurisdiction of both ICAI and IBBI. | | | | | | | | |

5.8 While self-regulation is prone to regulatory capture, no regulatory structure is immune from it. Quite often, it is subtle. It is important to appreciate its nuances and then provide for antidotes. The regulatory capture can be ex-ante and ex-post. The ex-ante capture is the set of influences that are exercised in the process of defining the rules and regulations. The ex-post capture seeks to influence regulatory agencies with the goal of avoiding compliance with the existing rules and regulations. Further, it could be financial and cultural. A financial capture takes place when the motivation of the regulatory agency is of a material nature and cultural capture takes place when the regulatory agency starts to think like the regulated, a reflection of strong social identification with it. In case of cultural capture, the regulator may not be corrupt or influenced materialistically, but it accepts the influences, values, and interests of regulated, which it believes are convergent with the interests of consumer and society (Borges, 2017). A regulatory structure may not suffer from regulatory capture in its initial stages, but this may happen as it develops through different stages.

5.9 Multiple remedies are suggested for preventing or mitigating regulatory capture. The regulatory structure should maintain a balance by limiting the discretion of the regulator,

² This model has undergone substantial change along with demutualisation of stock exchanges.

without compromising the independence and autonomy of regulatory agency. It should provide for higher transparency and accountability of regulatory decisions and processes (Boehm, 2007). It may provide for participation of public interest groups in regulatory process, limitations on the role of industry players, properly structured and resourced regulatory agencies, regulators who really understand the businesses that they are regulating, avoidance of revolving door situation, and independent reviews (Baxter, 2011). The risk of regulatory capture is reduced by diversifying the sources of expertise in the regulatory decision making. The rulemaking process should be exposed to diverse perspectives and ideas. The judicial review of regulatory decisions can provide such an important mechanism for limiting capture, as it allows the weak as well as the strong to be heard and is often effective in detecting cases in which the logical or evidentiary foundation for a particular regulatory action is weak (Carpenter & Moss, 2014).

One-Tier Vs. Two-Tier Architecture

5.10 The regulatory architecture for a profession and a market may comprise a sole regulatory agency or multiple regulatory agencies. The professions such as CAs, CSs and CMAs have only one regulator. The statute, however, enables the regulator to serve the regulated through its extensions. The regulator has an elected central council, few regional councils and many chapter management committees to serve and interact with the professionals. The valuation profession (outside the Valuation Rules) has several SROs, who compete among themselves.

5.11 The structure may have regulators in a hierarchy, where one regulator is subject to oversight of another regulator. The regulators in a tier may have parallel jurisdictions and compete with one another. The legal profession has two independent regulators in a hierarchy, BCI as the principal regulator and several SBCs as front-line regulators, with earmarked geographical jurisdictions. The principal regulator does not regulate the functioning of frontline regulators. An advocate is not subject to regulation of both BCI and the SBC concerned. The medical profession similarly has NMC as the principal regulator with SMCs constituted under the State laws as the frontline regulators. The insolvency profession has a two-tier architecture with IBBI as the principal regulator, and several IPAs as frontline regulators. The IPAs are market entities registered with the IBBI, rendering regulatory or monitoring services, subject to oversight of IBBI. They may be de-registered if they are found lacking in their mandated role. An insolvency professional is subject to regulation of both IBBI and the IPA concerned. Unlike SBCs or SMCs, IPAs are neither constituted by any Central or State law, nor do they have earmarked geographical jurisdiction. They compete with one another to provide better insolvency services. The insolvency profession in the UK has two tier architecture, but it allows the second-tier regulators (recognised professional bodies) to compete among themselves and with the principal regulator, the Insolvency Service. The valuation profession under the Valuation Rules has two-tier architecture like insolvency profession, where the second tier comprises market entities. The draft Valuation Professional Bill, 2008 proposed a two-tier structure with the Council of Valuation Professionals as the principal regulator and several Recognised Institutes as frontline regulators. It envisaged the second tier to be elected SROs. It divided responsibilities between them.

5.12 A few regulators have created a second tier of SROs to assist them in regulation, though they are not mandated to do so. The Maharashtra Real Estate Regulatory Authority introduced³ SROs in real estate sector in Maharashtra to ensure greater professionalism among promoters, bring a certain level of consistency in the practices of promoters, enforcement of code of conduct and to discourage fraudulent promoters. The SROs are required to register with the MahaRERA, and the membership of a registered SRO is a pre-condition for registration with MahaRERA. The RBI

³ The Maharashtra Real Estate Regulatory Authority (General) (Second Amendment) Regulations, 2019.

recognises industry associations as SROs of Non-Banking Financial Companies engaged in microfinance (NBFC-MFIs) to ensure effective monitoring of the functioning of NBFC-MFIs, their compliance with the regulations and code of conduct and in the best interest of the customers of the NBFC-MFIs. While membership to the SRO is not mandatory, NBFC-MFIs are encouraged to voluntarily become members of at least one SRO. The membership is seen by the trade, borrowers and lenders as a mark of confidence and removal from membership is seen as having an adverse impact on the reputation of such removed NBFC-MFIs. SEBI recognises any group or association of intermediaries as an SRO, which specifies standard of conduct for its members and conducts inspection and audit of its members.

5.13 The regulatory framework for valuation professions in other jurisdictions have differing structure. In Malaysia, there is a single-tier regulatory architecture, where Valuers, Appraisers and Estate Agents are registered with the Board of Valuers (The Valuers, Appraisers and Estate Agents Act, 1981 of Malaysia). New South Wales has a single-tier architecture where valuers are registered with the Director-General (The Valuers Act, 2003 of New South Wales, Australia). New Zealand has two-tier architecture where a Valuer must be a member of the New Zealand Institute of Valuers to be eligible for registration with the Valuers Registration Board (The Valuers Act, 1948 of New Zealand). In Singapore, one must be a Member or Fellow of Singapore Institute of Surveyors and Valuers to be eligible for an appraiser's license from the Comptroller of Property Tax (The Appraisers Act, 1906 of Singapore). In the USA, the Appraisal Sub-committee (ASC) created under FIRREA acts as the principal regulator for appraisal profession and the State Agencies act as the frontline regulators having disciplinary rights. The State Agencies license and certify appraisers, while ASC maintains national registry of appraisers. The Appraiser Foundation, a private sector initiative, having representation of member associations, lays down standards and minimum qualification requirement. Globally, most of the second-tier regulators are voluntary organisations without any statutory status.

Learnings for Valuation Profession

5.14 Except for 3000+ Valuers registered under the Valuation Rules, the valuation profession has multiple competing SROs. Most of the valuation professionals are members of SROs, which are non-governmental organisations/ associations promoted by valuers themselves. There is no statutory mandate to be enrolled with them, though some users require/prefer membership of a SRO for ensuring the quality and the standards of the valuation services⁴. Once an individual becomes a member of a SRO, he is required to follow the bye-laws, standards, and code of conduct, if any, prescribed by the SRO. He can be suspended or expelled as member for a variety of failures. Where valuation services are rendered by professionals such as CAs, they are subject to discipline of their respective PI such as ICAI, which are established under statutes for regulation of parent professions. Irrespective of their membership with an SRO, some users register, regulate and even penalise valuers. Thus, there are multiple SROs, with no statutory backing and with no central, coordinated effort or agency (like Board of Control for Cricket in India, Indian Medical Association, Advertising Standards Council of India) to develop the profession holistically. This approach (fragmented, non-statutory, self-regulation) in place for more than half a century did not engender a respectable profession. The draft Valuation Bill, 2008 proposed to provide a unified and statutory self-regulation. However, it could not be experimented. The Valuation Rules provide a unified and statutory framework, that is a blend of state regulation and market regulation.

5.15 In the earlier chapters, the CoE has recommended unified and statutory institutional framework. It notes the merits and demerits of self-regulations (pure self-regulations or

⁴ As per the Standard Procedure recommended by the Indian Bank Association, a valuer (or valuation professional) is required to be a member in good standing of any one of the valuer associations (self-regulatory organisations).

statutory self-regulation), which is an effective tool for development of the profession. SROs are banks of information and experience, which is useful in any statutory regulatory model to reduce the risk of information asymmetry. They are, however, weak in enforcement. The institutional framework should integrate self-regulation to the extent it benefits from the knowledge and expertise of valuers and it does not allow them any role in enforcement. The CoE proposes a Committee of Valuers comprising, exclusively, valuers to advise the Institute on any issue relating to the profession of valuers and market for valuation services, while mandating the Council of the Institute to consider the advice. The CoE notes the merits and demerits of state regulation, in the context of a profession. It is good in enforcement and avoidance of regulatory capture. The CoE proposes complete insulation of enforcement mechanism not only from the regulated, but also the regulator itself. A separate wing in the Institute will deal with disciplinary matters. It also proposes appointment of the members of the Governing Council (GC) of the Institute by Central Government, as opposed to by election.

5.16 There are about 3000 valuers registered under the Valuation Rules. The IoV alone has nearly 30,000 valuers at the end of 2018. As per an estimate presented in Chapter 2, India may eventually need 2,00,000 valuers across asset classes. India is a country of continental size. It is the third largest economy in terms of purchasing power. It is beyond the capacity of one principal regulator to develop and regulate a profession of such size and geographical spread and protect the interest of consumers across the country. Regulation by one regulator will be costly and inefficient. The feedback of the regulated and the feedback from the market will be hampered by the limited geographical reach of the principal regulator. Every other profession in the country has many front-line regulators to supplement the efforts of principal regulator. There is one SBC or one SMC for every state. Insolvency profession has many front-line regulators competing with one another. Competition brings excellence in service. Even though the professions such as CA or CS have only one regulator, they have 100+ points of geographical presence.

5.17 The CoE recommends a unified, statutory, two-tier regulatory architecture, with a statutory principal regulator which is a blend of state regulation and self-regulation, and several competing frontline regulators, which is a blend of self-regulation and market regulation. A mutually supportive structure of market and non-market institutions is well-suited to promote development (Datta-chaudhuri, 1990). The principal regulator shall register and regulate all service providers, including front-line regulators, and promote competition among them. It will focus on regulatory responsibilities, which is its strength. The front-line regulators shall work under the oversight of the principal regulator and will focus on developmental responsibilities, which is envisaged to be their strength. The responsibilities between the principal regulator and front-line regulators should be neatly delineated to avoid overlaps and gaps and presence of front-line regulators should not undermine the regulatory authority of the principal regulator. Such a model is the least disruptive, as it has the potential to incorporate the self-regulation model existing for the valuation professionals in general.

Contemporary Thoughts on Regulatory Design

5.18 The CoE notes that in the last few decades, there has been a shift towards regulations through independent regulatory agencies such as SEBI, IBBI, NMC, etc. The rise of regulators to share governance with Government is now a hard reality and governance through regulators probably constitutes the most important governance reforms in the last century. Perhaps the establishment of independent regulators constitutes a significant change to formal institutions of governance (Westrup, 2007). The rise of regulatory state may have been an efficient response to changing conditions (Glaeser & Shleifer, 2003).

5.19 Regulators are a class of body corporates mostly created by statutes. They provide public goods in public interest just as Government does. They have responsibilities - consumer protection, development and regulation - like those discharged by Government. They have powers - legislative, executive and judicial - like those of Government. They resemble Government in many respects, yet they are not the 'Government'. They are, in a sense, Governments within Government, imperium in imperio, and carry out governance on behalf of Government in a pre-defined framework (Nair & Sahoo, 2007). They are epistemically known as 'regulators' as their responsibilities include regulation, though they are formally described as authority, commission, board, council, etc.

5.20 There are, in fact, significant advantages of governance through a regulator. It generally does not share the 'social' obligations of Government; nor is it subject to the pressures of 'interest' groups. It provides the same level playing field to all kinds of participants without fear or favour. It builds the expertise matching the complexities of the task and evolves processes to enforce authority rapidly and proactively. It operates at arm's length from government, insulated from daily political pressures and embedding their decisions in technical expertise (Dubash & Morgan, 2013). However, there are also significant concerns. The fusion of legislative, executive and judicial powers in one entity carries the tension of potential misuse. It suffers from democratic deficit as it is not directly accountable to people or their representatives. Government continues to remain accountable for the governance carried out through the regulator, which poses a classic example of the principal-agent problem. The regulator being the fifth layer in the hierarchy of delegation, shares a principal-agent relationship with the State (Braun & Gilardi, 2006). In case of exigencies, Government is called upon to explain and carry out rescue operations. The challenge is to minimise the trade-off between the advantages of governance through regulator and the apparent threat to democratic accountability (Westrup, 2007).

5.21 The CoE undertook a comprehensive review of the experience so far to improve the design of regulators and make them more effective. It found a thorough inquiry of this nature in the Report of the Financial Sector Legislative Reforms Commission, which laid down broad principles of regulatory architecture and institutional design for modern Indian regulators. It took note of the evolving thinking about and design of institutions and regulators in the Indian context, in: (a) the Draft Regulatory Reforms Bill by the Planning Commission in 2013 (Appendix VI); (b) the Report of the Committee to Review the Company Secretaries Act, 1980 in 2014 (Appendix VIII); (c) the Report of the Bankruptcy Law Reforms Committee in 2015 (Appendix IX); (d) the Report of the Working Group on Regulatory Structure of Competition Law (2019) (Appendix XIII); and (e) the Report of the Competition Law Review Committee in 2019 (Appendix XIV). It also studied principles of setting up regulatory institutions, as enunciated in (a) The Administrative Procedure Act, 1946, Government of USA (Appendix I); (b) World Development Report, 2002: Building Institutions for Markets, World Bank (Appendix II); and (c) Executive Agencies: A Guide for Departments (2018), Cabinet Office (UK) (Appendix XII).

Governing Governor

5.22 It is useful to distinguish between the body of regulator – an office, employees, assets and other resources – and its head - GC. The GC of the regulator is the fulcrum of a regulatory architecture. It provides leadership, advises on strategy and the deliverability of policies, maintains high standards of corporate governance, ensures that controls are in place to manage risk, scrutinises performance, and is the forum for self-challenge on how well the regulator is achieving its objectives (UK, 2018). Since the regulator works under the direction, supervision and control of the GC, the design of GC is extremely important. The OECD (2014) lays down seven

principles for the governance of regulator, namely, Role clarity, Preventing undue influence and maintaining trust, Decision making and governing body structure of independent regulator, Accountability and transparency, Engagement, Funding and Performance evaluation.

Governance

5.23 It is difficult for a body to take decisions about itself or its working with complete objectivity or hold itself accountable for its conduct or performance. That is why decisions about organisation and process design are placed in the GC and not the management. It is the primary responsibility of the GC to lay down norms for the functioning of the management and act as a hands-on principal to hold the management accountable. It may, however, be hard for a GC to hold the management accountable if it has only managers. The GC, therefore, needs to have an appropriate external interface. The law should require a formal interface between the regulator and society in the regulator's governance.

Composition

5.24 There are different options for external interface. Many statutes, such as the IBC, establishing regulators provide for advisory committees to serve as sounding board and lend domain expertise. Many regulators such as SEBI, have voluntarily constituted advisory committees. While such committees are useful, they may not serve as effective governance mechanism. The Society should have representation in the GC to strengthen its democratic legitimacy and accountability. It is usually represented through PTMs. Today, almost every regulator has PTMs on its GC. They attend its meetings, vote on issues and take decisions on its behalf along with other members of the GC. They have skin in the game while not being beholden to the interests of management (OECD, 2014). PTMs on a regulator's GC is roughly analogous to independent directors on corporate boards. The best practice in corporate governance suggests that for effective accountability, the number of PTMs should match the number of WTM.

5.25 The CoE deliberated as who should be PTMs. It felt that having practising valuers in GC may create a situation of conflict of interest for the valuer, as he would now frame norms for his own conduct. Nevertheless, the expertise of a valuer helps in setting better norms for the development and regulation of profession. Therefore, the CoE recommends that there should be no earmarked slot for valuers in the GC. Nor should there be a prohibition on a valuer to be in the GC. The Government should have flexibility to appoint a valuer on the GC subject to condition that, after vacating office, he shall not provide services as a valuer or associate with any service provider in any manner for a period of two years. A key objective of the statute is protection of interests of users. The GC should have representatives of user departments for better appreciation of their needs and difficulties.

5.26 A regulator needs to have perspective of the society and public, in addition to that of the interest groups such as profession, users, etc. The GC should have some eminent citizens who would promote the cause of public. They do not have a conflict of interest and bring their own perspectives to the deliberations of the GC. This: (a) reduces the potential for decisions that favour the regulated occupation/profession over the public; (b) reduces the potential for decisions which illegitimately favour one faction of the regulated industry/profession over another; (c) institutionalises public participation in government decision-making; (d) decreases public suspicion and thereby augments public confidence and trust in the regulatory entity; (e) expands the range of skills, talent, training, and perspectives available for higher quality and more creative action; (f) achieves a balanced discussion, including re-examination of the "givens"

in any industry/occupation/profession; (g) enables "the average citizen" to address the regulatory entity; and (h) enhances credibility respecting decisions and public advocacy (Smith, 2000). Thus, PTMs should come from users, general public and valuation profession. This will bring diversity of skills and experience in the GC and to facilitate robust decision making.

Appointment

5.27 The CoE debated about the manner of appointment of members in the GC. The presence of elected members amongst the professionals in the regulatory authority has its own merits and demerits. Some of the merits are: (a) a visible or transparent connection to the membership, particular constituencies or community interests, (b) clear source of, and reduced responsibility for, recruiting board members, (c) responsibility for member accountability to stakeholders that is built-in to the board's work, (d) a means of promoting stakeholder "buy-in" and involvement, (e) a strong capacity for checks and balances in decision making where constituencies have different interests, and (f) a measure of public or political legitimacy where organisations operate in the public eye. However, there are certain demerits of allowing elected representatives of the regulated entities in the GC which are: (a) a limit on the ability of the regulator to choose whom, or what functional skills and assets it needs from the members serving on the board, (b) the board members would serve more out of interest rather than duty, (c) a greater emphasis on stakeholders interests rather than common interests, (d) cumbersome decision making where the elected members may have to consult with their constituencies on certain decisions (MacDonald, 2016).

5.28 The most glaring demerit of elected representatives of the regulated entities in the GC of the regulator is the public perception of regulatory capture. The regulator may start serving the interest of the regulated more than the public interest. This may lead to weak disciplinary actions against the erring regulated entities because of conflict of interest. Further, where the members belong to a particular group, there is a risk that once appointed as a member of the GC, they may perceive their role as representatives of a group they may have an interest in, rather than independently providing expertise for the governance of the organisation. Therefore, the need for representative advice in a regulator is better addressed through the formal establishment of advisory or consultative committees. Such committees may be formed either on an on-going or ad hoc basis (OECD, 2014).

5.29 There have been some concerns where regulator has representatives from the regulated profession. While reviewing the disciplinary mechanism in the three PIs, the HLC (MCA, 2017a) observed: *"For instance, in this exercise of self-regulation, members of the institutes elect representatives who decide whom to punish and what the punishment should be. The political process takes over and externalities ensure that the members do what is good for them individually, rather than what is good for the whole community. Just as it happens in pollution control, market failures like these have to be dealt with by external regulation. Investors and lenders believe that their complaints may not be heard by members of the club, and this significantly lowers the number of complaints."* For this reason, the medical profession recently moved from election to state appointment. The CoE noted that having elected members in the GC would give it a political colour. This goes against the concept of a regulatory body created outside the government to make it politically neutral and thereby hampers the effective functioning of the regulator. *The election process is unlikely to produce high-quality nominees, as persons who ought to be on the GC because of their competence and reputation are likely to shy away from elections.* Therefore, the CoE recommends that the members of the GC should be nominated by the Central Government based on the recommendations made by an independent select committee.

Responsibilities

5.30 Since the regulator and its GC are different, the specific responsibilities of the GC need to be identified. For example, it alone shall perform quasi-legislative functions. It should decide the matters of strategy and direction of the regulator and accountability. The IBBI (Procedure for GC Meetings) Regulations, 2017 provides a model for this.

5.31 The manner of working of the GC is also important. There are best practices in the interest of transparency and accountability. For example, the US Government in Sunshine Act, 1976 requires: *“... the agency shall maintain ... such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.”* Some such practices would develop in course of time. These could be specified through Regulations.

5.32 For effective participation of members, meetings of the GC must be held with adequate notice and a proper agenda. Decisions must be taken with the required majority when the meeting has the required quorum. Formal procedures on agenda setting and voting create pressure upon all members to vote wisely and articulate the logic that led up to a voting decision both internally within the regulator and externally to the general public. This is especially true for PTMs, who as eminent persons, are accountable within their communities to explain and defend their voting decisions. Though it is not a statutory requirement, many regulators in India routinely put out the agenda of each meeting as well as decisions with respect to each agenda item in public domain. Mature regulatory jurisdictions often codify standards of transparency. Deliberations on select items may be withheld from publication only for prespecified, valid reasons. This should, however, be the exception rather than the norm.

Committee of Valuers

5.33 The regulator authority should maintain a comfortable distance from the regulated. It must deny itself the benefits of association with them. The regulations should be inclusive, to be in interest of all the stakeholders and any competing interest must be adequately balanced. Since the GC does not have mandatory representation from the practising valuers or SROs of valuers, the engagement with key stakeholders needs to be institutionally structured to produce concrete, practical opportunities for dialogue through active participation and, where possible, exchange of empirical data. The engagement should be transparent to avoid the suspicion of regulatory capture. A structure is found in the National Medical Commission Act, 2019, which provides for the formation of the Medical Advisory Council, which is the primary platform through which the States and Union Territories may put forth their views and concerns before the NMC. The CoE therefore recommends a Committee of Valuers to provide professional advice to the GC.

Separation of Powers

5.34 “Separation of power” has been a well-recognised principle of the constitutional law jurisprudence in India. It divides the power of the state into three branches: legislative, executive and judicial. It provides “checks and balances” within the three branches of the state. The “checks” make them accountable to each other and the “balances” ensures that power is shared and not abused by one branch. Though the Constitution of India does not envisage strict

separation of powers, it does indeed make horizontal division of powers among the legislature, the executive and the judiciary. A regulator essentially performs three types of functions being quasi-legislative functions, executive functions and quasi-judicial functions and acts as a mini state in discharge of these functions. Even though this blurs the principle of separation of powers, this is a conscious decision to empower regulators to help them efficiently perform their tasks. The Supreme Court made (2004) an interesting observation in the context of SEBI's powers: *"Integration of power by vesting legislative, executive and judicial powers in the same body, in future, may raise a several public law concerns as the principle of control of one body over the other was the central theme underlying the doctrine of separation of powers."*

5.35 In keeping with the spirit of the constitutional provisions, every regulator must ensure that its three wings exercise quasi-legislative, executive and quasi-judicial powers with independence and without intra-institutional bargaining and, thereby, avoid potential public law concerns prognosticated by the Supreme Court. The institutional framework should ensure that within the regulator, a separate organisational unit should be responsible for each of the distinct types of functions and powers. These units should operate at an arm's length from one another to act as mutual checks and balances to address public law concerns. In particular, the operations of the executive functions, including investigations, and the quasi-judicial functions must remain firmly insulated from each other. The GC should perform quasi-legislative functions and powers and drive policy decisions. The quasi-judicial functions should be housed in administrative law department. Adjudicatory panels should exercise quasi-judicial functions and powers. All other functions and powers should be exercised by, and in the manner as may be decided by the GC. While human resources should move from one unit to another, no one should deal with the same matter in one unit which he dealt earlier in another unit.

Independence

5.36 There is an expanding empirical literature on the relationship between regulatory independence and economic outcomes (Parker and Kirkpatrick, 2012). Economic outcomes improve where there is an independent regulatory agency. The protagonists of governance by regulators believe that the independence of regulators is the key to their effectiveness (Szapiro, 2005). If a regulator is to be held accountable for its performance, it must have functional independence in terms of powers, resources and capacity commensurate with the regulatory responsibilities and the manner of using the same towards its objectives. It must also have structural independence which generally emanate from the composition of the GC, selection procedures for appointment of members and their terms of appointment, and autonomy in discharge of functions under the legislation.

5.37 It, however, does not mean independence from the standard checks and balances evolved over time for the exercise of powers. A public agency must discharge its responsibilities within the framework of the law and be accountable for its performance. Strictly speaking, a system delivers its best only if all its constituents have harmonious co-existence and no constituent seeks independence from the others. In a sense, dependence on one another is a source of strength; vigilance by others keeps one always on toes and prevents failure. Full independence carries along with it the obvious danger of a public agency drifting away from the people and, possibly, even from the very objectives for which it is established. The design should factor in the following elements for independence:

(a) For a regulatory agency to be independent and effective, it needs to be able to build and nurture a cadre of its own staff (Roy & Others, 2019). This includes making decisions on the internal organisational structure of the regulator (Patnaik & Shah, 2014). Having the power to

conduct its own hiring also enables a regulator to set up a specialised workforce that has the right technical knowledge. Modern regulators have the power to develop their own recruitment criteria and processes. For example, SEBI is empowered under section 9 of the SEBI Act, 1992 to appoint its officers and employees and decide on the terms and conditions of their service. The regulator must have power to decide matters relating to its human resources. It must have powers to make regulations to determine the procedure of selection, terms, compensation and conditions of the appointment and service of employees.

(b) Regulation is a resource intensive function. Markets evolve rapidly and regulators need the capability and resource to keep pace. A regulator must have the financial independence needed to hire and retain the right talent (Roy & Others, 2019). Funding must be commensurate to the needs of the regulator to effectively fulfil its legal objectives (OECD, 2014). The law must enable a regulator to levy fees to meet its needs. This has been upheld by the Supreme Court (2001) where the following broad principles were laid down: (a) The statute should empower the regulator to levy a fee to carry out its functions; (b) The fee levied by a regulator should not be excessive and should be in the public interest; (c) The fees should only be used for performing the regulator's functions as prescribed by the statute; and (d) The regulator can choose the measure of levy, provided that it withstands the test of reasonableness. The regulator must have independence on financial matters. A one-time corpus fund may be made available with the regulator, and financial independence may be built with bolstered revenues from fee earnings.

(c) Keeping in mind the need for financial independence, the requirement for funds and the work of the regulator, most regulators are exempt from paying tax. This is provided in statutes for SEBI, PFRDA, RBI, TRAI, etc. The Income Tax Act, 1961 exempts regulators such as the IRDAI and the CERC from income tax. The Central Goods and Services Tax Act, 2017 has notified exemptions in favour of the PFRDA, RBI, IRDAI and SEBI. The regulator must be exempted from all taxes on its wealth, income and services.

(d) It is important for the regulator to be independent of the profession and to ward off the capture by the regulated. This crucially depends on composition of the GC, which must have domain expertise to avoid undue influence on the decision making from outside. The board needs to have a complement of PTMs, who have access to industry knowledge and feedback from the regulated, but not willing to come on full time basis on its board. However, care must be taken to avoid any kind of conflict of interest.

(e) The independence critically depends on the terms (term and compensation) of appointment of functionaries (whole time members and chairman) on the regulatory board. The terms determine the strength of the functionary to withstand the influence of articulate interest groups and the pressures of fear and favour from any quarter. As regards term, The Supreme Court (2010b) observed: *"The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the field concerned. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post-retirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service."*

5.38 As regards compensation, Subramanian (2007) observed: *"The second major factor contributing to the decline of public institutions is its increasing inability to attract talent. This too has deeper causes, including the growing politicisation of the bureaucracy, cynicism about its role, and the fading sense of public service. But clearly one of them is the very rise of the private sector*

which has simply made the public sector a less attractive place to work in. The allocation of talent has become skewed. With the staggering scale of remuneration that the new economy is showering on skilled people, the public sector does not stand a chance of competing with the private sector in attracting high quality people. And, if institutions ultimately depend on the individuals manning them and the incentives they face, the prognosis is somewhat grim for public institutions.” As regards tenure, the FSLRC (MoF, 2013) recommended that the executive members of a regulatory board should have a fixed term of five years, subject to a retirement age which must be equivalent to the age of retirement for the equivalent senior-most Government positions. A reasonable secured term with reasonable compensation attracts the right persons on the board who are motivated to build capability rapidly to match the tasks and to discharge their responsibilities with utmost professionalism and objectivity. The solution is to attract people at young age by offering them market linked compensation and a career. The minimum and maximum age for a member and compensation may, however, be prescribed by the Rules with changing times.

Accountability

5.39 With the growing reliance on the regulators for governance, it is important to follow a holistic approach to building a uniform system of accountability. There are certain standard arrangements that advanced jurisdictions have adopted for ensuring the accountability of the regulators. These include: (a) ex-ante accountability such as consultation with the public and the stakeholders before taking an action, (b) ex-post accountability such as reporting actions already taken, (c) explanatory accountability such as disclosure of the rationale of the actions, (d) procedural accountability such as adhering to standards of procedural fairness and transparency, and (e) performance accountability such as achievement in terms of objectives. The accountability arrangements rest on five main planks: (a) articulation of the responsibilities, objectives and targets against which the regulators may be held accountable, (b) provision of powers, resources and capacity of the regulators matching their assigned responsibilities, (c) assignment of the affairs of the regulators to competent people who are comfortable with the accountability arrangements, (d) identification of stakeholders to whom the regulators may be accountable, and (e) education of the stake holders about the manner of ensuring the accountability (IMF, 2006). FSLRC (MoF, 2013) has enumerated four components of accountability, namely, clarity of purpose, a well-structured regulation-making process, the rule of law, and reporting mechanisms.

5.40 The design should factor in the following elements for accountability:

- (a) It is essential to clarify the role of a regulator to enable it to understand and fulfil its role effectively. The legislation should clearly define the role of the regulator in terms of its objectives, functions and co-ordination with other entities (OECD, 2014).
- (b) The GC should provide strategic direction to the regulator, establish its objectives, and control and monitor the management. It should review the performance of the regulator and hold it accountable for delivering on its objectives. The PTMs on the GC are the pathway through which society exerts influence upon the management of the regulator.
- (c) The regulator should have sound processes for the quasi-legislative, executive and quasi-judicial functions. That establishes an environment of the rule of law and creates accountability in and of itself (MoF, 2015).
- (d) The accountability arrangement must include an objective metric to measure the effectiveness of the regulator.

(e) There must be time-lines for completion of every activity of the regulator. It must dispose of any application from professionals, such as for registration, within a specified time. It must grant approval if the application meets the requirements. If it rejects an application, it must do so by a speaking order after providing an opportunity of hearing. It must complete the various processes such as inspection, investigation, enquiry, audit, etc., in a time bound manner. It must initiate appropriate enforcement actions immediately on conclusion of the fact-finding process. It must conclude enforcement actions expeditiously because delay defeats justice and causes hardships to the accused as well as the victims. The standards, norms and processes applicable for every regulatory action (quasi-legislative, executive and quasi-judicial) must be available in public domain (GU, 1946).

(f) The regulator should submit a structured annual report with performance targets and other data to serve as a metric to measure and review its effectiveness and performance (MCA, 2019b). It should periodically report to the government and the public to demonstrate the fulfilment of its regulatory objectives and provide relevant information to enable them to assess its performance.

Regulating Regulations

Incomplete Law

5.41 There are broadly two forms of law, namely, 'almost complete' and 'almost incomplete'. The former endeavours to enact the law with perfection, which can deal with all the possible circumstances for a long time. A law is complete if it unambiguously stipulates for all future contingencies; otherwise it is incomplete. An example of such form is the Indian Penal Code enacted way back in 1860. Of late, the environment has become very dynamic. The change that used to take centuries earlier in businesses and professions is coming about in months, or at best in years. The governance response to this has been establishment of regulators empowered by 'almost incomplete' form of law. All over the world, regulators have come up because they are found to be more effective in comparison to usual statecraft in an incomplete legal regime as they are vested with proactive law enforcement and residual law making powers (Pistor & Chenggang, 2003). This form believes that it is not possible to visualise all the possible circumstances and provide for the same in the legislation. Here, the legislations tend to be skeletal, but have the potential to deal with all the possible circumstances, including unforeseen emergencies.

5.42 A profession is knowledge intensive. It provides high end specialised services in a dynamic market environment. The role of a valuer inevitably changes to respond to changing technologies and evolving industry needs. For example, the fundamental nature of property markets has changed over the last few decades and this has significant implications on the valuation profession. Client demand for property valuations have moved from providing single valuation opinions and increasingly moving towards providing broad market analysis, accurate value predictions, and risk pricing which require valuers to broaden their knowledge and expertise (Motta & Endsley, 2003). The institutional framework should not, therefore, over-legislate and restrict developments.

5.43 Another dimension of incomplete law is subordinate legislation. For example, the SEBI Act, 1992 confers on SEBI substantial powers of delegated legislation (quasi-legislative) to make subordinate legislation (regulations) to fill the gaps in laws and to deal with the matters of detail, which rapidly change with time. This enables it to strike the moving targets at the right time and at the same time, keep the laws relevant to times. This form of law is eminently suitable for professions which evolve very fast and the authority needs to respond faster with preventive and remedial measures.

5.44 The *raison d'être* of regulators is to hit the moving targets. This is possible only if the law evolves continuously in tandem with the environment to meet the emerging deficiencies, accommodate new services and market designs, deal with innovative transactions by the professionals and improve the efficiency of operations in the market by overcoming the legislative lags. This requires an 'almost incomplete' legal regime where the regulator, which has a better understanding of the environment, has adequate powers of subordinate legislation within the basic frame of the statute and the powers to enforce the laws proactively and promptly.

Quasi-legislative Functions

5.45 The regulator, being an unelected body, is often accused of lacking democratic legitimacy. Somanathan (2016) believes that the creation of 'independent' regulators does reduce the extent of democratic (parliamentary) accountability. It is, however, not totally absent to the extent that the budgetary appropriations for these bodies do need to be proposed by the ministry and voted by Parliament. This is unlike the funding for courts, which is charged expenditure that does not need to be voted. Further, the statute usually requires all subordinate legislation issued by a regulator to be tabled before the Parliament. A parliamentary committee on subordinate legislation often scrutinises the regulations. Further, market at times perceives the regulator to be unduly influenced by certain interest groups either due to political economy factors or even due to cognitive biases of the staff within the regulator. Such perceptions may seriously compromise the legitimacy of a regulator. It helps if there is a structured arrangement that makes the regulation making process transparent and participative.

5.46 The Supreme Court (2016) observed: *"We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be "transparent" ... we would exhort Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them."* This calls for strong procedural frameworks to guide the delegated law-making process.

5.47 The CoE noted that several regulators in India have evolved best practices in regulation making. For example, the IBBI has issued regulations requiring it to inter-alia publish draft regulations for public comments, along with a statement of objectives of the regulations, economic analysis, etc. Further, the IBBI is required to consider public comments in finalising the draft regulations and publish a general statement of its response to the comments on its website. The Airport Economic Regulatory Authority of India Act, 2008 requires the authority to ensure transparency while exercising its powers and discharging its functions by (a) holding consultation with all the stakeholders, (b) allowing all stakeholders to make their submissions and (c) making all decisions of the authority fully documented and explained. The authority makes available in the public domain the comments of the regulator on each feedback received during consultation process (AERAI, 2011) of every proposed regulation. The Electricity Act, 2003 also requires previous publication of draft regulations and the regulation issuing authority is required to consider suggestions received on the same. The Company Secretaries Act, 1980 provides that all regulations made under the Act shall be subject to previous publication. The Ministry of Law & Justice issued a pre-legislative consultation policy which requires Central and State Government departments to publish laws and subordinate legislation for public consultation. The legislation delegating the power to make regulations should provide for a

transparent and participative regulation making process. It should provide a formal framework incorporating transparency and accountability in the issuance of regulations, including publication of draft regulations for public consultations and review of such regulations every few years (MCA, 2019b).

5.48 FSLRC (MoF, 2013) recommends publication of an analysis of costs and benefits (also called regulatory impact assessment) of the proposed regulation because every regulatory intervention imposes certain costs on the regulated and the system, and regulations should minimise these costs. It has suggested a detailed step by step approach for making regulations. The draft regulations must be approved by the board before it is released to public for comments. The regulator must release for public comments: (a) draft regulations; (b) the specific provision of law that empowers the regulator to make the proposed regulations and the manner in which the proposed regulation is consistent with the principles of the law; (c) a statement of the problem or market failure that the proposed regulation seeks to address; and (d) an analysis of the costs and benefits of the proposed regulations. The regulator must provide reasonable time for public comments and an appropriate mode for widespread public participation. The board must consider the comments received from public before approving the regulations and such public comments along with its response thereon must be published.

5.49 The legislation should require that draft regulations – new regulations as well as amendments to existing regulations – along with an associated regulatory impact assessment are put out with the approval of the GC for public comments, in the interest of democratic legitimacy. The regulator should facilitate an effective stakeholder consultation before issuing a regulation to allow the broader society to participate in policy changes. This increases information available to the regulator, while improving compliance and acceptability of the proposed regulation among the regulated sector and the stakeholders. However, there is an apprehension that the extensive consultation process may create an opportunity for the organised and vocal interest groups to have excessive influence over the outcomes of regulatory processes (Soma & Naru, 2017). The diverse stakeholders, who may be large in number but do not participate in the consultation due to several issues such as they suffer minimal impact or problems of collective action, may not be properly heard (Somanathan, 2016). The inputs received through consultation need to be independently examined, keeping in mind the interests of those stakeholders too, who would not have participated in the consultation process. This is essential to secure the rights and interests of all stakeholders as well as to secure independence of regulator from majority biases. The GC must approve regulations only after considering public comments and it should place reasons for rejecting a comment in the public domain. In case of emergency, regulations may be made without complying with the aforesaid process. However, such regulations should lapse after a stipulated period. The regulations should come into force after thirty days of their notification. This provides an opportunity to the regulated to adjust to the changes made by the regulations.

5.50 One of the objectives of delegation of power to make subordinate legislation is that it requires intricate knowledge, and it needs to respond, rapidly and often proactively, to the evolution of fast-paced marketplace. Due to this volatile nature, there is always a possibility that a subordinate legislation becomes obsolete. Therefore, the subordinate legislation is required to be reviewed with regular interval of time. The CoE recommends that every subordinate legislation/regulation should be mandatorily reviewed six months prior to the third anniversary of the regulation having been brought into effect unless a review is warranted earlier. In fact, even legislations are reviewed. A Committee (PMO, 2014) identified a total of 1741 Central Acts for repeal out of total 2781 Central Acts existing as on 15th October, 2014 on the Statutes Book.

5.51 Coupled with increasing dependence on subordinate legislation, it is necessary that every regulation is accompanied by objects and purpose clause, something like ‘Statement of Object and Reasons’ appended to Bills placed before Parliament, to ease understanding and interpretation of the same. The Supreme Court (2010a) observed: *“In this case, it was quite apparent that the 1997 Takeover Code and the later amendments introduced in it were intended to give effect to the recommendations of the two Committees headed by Justice Bhagwati. We were, thus, in a position to refer to the relevant portions of the two reports that provided us with the raison d’être for the amendment(s) or the introduction of a new provision and thus helped us in understanding the correct import of certain provisions. But this is not the case with many other regulations framed under different Acts. Regulations are brought in and later subjected to amendments without being preceded by any reports of any expert committees. Now that we have more and more of the regulatory regime where highly important and complex and specialised spheres of human activity are governed by regulatory mechanisms framed under delegated legislation it is high time to change the old practice and to add at the beginning the “object and purpose” clause to the delegated legislations as in the case of the primary legislations”*. The regulations must contain specific notes on each provision setting out the legislative intent for which that provision has been formulated. These notes should be an integral and operative part of the regulations and aim at telling society what role the regulatory system expects the provision of the regulation to perform and help in their interpretation.

5.52 A rigorous process is followed for making regulations to ensure that it addresses the identified market failure at the least possible cost and is not excessive. The regulator should use only that instrument, namely, regulations, to make regulatory prescriptions. It may, however, issue non-binding clarifications, guidance notes, FAQs, etc. for clarifying the provisions of the regulations, but should not constitute ‘law’.

Disciplining Discipline

5.53 The rule of law requires that the regulator must enforce observance of or compliance with a law, rule, regulation or obligation, if it is not voluntarily done, to induce the desired conduct of professionals. A key element of enforcement is adjudication / disciplinary proceeding. The process of disciplinary proceeding should be disciplined in the interest of credibility.

5.54 In the interest of fair and objective enforcement of the law, adjudication proceedings must commence with the issuance of a Show Cause Notice (SCN), based on findings of a fact-finding process. The SCN must state the details of any alleged contravention by the noticee and the measures or direction the regulator intends to take or issue if the allegations are established to enable the noticee to respond adequately. The regulator must provide for inspection of relevant material, including material that would be used for pressing charges as well as material that would undermine the charges. The adjudication process must provide a reasonable and effective opportunity of hearing to the noticee to defend himself and dispose of the SCN by a reasoned order, in the interest of principles of natural justice.

5.55 While there is unanimity that an intra-regulator instrumentality should adjudicate contraventions / conduct disciplinary processes, there are several views about the composition of the instrumentality. Some suggest that only the whole-time members of the GC should adjudicate contraventions. (PC, 2013, MoF, 2015; MCA, 2019b). An extension to this view suggests that one of the whole-time members of the GC shall be appointed as an administrative law member, who shall have oversight over functioning of the administrative law officers, who will adjudicate contraventions (MoF, 2013). Another suggestion is that the Adjudication Panel shall be

established by the GC, but it shall consist of three members, outside the GC, such as officer of the Central Government, professionals with at least 20 years post qualification experience and person who has served in the Tribunal or Court (ICSI, 2014). The CoE recommends that a panel of administrative law officers may adjudicate upon the alleged contraventions of the provisions of law by the regulated entities. These officers must strictly belong to the hierarchy of administrative law wing and must not be involved in executive function of the regulatory authority. The appeal from the decision of the panel should lie before the ALM.

5.56 A cardinal principle of law is that an accused must be deemed innocent until such time as his guilt has been proved conclusively and the punishment can follow only thereafter. It is so because punishment before conviction does irreversible and irreparable damage to the person. He could well be found innocent ultimately or the punishment suffered before conviction could be more than warranted. The regulator must initiate appropriate enforcement proceeding immediately on conclusion of the fact-finding process. It must conclude the enforcement proceeding expeditiously because delay defeats justice and causes hardships to the delinquent as well as the victims. Interim orders must be avoided to the extent possible. Wherever, it is unavoidable, it must be issued by the ALM and shall not have a life of beyond 90 days, within which regular proceeding must be completed.

5.57 The institutional framework should provide for appellate mechanism outside the principal regulator. A person aggrieved by the order of the regulator should be entitled to judicial review. The scope of the reviewing court includes - compelling agency action unlawfully withheld or unreasonably delayed; and holding unlawful and setting aside agency action. Where justice requires, during the pendency of judicial review process, reviewing court of the principal regulator may postpone the effective date of any action taken by the principal regulator (GU, 1946). However, it is useful to provide a filter before the orders are appealed to an external agency and allow corrections within the regulator. The orders of adjudication panel could be appealed to the ALM.

5.58 The world over, contraventions of laws are increasingly settled by consent settlement. In 2006, a new chapter was incorporated into the Code of Criminal Procedure, 1973 to facilitate plea bargaining, a kind of consent settlement, for some kinds of offences, which attract imprisonment up to seven years. SEBI commenced settlement of proceedings, under a circular issued in 2007, through the consent procedure to achieve appropriate sanction without lengthy and costly legal proceedings. Now the statute provides for it. The “Vivad se Vishwas” scheme (GoI, 2020) of the Income-tax Department wherein the taxpayer gets relief from vexatious litigation process is a recent example of consent settlement. The advantages of this kind of settlement, especially in the Indian context, are that: (a) It frees up the scarce resources of the authorities and the judicial system which are already saddled with a very large number of enforcement actions many of which are awaiting disposal for years; (b) It allows the authorities to impose innovative deterrents upon the respondent while achieving equitable remedies for the victims; (c) It achieves something in days or months, which even decades of trial may fail to do; and (d) It avoids the risk of the respondent going scot free after a prolonged, expensive and valiant legal battle for one or the other technical reasons.

National Institute of Valuers

5.59 It follows from above that the regulatory architecture shall have the National Institute of Valuers (NIV) as the principal regulator and many competing market entities as front-line regulators. The CoE recommends the following regulatory architecture.

5.60 General

- (a) Valuation profession should have a unified, statutory, two-tier institutional framework, which subsumes self-regulation and market regulation for vibrancy.
- (b) The statute should create and provide for the details of the first-tier (NIV) and enable the NIV to provide for details, such as governance, of the second-tier (VPOs) through regulations.
- (c) The statute should establish NIV to protect the interests of users of valuation services in India and to promote the development of, and to regulate the profession of valuers and market for valuation services.
- (d) The NIV should be a statutory body corporate away from the Government.
- (e) The statute should clearly spell out the powers and responsibilities of every constituent of the valuation ecosystem.

5.61 Governance

- (a) The statute should view the NIV, as a body corporate, and the GC, as a governing body of members, separately with clear roles and responsibilities attached to each of them. The NIV should operate under the oversight, control and direction of the GC.
- (b) The NIV is one more step away from the citizens. The statute should require a formal interface between the NIV and the society in the former's governance. The GC should have eminent citizens on its board as PTMs, representing users, professionals and general public. It should have access to expert advice of the Committee of Valuers and make regulations in consultation with the regulated and the public. It should be subject to directions of the Government on matters of policy.
- (c) The statute should indicate specific responsibilities of the GC. This should include holding the NIV accountable for its performance in relation to its objectives, and resources. The GC alone shall exercise quasi-legislative powers.
- (d) The GC should have a diversity of skills and experience tailored to the functions of the NIV to facilitate robust decision making.
- (e) The GC should comprise a Chairperson, WTMs, and PTMs, all of them should be appointed by the Government. The GC should have at least one ALM.
- (f) The terms and conditions of service of WTMs should be such as they attract young, bright talent to the GC.
- (g) A member of the GC should not have any conflict of interest.
- (h) The GC should work in a transparent manner.
- (i) The statute should provide for a Committee of Valuers comprising, exclusively, of valuers to advise the GC on any issue relating to the profession of valuers and market for valuation services and mandate the GC to consider the same.
- (j) The NIV should have three separate units to exercise quasi-legislative, executive and quasi-judicial powers. These units should operate at an arm's length from one another to act as mutual checks and balances to address public law concerns.

5.62 Independence

- (a) The NIV should be independent for it to be held accountable.

(b) The statute should enable NIV to levy fees and charges from the regulated for its sustenance. The NIV should have independent sources of resources commensurate with its responsibilities. It should be exempted from all taxes on its wealth, income and services.

(c) The NIV should have operational independence in terms of human resources. It should have capable human resources (in GC and the organisation) to withstand the pressures of market as well as fear and favour.

(d) The NIV should be the final authority in exercise of its powers. It should not require approval of any authority for making a regulation, conducting an investigation, awarding a civil penalty or filing a criminal prosecution. After it has exercised the power, the outcome (subordinate legislation or quasi-judicial order) may be undone by the legislature or judiciary, by following the due procedure.

5.63 Accountability

(a) The statute should clearly define the role of the NIV and hold it accountable for its performance keeping in view its mandate and resources.

(b) The NIV should have sound processes for the quasi-legislative, executive and quasi-judicial powers and functions.

(c) The NIV should have operations manuals and standard operating procedures to bring uniformity and objectivity in a task or process. It should have timelines for every activity and every stage of each activity.

(d) The NIV should make disclosures such as minutes and agenda of meetings of the GC, its orders, relevant data and information, etc. on the web site in the interest of transparency and enable stakeholders to make performance assessment of the NIV.

(e) The NIV should develop the parameters to assess its own performance and of the GC.

5.64 Quasi-Legislative Functions

(a) The statute should be an incomplete law. It should allow the NIV to complete the law within its pith and substance of the statute to address the emerging deficiencies and accommodate professional innovations.

(b) The NIV should use only one instrument, namely, regulations, to prescribe norms for the profession and professionals.

(c) The NIV should make regulations only if there is evidence or strong likelihood of market failure and the proposed regulation can address the market failure at a cost less than the cost of market failure sought to be avoided.

(d) The NIV should promote competition to address most of the market imperfections and intervene only when it is necessary to do so.

(e) The NIV should make regulations in consultation with the public, after presenting them a cost benefit analysis of the proposed regulation. It may make regulations without public consultation and cost benefit analysis in emergency, but such regulation should have a limited shelf life.

(f) The regulations should carry legislative notes to explain the rationale for the same.

(g) The NIV should review every regulation once in three years to ensure that it is still relevant and efficient and to weed out redundant regulations.

(h) The quasi-legislative activities should be scrutinised by Parliament and by Higher Courts on matters of vires.

5.65 Quasi-Judicial Functions

(a) The NIV should facilitate compliance of regulations by making available tools of compliance and issuing guidance on regulations instead of focusing on enforcement actions for non-compliance.

(b) It should have a separate wing called administrative law department under the oversight of an ALM.

(c) The ALM and ALOs should not have any operational responsibility to avoid any public policy concern and official bias.

(d) An adjudication proceeding should commence with the issue of a SCN, based on findings of a fact-finding process, that enables the noticee to defend himself adequately.

(e) The adjudication process should provide a reasonable and effective opportunity of hearing to the noticee to defend himself.

(f) A Panel of ALOs should dispose of a SCN by a reasoned order, following the principles of natural justice.

(g) The fines levied by the NIV should be credited to Consolidated Fund of India.

(h) A person aggrieved by an order of the Panel may prefer an appeal to the ALM.

(i) Only the ALM should pass interim orders. Such orders should have a limited shelf life.

(j) The Panel or the ALM should have access to professional opinion whenever they require.

(k) The quasi-judicial orders should be subject to judicial review by a High Court and appeals therefrom should lie to the Supreme Court.

(l) The statute should provide a mechanism to settle violations by consent.

Valuation Professional Organisation

5.66 The CoE left it for the NIV to establish and modify appropriate structure of VPOs in the country. Several models are available across the world. The IVSC (2013) provides a model for good practice guidance about the role of the VPOs and their role and responsibilities.



Unshackling the economic freedom for markets augments wealth creation.

Economic Survey, 2019-20.

6.1 The valuation profession is in existence for past several decades. There are valuers and RVOs, registered with IBBI under the Valuation Rules. There are also valuers registered with different user agencies. There is a sizeable number of individuals and entities practising the profession. There are a few dedicated valuation courses in the country and also a large number of very high-quality textbooks and study materials for valuation courses and examination. The proposed institutional framework should take advantage of the existing wealth of capacity, experience and institutions. The CoE proposes an institutional framework that is least disruptive and builds on the existing resources to ensure that the transition is seamless and there is no gestation, yet a world class. It believes that the framework would produce the most valuable professionals and has the potential to be a model for other profession.

6.2 The CoE is conscious that it would take some time for the institutional arrangement, that would deliver national and graduate valuation programmes, to come up. However, it is very likely that the Institutes and Universities, who are presently, offering valuation courses, particularly the post-graduation ones, should be able to register themselves as valuation institutes to offer the courses without loss of time. Nevertheless, given the duration of the courses, these institutes would have pass outs after 2 to 4 years of commencement of the courses. This would not cause any inconvenience as 3000+ valuers already registered under the Valuation Rules are available on the day one. Further, the proposed framework provides a window of 2 to 3 years for valuers, who are practising without having a registration under the Valuation Rules, to join the profession after passing the valuation examination.

Transitional Arrangement

6.3 The COE recommends the following transitional arrangement:

(a) **Valuers registered under the Valuation Rules:** They have qualification and experience as required under the Valuation Rules, have undergone the prescribed educational training and passed the valuation examination of the relevant asset class, and are undergoing CPE. They are fit and proper persons and enrolled as professional members with RVOs. They are registered as valuers in accordance with the Valuation Rules. The RVOs are monitoring their conduct.

They should be automatically made valuers under the new framework, subject to their consent, from the date of registration under the said Rules. They would be the initial constituent of the valuation profession and render services without any gap. They would provide practical, training and internship to students who would undergo educational courses.

(b) **Valuers engaged in valuation services, having qualification and experience required under the Valuation Rules, but not registered under the said Rules:** Since they meet the eligibility norms under the Rules, they should be provided a window of three years to seek registration as valuers, after completing the prescribed educational training and passing the valuation examination of the relevant asset class.

(c) **Valuers engaged in valuation services and meeting all eligibility norms under the Valuation Rules, except the required qualifications:** They may be provided a window of two

years to seek registration as valuers, after completing the limited valuation programme, undergoing the prescribed educational training and passing the valuation examination of the relevant asset class.

(d) **Registered valuer organisations recognised under the Valuation Rules:** There are 11 recognised RVOs. They were set up as section 8 companies only to become RVOs under the Valuation Rules. They meet the prescribed governance norms. They should automatically be transitioned as VPOs under the new framework. If the principal regulator prescribes additional / higher norms to be a VPO, the existing VPOs should have a window to meet those additional / higher norms.

(e) **Principal Regulator:** The IBBI has been discharging the function of the Authority under the Valuation Rules. It is also regulating the insolvency profession. It has governance norms broadly similar to those recommended in the institutional framework. In the interest of continuity and to avoid any disruption, the IBBI may exercise the powers and discharge the functions of the Institute under the Act, until the Institute is established.

Phasing

6.4 The Valuation Rules envisage valuers in three asset classes and mandate that valuations required under two legislations (the Companies Act, 2016 and the Code) shall be conducted by valuers registered under the said Rules. The proposed institutional framework should start with the said three asset classes and valuations under the said legislations. However, in course of time, the benefit of professional valuation should be available for valuations required under other legislations and even valuation required by market. The asset classes should undergo continuous change to meet the needs of the stakeholders.

6.5 Since most of the valuers are rendering valuation services as an extension of their primary vocation / profession, it should not be mandatory in the initial years to require them to practise valuation profession exclusively. As the profession and the market for valuation services matures, valuation should be practised as a full-time profession.

6.6 To start with, an individual as well as an entity (partnership firm, LLP and company) may be registered as a valuer. An entity formed by valuers of different asset classes should not be considered as multi-disciplinary practice for this purpose. In course of time, multi-disciplinary practices may also be permitted with appropriate safeguards. Similarly, in course of time, subsidiaries may be allowed to be valuers with appropriate safeguards.

Capacity Building

6.7 The strength of any regulatory setup lies in, and is limited by, the capacities and capabilities it develops. Unless adequate capacity and capability is created, even the best conceived architecture for a regulator may fail to deliver on its purpose. The chain is as strong as its weakest link. Such capacity and capability need to be developed at the Institute, VPOs and valuer institutes. The principal regulator should have a plan to boost capacity on priority. It is worth noting the following observation of the BLRC (MoF, 2015) in this regard:

“Many times, in the Indian experience, when there is low institutional capacity, the performance of a government agency critically depends on the individuals present therein. This puts an undue emphasis on the appointments process, which may or may not always deliver remarkable outcomes. In a situation where institutional capacity is low, the performance of a government

agency varies greatly with the identities of its key personnel. The working of the agency is not predictable; it fluctuates depending on staffing changes. India's quest for State capacity lies in achieving consistent institutional capacity, where high performance is obtained consistently for decades, and staffing changes are routine."

6.8 The adequate capacity of the principal regulator is of utmost importance to ensure its effectiveness. It must have adequate physical infrastructure, including office premises, and other resources commensurate with its responsibilities. Since it would have limited physical reach over the wide geographical area, a well-equipped IT facility would enable its virtual presence overcoming geographical limitations. The efficiency of the regulator would primarily depend upon the staff it hires. To start with, it may have staff from other regulatory bodies, including regulators of professions. It's hiring policy should enable recruitment of professionals, including valuation professionals. It should have the ability to raise own resources by levying fee on the regulated entities to meet its expenses. RVOs are in existence and have some capacity. Some of them have demonstrated commendable capabilities in terms of developmental initiatives.

6.9 The quality of profession depends on the quality of valuer institutes which would offer educational courses. They need a helping hand in terms of research, study material and faculty to develop and deliver the courses. Only those Institutes which have a track record of delivering very high-quality education and research should be registered as valuer institutes. While registering educational institutes, the key indicators as assessed by the National Academic Accreditation Council of India could be followed, which are: Curricular Aspects, Teaching-Learning and Evaluation, Research, Innovations and Extension, Infrastructure and Learning Resources, Student Support and Progression, Governance, Leadership and Management, and Institutional Values and Best Practices. These institutes should mandatorily produce minimum relevant research publications every year.

Repeal and Savings

6.10 Since the proposed institutional framework provides a unified regime for the valuation profession, section 247 and other provisions in the Companies Act, 2013 need to be modified to provide that valuations under the provisions of the Act would be conducted by the valuers under the new regime. Consequently, the Valuation Rules need to be repealed. However, the actions taken under section 247 and the Valuation Rules need to be saved.

Draft Valuers Bill, 2020

6.11 Keeping the above in view, the CoE has prepared a Draft Valuers Bill, 2020 and placed it at the end of this chapter. A statement of the features of the proposed institutional framework with those in Draft Valuers Bill, 2008, Valuation Rules, and in similar frameworks relating to a few select professions is appended to Chapter 1.

DRAFT VALUERS BILL, 2020

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DRAFT VALUERS BILL, 2020

An Act to provide for the establishment of an Institute to promote the development of, and to regulate the profession of valuers and market for valuation services and to protect the interests of users of valuation services in India, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows: -

**PART I
PRELIMINARY**

1. Short title, extent and commencement.

- (1) This Act may be called the Valuers Act, 2020.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf:

Provided that different dates may be appointed for different provisions of this Act and any reference to any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

- (4) A Reauthorisation Act may be passed every ten years for continuation of the Act, based on evaluation of the need for the same: Provided that if no Reauthorisation Act is passed, the Act shall continue to be in force.

2. Definitions.

In the Act, unless the context otherwise requires -

- (1) "Act" means the Valuers Act, 2020;
- (2) "administrative law department" means a department of the Institute named as such under section 12 comprising an administrative law member and such number of administrative law officers, other officers and employees, as may be determined by the Institute, for disposal of show cause notices and other functions under this Act;
- (3) "administrative law member" means a whole-time member, who is appointed as such under sub-section (1) of section 14;
- (4) "administrative law officer" means an officer of the Institute who is designated as such in the Institute under sub-section (2) of section 12;
- (5) "asset" means any property or rights having a value, which includes and not restricted to:-
 - (a) property of any description, whether movable or immovable;
 - (b) tangible assets such as land and building, plant and machinery, agricultural land, orchard, plantation, live-stock, forest, mines and minerals, and gem and jewellery;
 - (c) intangible assets such as intellectual property, know-how, goodwill, trade secret, brand and patent;
 - (d) financial assets such as securities, stocks, shares, debentures, receivables, derivatives, businesses, companies and enterprises;
 - (e) rights or interests in any asset;

- (f) any group of assets; and
- (g) such other property, as may be specified;
- (6) “asset class” means a distinct group of assets, such as land and building, plant and machinery, financial assets, which display similar characteristics, and requires, as determined by the Council, a separate set of valuers for valuation;
- (7) “associated person” means a proprietor, partner, director, officer, or an employee of a service provider, a professional engaged by a service provider, or any other person acting for or on behalf of a service provider;
- (8) “bye-laws” means the bye-laws made by a valuation professional organisation under sub-section (1) of section 54;
- (9) “Chairperson” means Chairperson of the Council;
- (10) “committee of valuers” means the committee of valuers constituted under sub-section (1) of section 20;
- (11) “company” means a company registered under the Companies Act, 2013 (18 of 2013);
- (12) “contravention” means contravention of any provision of the Act, rules and regulations made thereunder or orders and directions issued by the Institute;
- (13) “Council” means the Governing Council of the National Institute of Valuers referred to in sub-section (1) of section 13;
- (14) “credits” means credits earned by an individual on passing the subject examination or practice examination, as the case may be, conducted by the Institute, after having completed course work of the subject or practice under an educational course from a valuer institute and subject credit and practice credit shall be construed accordingly;
- (15) “educational course” means national valuation programme, graduate valuation programme or limited valuation programme;
- (16) “fit and proper person” means a person determined by the Institute to be fit and proper. Explanation:- For determining whether a person is fit and proper, the Institute may take into account of any consideration as it deems fit, including but not limited to the following -
- (a) integrity, reputation and character;
- (b) absence of convictions and restraint orders; and
- (c) competence, including financial solvency.
- (17) “graduate valuation programme” means a full time two-year educational course, which comprises a specified number of-
- (a) subject credits common to every asset class;
- (b) subject credits specific to an asset class; and
- (c) practice credits specific to an asset class,

delivered by a valuer institute, as per syllabus specified by the Institute:

Illustration 1: An individual shall be considered to have completed graduate valuation programme in the asset class ‘land and building’, if he has acquired X subject credits common to every asset class, Y subject credits specific to land and building, and Z practice credits specific to land and building.

Illustration 2: An individual, who has completed graduate valuation programme in the asset

class 'land and building', shall be considered to have completed graduate valuation programme in the asset class 'plant and machinery', if he has acquired Y subject credits specific to plant and machinery, and Z practice credits specific to plant and machinery. He shall not be required to acquire X subject credits common to every asset class.

(18) "Institute" means the National Institute of Valuers established under sub-section (1) of section 3;

(19) "investigating authority" means an officer or team of officers directed by the Institute to undertake an investigation of a service provider and includes persons authorised by the investigation authority in this regard;

(20) "inspecting authority" means an officer or team of officers directed by the Institute to undertake an inspection of a service provider and includes persons authorised by the inspecting authority in this regard;

(21) "legislative notes" means the intent or rationale for making a specific regulation;

(22) "liability" means any obligations, contingent or otherwise, which includes and not restricted to:

- (a) current liability;
- (b) term liability;
- (c) contingent liability;
- (d) legal liability;
- (e) a group of liabilities; and
- (f) such other liability, as may be specified.

(23) "limited valuation programme" means an educational course of at least four hundred hours delivered by a valuer institute, as per syllabus specified by the Institute;

(24) "member" means a member of the Council and includes the Chairperson;

(25) "national valuation programme" means a full time four-year educational course, which comprises a specified number of-

- (a) subject credits common to every asset class;
- (b) subject credits specific to an asset class; and
- (c) practice credits specific to an asset class,

delivered by a valuer institute, as per syllabus specified by the Institute:

Illustration 1: An individual shall be considered to have completed national valuation programme in the asset class 'land and building', if he has acquired X subject credits common to every asset class, Y subject credits specific to land and building, and Z practice credits specific to land and building.

Illustration 2: An individual, who has completed national valuation programme in the asset class 'land and building', shall be considered to have completed national valuation programme in the asset class 'plant and machinery', if he has acquired Y subject credits specific to plant and machinery, and Z practice credits specific to plant and machinery.

(26) "noticee" means a service provider who is alleged to have contravened any provision of this Act or rules or regulations or directions or orders made or issued thereunder, and who has been issued a show cause notice;

(27) "notification" means a notification published in the Gazette and the terms "notify" and "notified" shall be construed accordingly;

- (28) "operation manual" means a manual of operations for a task or activity by the Institute;
- (29) "Panel" means a Panel of two or more administrative law officers constituted under sub-section (4) of section 12;
- (30) "part-time member" means a member who is not a whole-time member;
- (31) "partnership firm" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- (32) "person" includes-
- (a) an individual;
 - (b) a Hindu Undivided Family;
 - (c) a society;
 - (d) company;
 - (e) a trust;
 - (f) a partnership firm;
 - (g) a limited liability partnership;
 - (h) university; and
 - (i) any other entity established by a Central or State statute.
- (33) "prescribed" means prescribed by rules made by the Central Government under this Act;
- (34) "public domain" means any platform, such as website, electronic or other platform, which is accessible to public without incurring any cost;
- (35) "publish" means publish in public domain unless specifically stated;
- (36) "record" means the books of account, registers, documents, and other records, whether maintained in electronic form or otherwise, of a service provider and its associated person;
- (37) "register" means the register of valuers maintained under clause (c) of sub-section (2) of section 11;
- (38) "registered office" means the office of a service provider, as is registered in the books of the Institute;
- (39) "regulations" means the regulations made by the Institute under section 25;
- (40) "rules" means rules made by the Central Government under section 22;
- (41) "schedule" means schedule annexed to this Act;
- (42) "Secretary" means Secretary designated by the Institute under sub-section (3) of section 5;
- (43) "section" means a section of this Act;
- (44) "service provider" means-
- (a) a valuer, valuation professional organisation or valuer institute registered under this Act; and
 - (b) a person who was registered under this Act for the purposes of proceedings before the Panel under section 41, or administrative law member under section 43 or any court;
- (45) "show cause notice" means a notice issued by the Institute under sub-section (2) of section 39;
- (46) "specified" means specified by regulations made under this Act and the term 'specify' shall be construed accordingly;

(47) “user” means any user of any service rendered by a service provider for a fee, and includes valuation services;

(48) “valuer” means a valuer who is registered as such under section 50 and includes a ‘valuation entity’, ‘associate valuer’, ‘fellow valuer’ and ‘honorary valuer’;

(49) “valuation entity” means a person, other than an individual, registered as a valuer;

(50) “valuer institute” means a valuer institute who is registered as such under section 55;

(51) “valuation professional organisation” means a valuation professional organisation which is registered as such under section 53;

(52) “valuation services” means the services relating to valuation of any asset or liability-

(a) which is required under the provisions of-

(i) the Banking Regulation Act, 1949 (10 of 1949),

(ii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956),

(iii) the Wealth Tax Act, 1957 (27 of 1957),

(iv) the Income Tax Act, 1961 (43 of 1961),

(v) the Securities Exchange Board of India Act, 1992 (15 of 1992),

(vi) the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999),

(vii) the Foreign Exchange Management Act, 1999 (42 of 1999),

(viii) the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (54 of 2002),

(ix) the Prevention of Money Laundering Act, 2002 (15 of 2003)

(x) the Limited Liability Partnership Act, 2008 (6 of 2009),

(xi) the Companies Act, 2013 (18 of 2013),

(xii) the Pension Funds Regulatory and Development Authority Act, 2013 (23 of 2013),

(xiii) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015),

(xiv) the Insolvency and Bankruptcy Code, 2016 (31 of 2016), or

(xv) any other law, as may be prescribed.

Explanation.- “law” for the purpose of this sub-clause means any Act of Parliament or Legislature of a State, and any rules and regulations made thereunder.

(b) which arises from needs of the market, as may be specified.

(53) “valuation standards” means the standards for valuation laid down under sub-section (7) of section 21;

(54) “valuation standards committee” means the committee constituted under sub-section (1) of section 21;

(55) “whole-time member” means a member, who has responsibility of managing day-to-day affairs of the Institute and includes administrative law member(s) and the Chairperson;

(56) Words and expressions used but not defined in this Act, but defined in the Indian Contract Act, 1872 (9 of 1872), the Banking Regulation Act, 1949 (10 of 1949), the Securities Contract (Regulation) Act, 1956 (42 of 1956), the Wealth Tax Act, 1957 (27 of 1957), the Income Tax Act, 1961 (43 of 1961), the Securities Exchange Board of India Act, 1992 (15 of 1992), the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Foreign Exchange Management Act, 1999 (42 of 1999), the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (54 of 2002), the Prevention of Money Laundering Act, 2002 (15 of 2003), the Limited Liability Partnership Act, 2008 (6 of 2009), the Companies Act, 2013 (18 of 2013), the Pension Funds Regulatory and Development Authority Act, 2013 (23 of

2013), the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), and the Insolvency and Bankruptcy Code, 2016 (31 of 2016) shall have the meanings respectively assigned to them in those Acts.

PART II NATIONAL INSTITUTE OF VALUERS

CHAPTER I ESTABLISHMENT OF INSTITUTE

3. Establishment of Institute.

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Institute to be called the National Institute of Valuers.

(2) Subject to sub-section (4) of section 1, the Institute shall be a body corporate, having perpetual succession and a common seal, and subject to provisions of this Act, shall have power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Institute shall be at such place, as the Central Government may, by notification, specify.

(4) The Institute may establish offices at other places in and outside India, as it may deem it necessary.

(5) Until the Institute is established, the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016) shall act as the Institute and shall exercise all the powers and discharge all the functions as such in accordance with the provisions of this Act.

4. Affairs of the Institute.

(1) The general superintendence, direction and management of the affairs and business of the Institute shall vest in the Council, which may exercise all powers and do all acts and things which may be exercised or done by the Institute.

(2) Subject to sub-section (1), the Chairperson shall have powers of general superintendence, direction and management of the affairs and business of the Institute and may exercise all powers and do all acts and things which may be exercised or done by the Institute.

(3) The Chairperson shall be the chief executive of the Institute and whole-time members shall be the whole-time executives of the Institute.

(4) Without prejudice to other provisions of this Act, the Institute may, by general or special order, delegate to any member or officer of the Institute subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act, except the powers under section 25, as it may deem necessary.

5. Officers and employees.

(1) The Institute may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act, in such manner as may be specified.

(2) The salaries and allowances payable to, and other terms and conditions of service of, officers and employees of the Institute appointed under sub-section (1) shall be such as may be specified.

(3) The Institute shall designate one of its senior officers as Secretary to the Institute.

(4) The Secretary shall ensure-

(a) maintenance and preservation of records and registers of the Institute, the Council and committees of the Council in the manner specified; and

(b) disclosure of records and information of the Institute in the manner specified.

6. Protection of action taken in good faith.

(1) The members, and officers and other employees of the Institute shall be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860), when acting or purporting to act in pursuance of any of the provisions of this Act.

(2) No suit, prosecution or other legal proceedings shall lie against the Central Government or an officer of the Central Government, Council or a member of the Council, the Institute or an officer or other employee of the Institute, Committee of Valuers or a member of the Committee of Valuers, or Valuation Standards Committee or a member of the Valuation Standards Committee for anything which is done or intended to be done in good faith under this Act or the rules or regulations made thereunder:

7. Finances of the Institute.

(1) There shall be constituted a Fund to be called the Fund of National Institute of Valuers under the management, custody and control of the Institute and there shall be credited thereto -

(a) all grants, fees and charges received by the Institute under this Act;

(b) all sums received by the Institute from such other sources as may be decided upon by the Central Government;

(c) all sums received pursuant to investment made by the Institute under sub-section (4);

(d) such other funds as may be specified by the Institute or prescribed by the Central Government.

(2) The Fund shall be applied for meeting -

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Institute;

(b) the expenses of the Institute in discharge of its functions under this Act;

(c) the expenses incurred in furtherance of the objects and for purposes of this Act;

(d) such other expenses as may be prescribed.

(3) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Institute grants of such sums of money as it may think fit for being utilised for the purposes of this Act.

(4) The Institute may invest any surplus money for the time being standing to the credit of the Fund, in such instruments and in such manner as may be specified.

8. Budget and accounts.

(1) The Institute shall prepare, in such form and at such time prior to the start of the financial year, as may be prescribed, an annual budget indicating all its estimated receipts and

expenditures.

(2) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(3) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(4) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Institute.

(5) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

9. Returns and reports.

(1) The Institute shall furnish to the Central Government at such time and in such form and manner, as may be prescribed, such returns and statements as the Central Government may require.

(2) The Institute shall, within two hundred and ninety days after the end of each financial year, submit to the Central Government an annual report, in the format as may be prescribed.

(3) The annual report shall provide in accordance with the Rules prescribed in this behalf-

- (a) a true and full account of its policies, activities and programmes;
 - (b) an assessment of the effectiveness and the efficiency of the Institute in terms of its objectives, functions, and activities;
 - (c) summary of financial performance of the Institute;
 - (d) performance of the Council;
- during the previous financial year.

(4) A copy of the annual report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

10. Exemption from tax.

Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), the Central Goods and Services Act, 2017 (12 of 2017) or any other enactment for the time being in force relating to tax on wealth, income, expenditure, profits or gains, the Institute shall not be liable to pay wealth-tax, income-tax, goods and services tax, or any other tax in respect of its services, wealth, income, expenditure, profits or gains derived.

11. Duties, powers and functions of the Institute.

(1) Subject to the provisions of this Act, it shall be the duty of the Institute to promote the development of, and to regulate the profession of valuers and market for valuation services, and

to protect the interests of users of valuation services, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for the following: -

- (a) promoting the development of, and regulate, the working and practices of, service providers standards of professional conduct and other institutions, in furtherance of the purposes of this Act;
- (b) promoting competition in the market for educational courses and valuation services;
- (c) registering service providers, maintaining registers of such service providers and renewing, withdrawing, suspending or cancelling their registrations;
- (d) specifying the eligibility requirements for registration of service providers;
- (e) specifying the manner of issue, renewal, withdrawal, or termination of certificate of practice to a valuer.
- (f) levying fee or other charges for carrying out the purposes of this Act, including fee for registration and renewal of service providers and issue and renewal of certificate of practice;
- (g) laying down the syllabus and manner of delivery of the educational courses to become a valuer;
- (h) promoting education in the field of valuation and setting standards of education and training for valuers;
- (i) specifying valuation standards for valuation services by a valuer;
- (j) issuing guidelines and guidance notes for valuation services;
- (k) monitoring the performance of service providers;
- (l) carrying out inspections and investigations of service providers;
- (m) specifying mechanism for redressal of grievances against service providers;
- (n) conducting study and research on the functioning and performance of the service providers;
- (o) publishing such information, data, research studies and other information as may be specified;
- (p) maintaining websites and such other universally accessible repositories of electronic information as may be necessary;
- (q) facilitating working of committee of valuers, valuation standards committee and other committees;
- (r) specifying mechanism for issuing regulations, including the conduct of public consultation processes before notification of any regulations;
- (s) conducting awareness and advocacy for stakeholders;
- (t) entering into memorandum of understanding with any other statutory authority, professional body or academic institute in India or abroad to further the objectives of this Act;
- (u) establishing centres of excellence for knowledge management and research in the areas relevant to the Institute; and
- (v) performing such other functions, as may be prescribed.

(3) The Institute shall set up an organisational structure, as it may consider appropriate, to effectively discharge its responsibilities under this Act.

(4) The Institute may specify model bye-laws to be adopted by valuation professional organisations, which may provide for -

- (a) the standards of professional competence to be a member of a valuation professional organisation;

- (b) the standards for professional and ethical conduct to be a member of a valuation professional organisation;
- (c) requirements for enrolment of a person as a member of a valuation professional organisation which shall be non-discriminatory.

Explanation. - For the purposes of this clause, the term “non-discriminatory” means lack of discrimination on the grounds of race, religion, caste, gender or place of birth and such other grounds as may be specified;

- (d) the requirements for continuing professional education for members;
- (e) governance and management of valuation professional organisations;
- (f) the specific classes of persons to whom services may be provided at concessional rates or for no remuneration by members;
- (g) mechanism for redressal of grievances against the members;
- (h) monitoring and reviewing the working of the members; and
- (i) any other matter, as it may deem fit.

(5) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Act, the Inspecting Authority, the Investigating Authority, the Panel and the Administrative Law Member shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely-

- (a) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Institute;
- (b) summoning and enforcing the attendance of persons and examining them on oath;
- (c) inspection of any books, registers and other documents of any service provider at any place; and
- (d) issuing of commissions for the examination of witnesses or documents.

12. Administrative law department.

(1) The Institute shall have an administrative law department under the oversight of an administrative law member(s).

Provided that if the Council does not have any administrative law member at any time, any other whole-time member of the Institute may be authorised to officiate as such by Chairperson.

(2) The Institute shall designate as many officers as administrative law officers, as required, to work in the administrative law department.

(3) An officer shall be eligible to be designated as administrative law officer if he has a degree in law and at least five years of experience as an advocate or law officer in any Central or State Governments or any public sector undertaking or as a teacher in law in any recognised university.

(4) The administrative law member shall, by general order, constitute one or more Panels of administrative law officers for disposal of show cause notices referred by the Institute under sub-section (7) of section 40.

(5) The administrative law member(s) and administrative law officers shall not discharge any function which may compromise their independence and neutrality.

(6) No officer or employee of the administrative law department shall deal with a matter which

he dealt with while working in another department of the Institute.

CHAPTER II GOVERNING COUNCIL

13. Composition of Council.

(1) The Central Government shall, by notification, constitute the Governing Council of the Institute consisting of the following members, namely: -

- (a) the Chairperson;
- (b) three whole-time members, of whom at least one shall be an administrative law member;
- (c) one ex-officio member each from amongst the officers not below the rank of Joint Secretary as nominated by the Ministry of Finance, and Ministry of Corporate Affairs;
- (d) one ex-officio member each from amongst the officers not below the rank of Executive Director as nominated by the Reserve Bank of India, Securities and Exchange Board of India, and Insolvency and Bankruptcy Board of India; and
- (e) eight other part-time members.

Provided that irrespective of vacancy by reason of resignation, removal or otherwise of any member-

- (i) the number of part-time members shall not be less than the total number of members under clauses (b) to (d); and
- (ii) the total number of members of the Council shall not be less than eleven.

(2) Subject to the provisions of sub-section (1), no act or proceeding of the Council shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Council;
- (b) any defect in the appointment of an individual as a member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the matter.

14. Appointment of members.

(1) The Central Government shall, by notification, appoint members of the Council.

(2) A member, other than an ex-officio member, shall be appointed on the recommendation of a Selection Committee consisting of-

- (a) Cabinet Secretary;
- (b) Secretary to the Government of India to be nominated by the Central Government;
- (c) Chairperson of the Council, in case of selection of members other than the Chairperson;
- (d) three experts of repute from the fields of economics, finance, law, management, accountancy, public policy, engineering, valuation or related subjects, to be nominated by the Central Government.

(3) An individual shall be eligible for appointment as a whole-time member, if he: -

- (a) has a degree in economics, finance, law, management, accountancy, public policy, engineering or valuation; and
- (b) has experience of not less than twenty years in dealing with matters relating to valuation, corporate sector, economy, law, technology, or public policy;

Provided that an individual having a degree in law as well as professional experience in law shall be eligible to be appointed as an administrative law member.

(4) An individual shall not be eligible for appointment as a member, if he:-

- (a) is not a citizen of India;
- (b) is not a person of ability, integrity and standing;
- (c) has any conflict of interest with the objectives of the Institute;
- (d) has been adjudicated as bankrupt;
- (e) is of unsound mind and stands so declared by a competent court; or
- (f) has been convicted of an offence involving moral turpitude.

(5) A member, after vacating office, shall not provide services as a valuer or be associated with any service provider in any manner whatsoever for a period of two years from the date of so vacating office:

Provided that such a member may conduct research or impart education and training in the area of valuation.

15. Terms and conditions of service of members.

(1) No individual shall hold office-

- (a) as Chairperson or a whole-time member after he has attained the age of sixty-five years; and
- (b) as a part-time member after he has attained the age of seventy years.

(2) Subject to sub-section (1), an individual shall be appointed as a member for a period of five years and he shall be eligible for reappointment.

(3) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the ex-officio members) shall be such as may be prescribed keeping in view relevant factors, including the talent required for the office.

(4) The terms of office of a member shall not be varied to his disadvantage during his term.

16. Resignation and removal.

(1) A member, other than an ex-officio member, may resign at any time before the expiry of the term by giving to the Central Government a notice of not less than three months in writing.

(2) The Central Government may remove a member from office on a finding that he has -

- (a) become a person ineligible in terms of sub-section (4) of section 14; or
- (b) has so abused his position as to render his continuation in office detrimental to the public interest.

(3) No member shall be removed under sub-section (2), unless he has been given a reasonable opportunity of being heard in the matter by a committee of external experts constituted by the Central Government for this purpose.

17. Meetings of the Council.

(1) The Council shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings, including quorum at such meetings, as may be specified.

(2) The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Council, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Council shall be decided by a majority vote of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the member presiding, shall have a second or casting vote.

(4) Any member, who has any direct or indirect interest, pecuniary or otherwise, in a matter coming up for consideration at a meeting of the Council, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Council, and the member shall not take any part in any deliberation or decision of the Council with respect to that matter.

(5) The provisions of this section shall apply, mutatis mutandis, to meetings of any committee of the Council.

(6) Secretary to the Institute shall act as the Secretary to the Council and to any committee of the Council.

18. Business of the Council.

(1) The Council shall be responsible for governance of the Institute and towards this end:-

- (a) ensure the functioning of the Institute in accordance with the provisions of this Act; and
- (b) undertake any activity as may be necessary to carry out the purposes of this Act.

(2) Without prejudice to provisions of sub-section (1), the Council shall transact the following businesses: -

- (a) determination of asset classes requiring a separate class of valuers under sub-section (6) of section 2;
- (b) delegating powers under sub-section (4) of section 4;
- (c) approving annual budget of the Institute under sub-section (1) of section 8;
- (d) approving annual statement of accounts of the Institute under sub-section (2) of section 8;
- (e) approving annual report of the Institute under sub-section (2) of section 9;
- (f) considering advice of the committee of valuers provided under subsection (6) of section 20;
- (g) making regulations under section 25;
- (h) approving operation manuals for various activities of the Institute;
- (i) approving location of office premises;
- (j) approving number and categories of officers and other employees and their compensation;
- (k) assessing performance of the Institute and the Council keeping in view objectives, functions, responsibilities, powers and resources of the Institute under this Act;
- (l) appraising performance of the Chairperson and whole-time members, keeping in view their responsibilities and resources at their disposal;
- (m) approving the code of conduct and ethics for members;
- (n) any other as may be required by the Council from time to time;
- (o) any other as may be brought before the Council from time to time; and
- (p) any other as may be required under any law for the time being in force.

19. Audit Committee.

(1) The Council shall constitute an Audit Committee comprising three part-time members.

(2) A member shall ordinarily be a member of the Audit Committee for a term of three years.

- (3) The responsibilities of the Audit Committee shall include:
- (a) monitoring compliance with laws applicable to the Institute;
 - (b) oversight of risk management function of the Institute;
 - (c) finalisation of principles, policies and standards for financial reporting and modification thereof;
 - (d) oversight of the financial reporting process; and
 - (e) any other responsibility as may be assigned by the Institute.

20. Committee of valuers.

- (1) The Institute shall, by an order, constitute a committee of valuers.
- (2) The committee of valuers shall consist of: -
- (a) five members nominated by the Institute from amongst the valuers; and
 - (b) fifteen members nominated by valuation professional organisations from amongst their members, who are valuers, in such manner as may be specified:

Provided that no associate valuer shall be nominated to the committee after five years from commencement of this Act.

- (3) The terms and conditions of a member on the committee of valuers shall be as may be specified.

Provided that an individual shall not be a member of the committee of valuers for more than two terms, whether consecutively or otherwise.

(4) The committee of valuers shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings, including quorum at such meetings, as may be specified.

(5) The committee of valuers may advise the Institute on its own, and shall advise the Institute on a reference from the Institute, on any issue relating to the profession of valuers and market for valuation services.

(6) Every advice of the committee of valuers shall be considered by the Council.

(7) Every advice of the committee of valuers and the decision of the Council thereon shall be published in public domain.

CHAPTER III VALUATION STANDARDS

21. Valuation Standards Committee.

- (1) The Central Government shall constitute a valuation standards committee.
- (2) The valuation standards committee shall consist of:
- (a) the Chairperson;
 - (b) one officer, who is well-versed with valuation, each nominated by
 - (i) the Ministry of Corporate Affairs,
 - (ii) the Ministry of Finance,
 - (iii) the Central Board of Direct Taxes,
 - (iv) the Central Board Indirect Taxes and Customs,
 - (v) the Reserve Bank of India,

- (vi) the Securities and Exchange Board of India,
- (vii) the Insurance Regulatory and Development Authority of India,
- (viii) the Pension Fund Regulatory and Development Authority,
- (ix) the Insolvency and Bankruptcy Board of India, and
- (x) the International Financial Services Centres Authority;
- (c) three valuers each from an Asset Class, as nominated by the Council;
- (d) three members to represent trade and business, as nominated by the Council; and
- (e) four eminent citizens, as nominated by the Central Government.

Provided that no associate valuer shall be nominated to the committee under clause (c) after five years from the commencement of this Act.

(3) The terms and conditions of a member on the valuation standards committee shall be as may be prescribed.

(4) The valuation standards committee shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings, including quorum at such meetings, as may be prescribed.

(5) The valuation standards committee shall recommend:

- (a) valuation standards; and
 - (b) valuation guidelines,
- to be used by valuers for valuation services.

(6) The valuation standards committee shall review:

- (a) valuation standards, and
- (b) valuation guidelines,

at least once in every three years unless warranted earlier.

(7) The Institute, in consultation with the Central Government, shall lay down valuation standards based on the recommendations of the valuation standard committee.

CHAPTER IV CENTRAL GOVERNMENT

22. Power to make rules.

(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) other law under sub-clause (xiv) of clause (a) of sub-section (51) of section 2,
- (b) other funds under clause (d) of sub-section (1) of section 7;
- (c) other expenses under clause (d) of sub-section (2) of section 7;
- (d) form and time of annual budget under sub-section (1) of section 8;
- (e) form of annual statement of accounts under sub-section (2) of section 8;
- (f) returns and statements under sub-section (1) of section 9
- (g) format of annual report under sub-section (2) of section 9;
- (h) other functions of the Institute under clause (v) of sub-section (2) of section 11;

- (i) salaries and allowances payable to and other conditions of service of the Chairperson and the members under sub-section (3) of section 15;
- (j) the terms and conditions of members of the Valuation Standards Committee under sub-section (3) of section 21; and
- (k) the conduct of meeting of Valuation Standards Committee under sub-section (4) of section 21.

23. Power to issue directions.

(1) The Institute shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Institute shall be given an opportunity to express its views before any direction is given.

(2) The decision of the Central Government whether a question is one of policy shall be final.

(3) The Central Government shall cause a copy each of the direction issued under sub-section (1) and a statement carrying the rationale for the same, before each House of Parliament at the earliest.

24. Power to supersede the Council.

(1) If at any time the Central Government is of opinion –

(a) that on account of grave emergency, the Council is unable to discharge the functions and duties imposed on it by or under the provisions of this Act;

(b) that the Council has persistently not complied with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such non-compliance the financial position of the Institute or the administration of the Institute has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do, it may, by notification, supersede the Council for such period, not exceeding six months, as may be provided in such notification.

(2) Upon the publication of the notification under sub-section (1) superseding the Council, -

(a) all the members shall, as from the date of supersession, vacate their offices as such; and

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Council, shall until the Council is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct.

(3) On the expiration of the period of supersession as provided in the notification issued under sub-section (1), the Central Government may reconstitute the Council by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

PART III
DISCHARGE OF FUNCTIONS BY INSTITUTE

CHAPTER I
REGULATIONS

25. Power to make regulations

(1) The Institute may, by notification, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) Any prescription by the Institute that is likely to affect rights and obligations of a stakeholder shall be specified through regulations.

(3) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely -

- (a) other property under clause (g) of sub-section (5) of section 2;
- (b) number of credits and syllabus for graduate valuation programme under sub-section (17) of section 2;
- (c) other liability under clause (f) of sub-section (22) of section 2;
- (d) syllabus for limited valuation programme under sub-section (23) of section 2;
- (e) number of credits and syllabus for national valuation programme under sub-section (25) of section 2;
- (f) valuation services under clause (b) of sub-section (51) of section 2;
- (g) delegation of powers and functions of the Institute under sub-section (4) of section 4;
- (h) appointment of other officers and employees under sub-section (1) of section 5;
- (i) salaries and allowances of officers and employees under sub-section (2) of section (5);
- (j) manner of maintenance of records, etc. under clause (a) of sub-section (4) of section 5;
- (k) manner of disclosure of records and information under clause (b) of sub-section (4) of section 5;
- (l) other funds under clause (d) of sub-section (1) of section 7;
- (m) instruments of investment and manner of investment under sub-section (4) of section 7;
- (n) publication of information under clause (o) of sub-section (2) of section 11;
- (o) model bye-laws for valuation professional organisations under sub-section (4) of section 11;
- (p) other grounds of discrimination under explanation to clause (c) of sub-section (4) of section 11;
- (q) discovery and production of documents under clause (a) of sub-section (5) of section 11;
- (r) rules of procedure of meetings under sub-section (1) of section 17;
- (s) manner of nomination of members under clause (b) sub-section (2) of section 20;
- (t) terms and conditions of members under sub-section (3) of section 20;
- (u) rules of procedure of meetings under sub-section (4) of section 20;
- (v) manner of filing an information under sub-section (1) of section 30;
- (w) manner of dealing with an information under sub-section (2) of section 30;
- (x) service providers for inspection under sub-section (1) of section 31;
- (y) manner of preferring an appeal under sub-section (1) of section 43;
- (z) procedure of settlement under sub-section (4) of section 44;
- (aa) asset classes under clause (a) of sub-section (1) of section 47;
- (bb) professional experience of high order under sub-section (3) of section 48;

- (cc) extra ordinary contribution to valuation profession under sub-section (4) of section 48;
- (dd) disciplines under clause (b) of sub section (1) of section 49;
- (ee) hours of training under clause (d) of sub section (1) of section 49;
- (ff) safeguards under sub-section (4) of section 49;
- (gg) manner, form and fee for making application under sub-section (1) of section 50;
- (hh) manner of suspension or cancellation of certification of registration of a valuer under sub section (5) of section 50;
- (ii) disclosures regarding valuation services under clause (c) sub-section (6) of section 50;
- (jj) continuous professional education under clause (d) of sub section (6) of section 50;
- (kk) fee under clause (f) of sub-section (6) of section 50;
- (ll) maintenance of records under clause (h) of sub-section (6) of section 50;
- (mm) code of conduct under clause (i) of sub-section (6) of section 50;
- (nn) reports under clause (j) of sub-section (6) of section 50;
- (oo) other conditions of registration as valuer under clause (k) of sub section (6) of section 50;
- (pp) manner of issue, renewal etc. of certificate of practice under sub-section (4) of section 51;
- (qq) any person under clause (a) of sub-section (1) of section 52;
- (rr) net worth, etc., under clause (b) of sub-section (1) of section 52;
- (ss) eligibility for valuation professional organisations under clause (d) of sub-section (1) of section 52;
- (tt) manner, form and fee for making application sub-section (2) of section 53;
- (uu) time under sub-section (4) of section 53;
- (vv) manner of suspension or cancellation of certification of registration of a valuer professional organisation under sub-section (6) of section 53;
- (ww) disclosures under clause (c) sub-section (7) of section 53;
- (xx) fee under clause (d) of sub-section (7) of section 53;
- (yy) reports under clause (e) of sub-section (7) of section 53;
- (zz) other conditions of registration under clause (f) of sub section (7) of section 53;
- (aaa) other functions under clause (f) of sub-section (2) of section 54;
- (bbb) experience and resources under clause (a) of sub-section (2) of section 55;
- (ccc) manner, form and fee for making application under sub-section (3) of section 55;
- (ddd) manner of suspension or cancellation of certification of registration of a valuer institute under sub-section (6) of section 55;
- (eee) disclosures under clause (c) of sub-section (7) of section 55;
- (fff) minimum research, etc. under clause (d) of sub-section (7) of section 55;
- (ggg) reports under clause (e) sub-section (7) of section 55;
- (hhh) other conditions of registration under clause (f) of sub section (7) of section 55;
- (iii) syllabus and manner of delivery of educational courses under clause (a) of sub-section (1) of section 56;
- (jjj) manner of examinations under sub-section (1) of section 57;
- (kkk) manner of examinations under sub-section (2) of section 57;
- (lll) extent and manner of outsourcing under subs-section (3) of section 59;
- (mmm) conduct of valuation, etc. under sub-section (2) of section 59;

(nnn) disclosures required under sub-section (5) of section 59;
 (ooo) conflict of interest under sub-section (8) of section 59; and
 (ppp) manner of apprising stakeholders of conflict of interest under sub-section (8) of section 59.

26. Public consultation.

(1) For the purpose of making regulations, the Institute shall upload the following, with the approval of the Council, on its website seeking comments from the public

- (a) draft of proposed regulations;
- (b) the specific provision of this Act under which the Institute proposes regulations;
- (c) a statement of the problem that the proposed regulation seeks to address;
- (d) an economic analysis of the proposed regulations;
- (e) a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- (f) the manner of implementation of the proposed regulations; and
- (g) the manner, process and timelines for receiving comments from the public.

(2) The Institute shall allow at least twenty-one days for public to submit their comments.

(3) The Institute shall consider the public comments received and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations.

(4) If the Council decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process under this regulation.

(5) The Institute shall notify regulations promptly after it is approved by the Council along with legislative notes.

(6) A regulation shall ordinarily come into force after thirty days from the date of notification unless a different date is specified therein.

(7) Without prejudice to provisions in this regulation, the Institute may consult stakeholders in any manner and may constitute subject or issue specific advisory committees, as it may consider appropriate for making regulations.

27. Urgent regulations

(1) Where the Institute is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of the Council, without having public consultation under section 26.

(2) A regulation made under this section will cease to have effect after one hundred and eighty days from the date on which that regulation is notified.

28. Review of regulations

The Institute shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view:

- (a) its objectives;
- (b) its outcome;

- (c) experience of its implementation;
- (d) experience of its enforcement and the related litigation;
- (e) global best practices, if any;
- (f) its relevance in the changed environment; and
- (g) any other factor considered relevant by the Institute.

Explanation: The three years shall count from the date of notification of the Regulations.

29. Guidance on law

The Institute may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be construed as determination of any question of fact or law.

CHAPTER II INSPECTION AND INVESTIGATION

30. Information against service providers.

- (1) Any user aggrieved by the service of a service provider may file an information to the Institute in such form and within such time and in such manner as may be specified.
- (2) An information received under sub-section (1) shall be dealt by the Institute in the manner, as may be specified.

31. Order of inspection.

- (1) The Institute shall conduct inspection of such number of service providers, selected in such manner every year, as may be specified to monitor compliance with the provisions of this Act, rules and regulations made thereunder.
- (2) Without prejudice to the provisions of sub-section (1), the Institute may, at any time, by an order, direct an inspecting authority to carry out an inspection of records of a service provider for the purposes specified in sub-section (3), where it has reasonable grounds to believe, on the basis of material available in an information received under section 30 or otherwise available on record, that the service provider has contravened any of the provisions of this Act or the rules or regulations made or directions issued by the Institute thereunder.
- (3) The purposes of inspection under sub-section (2) may include:
 - (a) to ensure that the records are being maintained by a service provider in the manner required under this Act and regulations;
 - (b) to ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfil its obligations under this Act and regulations;
 - (c) to ascertain whether any circumstance exists which would render a service provider unfit or ineligible under this Act or regulations;
 - (d) to ascertain whether the provisions of this Act, or the rules, regulations and orders and directions issued by the Institute, if any, are being complied with;
 - (e) to inquire into the information received from users on any matter having a bearing on the activities of a service provider; and

(f) such other purpose as may be deemed fit by the Institute in furtherance of the objectives of this Act.

(4) The order referred to in sub-section (2) shall contain-

- (a) scope of inspection;
- (b) composition of Inspecting Authority;
- (c) timelines for conducting the inspection;
- (d) reporting of progress in inspection;
- (e) submission of interim inspection report, if any; and
- (f) submission of inspection report.

(6) The Institute and the Inspecting Authority shall keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection.

32. Conduct of inspection.

(1) The Inspecting Authority shall serve a notice of inspection to the service provider at least 10 days before the commencement of inspection:

Provided that where the Inspecting Authority is satisfied that the notice will cause undue delay in inspection or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

(2) The Inspecting Authority may require the service provider to submit records, as may be required, before the commencement of inspection.

(3) The Inspecting Authority may visit the offices of the service provider for conducting the on-site inspection.

(4) A service provider shall produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require.

(5) The service provider shall allow the Inspecting Authority to have access to the premises occupied by such service provider or by any other person on its behalf and extend facility for examination of any records in the possession of the service provider or any such other person and provide copies of records or other material which in the opinion of the Inspecting Authority are relevant for the inspection.

(6) The Inspecting Authority shall, in the course of inspection, may examine and record statements of any associated person of the service provider in relation to the affairs of the service provider.

(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.

33. Interim inspection report.

(1) The Inspecting Authority may submit an interim inspection report to the Institute, if it considers appropriate, keeping in view the nature and progress of inspection.

(2) The Inspecting Authority shall submit an interim inspection report, if required by the Institute.

(3) If the Institute is satisfied from the interim inspection report that there is a gross contravention of the provisions of this Act, or the rules, regulations made thereunder, by the service provider and an immediate action is warranted, it shall refer the matter to the Administrative Law Member for an appropriate action.

(4) On consideration of the interim inspection report, the administrative law member may issue an interim order with any or all the following directions to the service provider:

- (a) cease or desist; or
- (b) suspension of certificate of registration of the service provider, or suspension of certificate of practice of the valuer, as the case may be, for a period not exceeding 90 days; or
- (c) impose such conditions or restrictions upon the service provider as considered appropriate.

(5) Before issuing any order under sub-section (4), the administrative law member shall –

(a) give a written notice to the service provider against whom it proposes to issue the interim order; and

(b) give such service provider an opportunity to make representation against the written notice:

Provided that, in exceptional circumstances, an order under sub-section (4) may be passed without issuing such notice or giving opportunity to make representations, but such person shall be given an opportunity to make representation at the earliest;

Provided further that, in such cases, the administrative law member may modify, confirm, recall or set aside the previous order.

(6) The interim order referred to sub-section (4) shall lapse on expiry of 90 days.

34. Inspection report.

(1) The Inspecting Authority shall send a copy of the draft inspection report to the service provider requiring comments of the service provider within 15 days from receipt of the draft inspection report.

(2) The Inspecting Authority shall submit a copy of the draft inspection report to the Institute.

(3) The Institute shall examine the draft inspection report as to whether inspection is complete and satisfactory or requires further inspection and advise the Inspecting Authority accordingly within 15 days of receipt of draft inspection report.

(4) After considering the comments of the service provider and the advice of the Institute, the Inspecting Authority shall prepare the inspection report and submit it to the Institute.

35. Order of investigation.

(1) Whenever the Institute has reasonable grounds to suspect, on the basis of the material available in an information received under section 30 or otherwise available on record, that -

- (a) the affairs of a service provider are being conducted in a manner detrimental to the users of valuation services; or
- (b) the service provider has contravened any of the provisions of this Act or the rules or regulations made or directions issued by the Institute thereunder, it may, at any time by order, direct an Investigating Authority to conduct an investigation of the affairs of the service provider and to report thereon to the Institute.

(2) The order referred to in sub-section (1) shall contain the following particulars: -

- (a) scope of investigation in terms of records, activities, places, and persons;
- (b) composition of Investigating Authority;

- (c) timelines for conducting investigation;
- (d) reporting of progress in investigation;
- (e) submission of interim investigation report, if any; and
- (f) submission of investigation report.

(3) The Institute and the Investigating Authority shall keep investigation confidential and to cause the least burden on, or disruption to, the business of the service provider under investigation.

(4) The Institute may, at any time, modify the order referred to under sub-regulation (1) to enlarge the scope of investigation or other terms of investigation, for reasons to be recorded in writing.

36. Conduct of investigation.

(1) The Investigating Authority shall serve a notice of investigation to the service provider at least five days before the commencement of investigation:

Provided that where the Investigating Authority is satisfied that the notice will cause undue delay in investigation or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

(2) The Investigating Authority may require the service provider or an associated person to submit records as may be required, before the commencement of investigation.

(3) The Investigating Authority may visit the offices of the service provider for conducting the on-site investigation.

(4) A service provider and an associated person shall produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.

(5) The service provider shall allow the Investigating Authority to have access to the premises occupied by such service provider or by any other person on its behalf and extend facility for examination of any records in the possession of the service provider or any such other person and provide copies of records or other material which in the opinion of the Investigating Authority are relevant for the investigation.

(6) The Investigating Authority shall, in the course of investigation, may examine and record statements of any associated person of the service provider in relation to the affairs of his business and for that purpose may require any of those persons to appear before it personally.

(7) Notes of any examination referred to in sub-section (6) shall be recorded and shall be read over to, or by, and signed by, the person examined.

(8) It shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation.

(9) If any person fails without reasonable cause or refuses to -

- (a) produce to the investigating authority any book, register, record and other document which is his duty to produce;
- (b) furnish any information to the investigating authority, which is his duty to furnish; or

(c) appear before the investigating authority personally when required to do so under or to answer any question which is put to him by the investigating authority; or

(d) to sign the notes of any examination, he shall be liable to a fine which may extend to one lakh rupees or imprisonment of one month or both.

(10) The Investigating Authority may keep in its custody any record produced to it up to six months and thereafter shall return the same to the person by whom or on whose behalf the records were produced:

Provided that it may call for the records again if it considers necessary and shall give certified copies to the person by whom or on whose behalf these were produced, if required by him.

(11) Where in the course of investigation, the Investigating Authority has reasonable grounds to believe that the records of, or relating to, a service provider or an associated person in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the competent court having jurisdiction for an order for the seizure of such records.

(12) After considering the application under sub-section (11) and hearing the Investigating Authority, if necessary, the court designated by the Central Government may, by order, authorise the Investigating Authority –

(a) to enter, with such assistance, as may be required, the place or places where such records are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize records, it considers necessary, for the purposes of the investigation.

(13) The Investigating Authority may requisition the services of any police officer or any officer of the Central Government, or of both to assist him in search and seizure under the order under sub-section (11) and it shall be the duty of every such officer to comply with such requisition.

(14) Every search or seizure under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

37. Interim investigation report.

(1) The Investigating Authority may submit an interim investigation report to the Institute, if it considers appropriate, keeping in view the nature and progress of investigation.

(2) The Investigating Authority shall submit an interim investigation report, if required by the Institute.

(3) If the Institute is satisfied from the interim investigation report that prima facie, there is a gross contravention of the provisions of this Act, or the rules or regulations made thereunder, by the service provider and an immediate action is warranted, the Institute shall refer the matter to the Administrative Law Member for an appropriate action under sub-section (4).

(4) On consideration of the interim investigation report, the administrative law member may issue an interim order with any or all the following directions to the service provider:

(a) cease or desist; or

(b) suspension of certificate of registration of the service provider, or suspension of certificate of practice of the valuer, as the case may be, for a period not exceeding 90 days; or

(c) impose such conditions or restrictions upon the service provider as considered appropriate.

- (5) Before issuing any order under sub-section (4), the administrative law member shall -
- (a) give a written notice to the service provider against whom it proposes to issue the interim order; and
 - (b) give such service provider an opportunity to make representation against the written notice:
- Provided that, in exceptional circumstances, an order under sub-section (4) may be passed without issuing such notice or giving opportunity to make representations, but such person shall be given an opportunity to make representation at the earliest;
- Provided further that, in such cases, the administrative law member may modify, confirm, recall or set aside the previous order.
- (6) The interim order referred to sub-section (4) shall lapse on expiry of 90 days.

38. Investigation report.

- (1) The Investigating Authority shall submit a copy of the draft investigation report to the Institute.
- (2) The Institute shall examine the draft investigation report as to whether investigation is complete and satisfactory or requires further investigation and advise the Investigating Authority accordingly within fifteen days of receipt of the draft investigation report.
- (3) After considering the advice of the Institute, the Investigating Authority shall prepare the investigation report and submit it to the Institute.

CHAPTER III ADJUDICATION

39. Consideration of inspection and investigation report.

- (1) The Institute shall consider the inspection report received under section 34 or investigation report received under section 38, as the case may be, expeditiously.
- (2) If the Institute, after consideration of the report under sub-section (1), is of the prima facie opinion that sufficient cause exists to take actions under sub-section (4) of section 41, it shall issue a show-cause notice in accordance with section 40 to the service provider and in any other case, close the inspection or investigation, as the case may be.

40. Show-cause notice.

- (1) The show-cause notice shall be in writing and shall state-
 - (a) the provisions of this Act under which it has been issued;
 - (b) the details of the alleged facts;
 - (c) the details of the evidence in support of the alleged facts;
 - (d) the provisions of this Act, or the rules, regulations or directions or circulars made thereunder, allegedly violated;
 - (e) the actions or directions that the Institute proposes to take or issue, if the allegations are established; and
 - (f) the time within which the noticee may make written submission.
- (2) For the purposes of clause (e) of sub-section (1), the Institute shall take into account, but not limited to, the following factors: -
 - (a) the nature and seriousness of the alleged contraventions, including whether it was deliberate,

reckless or negligent on the part of the noticee;

(b) the consequences and impact of the alleged contravention, including –

(i) unfair advantage gained by the noticee as a result of the alleged contravention;

(ii) loss caused, or likely to be caused, to users or any other person as a result of the alleged contravention; and

(iii) the conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.

(3) The noticee shall be provided at least twenty-one days to make a written submission.

(4) The show-cause notice shall state, if a noticee fails to respond under sub-section (3) within the given time, that it shall be disposed of based on the material available on record.

(5) The show-cause notice shall enclose copies of relevant documents, material and records and the report of investigation or inspection, relied upon to substantiate the charge levelled against the noticee as also the material which undermine the charge.

(6) A show-cause notice issued shall be served on the noticee-

(a) by sending it to the noticee at the address registered with the Institute or the registered office, wherever available, by registered post with acknowledgement due; and

(b) by an appropriate electronic form to the email address provided by the service provider to the Institute.

(7) The Institute shall refer the show-cause notice to the Panel along with all the relevant records including the written submissions, if any, made by the noticee in the matter.

(8) The Institute and the Panel shall keep show-cause notice confidential and to cause the least burden on, or disruption to, the practice of profession of the noticee.

41. Disposal of show-cause notice.

(1) The Panel, after providing an opportunity of being heard to the noticee and on consideration of the factors listed in sub-section (2) of section 40, shall dispose of the show-cause notice by passing a reasoned order.

Provided that the Panel, may seek expert opinion from a valuer, where it considers it necessary for better appreciation of facts.

(2) The Panel shall dispose of the show-cause notice within a period of one hundred and eighty days from the issue of the show-cause notice.

(3) The Panel shall not examine the merits of a valuation arrived at by the valuer unless there is a prima facie evidence of mala fides, gross negligence, or willful misconduct.

Clarification: - For the avoidance of doubt, it is clarified that a valuation arrived at by the valuer shall be presumed to be bona fide until contrary is proved.

(4) The Panel, in its order under sub section (1),-

(a) may issue one or more of the following directions, where the service provider is a valuer and is guilty of contraventions mentioned in the First Schedule; –

(i) warning;

(ii) reprimand;

(iii) improvement of capability;

(iv) cease and desist;

(v) restrictions on rendering of valuation services for a certain period;

- (vi) disgorgement of unlawful gain made, or loss averted;
 - (vii) monetary penalty which may extend to two lakh rupees or up to three times the amount of the loss caused, or likely to have been caused, to users concerned on account of such contravention, whichever is higher;
 - (viii) monetary penalty which may extend to two lakh rupees or up to three times the amount of unlawful gain made on account of such contravention, whichever is higher;
 - (ix) suspension of certificate of registration or certificate of practice of one or more asset classes for a period upto six months; and
 - (x) any other action or direction as may be considered appropriate.
- (b) may issue one or more of the following directions, where the service provider is a valuer and is guilty of contraventions mentioned in the Second Schedule; -
- (i) warning;
 - (ii) reprimand;
 - (iii) cease and desist;
 - (iv) restrictions on rendering of valuation services for a certain period;
 - (v) disgorgement of unlawful gain made, or loss averted;
 - (vi) monetary penalty which may extend to ten lakh rupees or up to three times the amount of the loss caused, or likely to have been caused, to users concerned on account of such contravention, whichever is higher;
 - (vii) monetary penalty which may extend to ten lakh rupees or up to three times the amount of unlawful gain made on account of such contravention, whichever is higher;
 - (viii) suspension of certificate of registration or certificate of practice for such period as it thinks fit;
 - (ix) cancellation of certificate of registration or certificate of practice of one or more asset classes;
 - (x) a reference to the Institute for filing a criminal complaint; and
 - (xi) any other action or direction as may be considered appropriate.
- (c) may issue one or more of the following directions, where the service provider is a valuation professional organisation and is guilty of contraventions mentioned in the Third Schedule; -
- (i) warning;
 - (ii) reprimand;
 - (iii) cease and desist;
 - (iv) improvement of capacity;
 - (v) restrictions on business for a certain period;
 - (vi) disgorgement of unlawful gain made, or loss averted;
 - (vii) monetary penalty which may extend to one crore rupees or up to three times the amount of the loss caused, or likely to have been caused, to users concerned on account of such contravention, whichever is higher;
 - (viii) monetary penalty which may extend to one crore rupees or up to three times the amount of unlawful gain made on account of such contravention, whichever is higher;
 - (ix) suspension of certificate of registration for such period as it thinks fit;
 - (x) cancellation of certificate of registration;
 - (xi) a reference to the Institute for filing a criminal complaint; and
 - (xii) any other action or direction as may be considered appropriate.
- (d) may issue one or more of the following directions, where the service provider is a valuer institute and is guilty of contraventions mentioned in the Fourth Schedule; -
- (i) warning;
 - (ii) reprimand;
 - (iii) cease and desist;
 - (iv) improvement of capacity;

- (v) restrictions of business for a certain period;
- (vi) disgorgement of unlawful gain made, or loss averted;
- (vii) monetary penalty which may extend to one crore rupees or up to three times the amount of the loss caused, or likely to have been caused, to users concerned on account of such contravention, whichever is higher;
- (viii) monetary penalty which may extend to one crore rupees or up to three times the amount of unlawful gain made on account of such contravention, whichever is higher;
- (ix) suspension of certificate of registration for such period as it thinks fit;
- (x) cancellation of certificate of registration;
- (xi) a reference to the Institute for filing a criminal complaint; and
- (xii) any other action or direction as may be considered appropriate.

(5) Where a service provider is found guilty of contravention of two or more entries in a Schedule or across Schedules, as the case may be, the Panel, in its order under sub section (1) may either issue separate direction for each contravention, or one combined direction for all contraventions.

(6) If the order under sub-section (1) suspends or cancels the registration of a service provider, the Panel may, if it considers fit, require the service provider to-

- (a) discharge pending obligations, if any;
- (b) continue its functions till such time as may be directed, only to enable users to shift to another service provider; and
- (c) comply with any other directions.

(7) The order under sub-section (1) shall not become effective until thirty days have elapsed from the date of issue of the order, unless the Panel states otherwise in the order along with the reasons for the same.

(8) The order under sub-section (1) shall be issued to the noticee immediately and be published on the website of the Institute.

42. Realisation of penalty.

(1) All sum realised by way of penalties under section 41 shall be credited to the Consolidated Fund of India.

(2) If a person fails to pay the penalty, or disgorge such amount as directed under an order under section 41, the Recovery Officer appointed by the Institute shall recover from such person the amount due by one or more of the following modes, namely: -

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts; or
- (c) attachment and sale of the person's immovable property.

(3) The provisions of the Income-tax Act, 1961 and the rules thereunder as in force from time to time shall, mutatis mutandis, apply to recovery of the amounts by the Recovery Officer.

(4) The Recovery Officer may seek the assistance of the district administration while exercising the powers under sub-section (2) and it shall be the duty of district administration to extend such assistance.

(5) Notwithstanding anything contained in any other law for the time being in force, the amounts due in pursuance to an order passed under the provisions of this Act shall have precedence over any other claim against such person.

43. Appeal against order.

(1) A service provider aggrieved by the order of a Panel under section 41 may prefer an appeal before the Administrative Law Member in the manner as may be specified.

(2) An appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Panel is received by the service provider:

Provided that the Administrative Law Member may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) The Administrative Law Member may call upon such experts from the disciplines of valuation, law, economics, commerce, accountancy, or from any other discipline as he deems necessary to provide opinion on any specific issue for his consideration.

(4) The Administrative Law Member, after hearing the service provider, shall pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Administrative Law Member shall dispose of the appeal as expeditiously as possible and in any case not later than ninety days from the date of receipt of the appeal unless the delay is on account of the appellant.

44. Settlement of contraventions.

(1) Notwithstanding anything contained in any other law for the time being in force, a service provider, against whom a show-cause notice has been issued or likely to be issued for any alleged contravention, may file an application in writing to the Institute proposing settlement of the alleged contravention.

(2) The Institute may, after taking into consideration the nature, gravity and impact of contravention(s), accept the proposal for settlement, subject to such terms as may be considered equitable, and pass an order to that effect.

Explanation: For the purpose of this sub-section, the terms may include any or all the directions permissible under sub-section (2) of section 41 or any other term.

(3) If the matter is pending before a Panel, the Administrative Law Member, or a court, the terms of settlement agreed between the Institute and the service provider shall be submitted before such Panel, the Administrative Law Member, or the court, as the case may be, for its consideration and orders.

(4) The settlement under this section shall be conducted in accordance with the procedure, as may be specified.

(5) No appeal shall lie against any order passed by the Institute under this section.

(6) The settlement amount, excluding the disgorgement amount and legal costs, if any, realised under this section shall be credited to the Consolidated Fund of India.

45. Right to legal representation.

A person may either appear in person or authorise one or more chartered accountants, company secretaries, cost accountants, legal practitioners, valuers or any of its officers to present its case before the Panel or the Administrative Law Member.

Explanation. - For the purposes of this section, -

- (a) “advocate” means an advocate entered in any roll of a State Bar Council under the Advocates Act, 1961 (25 of 1961);
- (b) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who holds a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who holds a certificate of practice under sub-section (1) of section 6 of that Act; and
- (d) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a certificate of practice under sub-section (1) of section 6 of that Act.

46. Appeal to the High Court.

(1) A service provider aggrieved by any order of the Administrative Law Member under sub-section (4) of section 43 may prefer an appeal to the High Court within thirty days of the date of receipt of the order:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the administrative law member under sub-section 3 of section 43 and may—

- (a) confirm, modify or set aside the order;
- (b) impose, enhance or reduce the penalty;
- (c) remit the matter to the administrative law member for such further inquiry as it considers necessary; or
- (d) pass such other order as it thinks fit:

Provided that no order of the administrative law member shall be modified or set aside unless the Institute been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the service provider concerned has been given an opportunity of being heard.

Explanation. – In this section “High Court” means the highest civil court of appeal, other than the Supreme Court, exercising jurisdiction in the area where the service provider resides or has registered office, as the case may be.

PART IV VALUATION SERVICES

CHAPTER I ASSET CLASSES

47. Asset classes.

(1) Based on its assessment of the needs of the market for valuation services, the Institute, by notification: -

- (a) specify the asset classes;
- (b) add or delete any asset class;
- (c) expand or limit the scope of an asset class,

for the purpose of educational courses, examinations and registration of valuers.

(2) The Institute shall register a service provider, asset class wise.

Explanation.- For the purpose of this sub-section, a person may be registered as a service provider in respect of an asset class or more than one asset class, as the case may be, subject to meeting the eligibility requirements.

Illustration 1: Mr. X may be registered as a valuer in two classes, namely, Land & Building and Plant & Machinery simultaneously if he meets the eligibility norms for both the asset classes.

Illustration 2: The entity A may be registered as a valuation professional organisation for two classes, namely, Land & Building and Plant & Machinery simultaneously if it meets the eligibility norms for both the asset classes.

(3) A valuer shall not be registered as a valuer institute or a valuation professional organisation.

Illustration 1: The entity A may be registered as a valuation professional organisation and valuer institute simultaneously.

Illustration 2: The entity A shall not be registered as a valuation professional organisation and a valuer simultaneously.

CHAPTER II VALUERS

48. Classes of valuers.

(1) There shall be four classes of valuers, namely:

- (a) valuation entities;
- (b) associate valuers;
- (c) fellow valuer; and
- (d) honorary valuer.

(2) An individual, subject to the eligibility under section 49 and other provisions of this Act, shall be registered as an associate valuer and on registration, he shall be entitled to prefix the letters 'AV' to his name.

(3) An associate valuer, who has been in practice for at least five years, may be registered as a fellow valuer on demonstrating professional excellence of a high order, as may be specified and he shall be entitled to prefix the letters 'FV' to his name.

(4) An individual may be registered as an honorary valuer on recognition of such extra-ordinary contribution to the valuation profession, as may be specified, and he shall be entitled to prefix the letters 'HV' to his name, but shall not render valuation services.

49. Eligibility.

(1) An individual shall be eligible for registration as a valuer in respect of an asset class, if he-

(a) has completed the national valuation programme of the relevant asset class, after having completed higher secondary education; or

(b) has completed the graduate valuation programme of the relevant asset class, after having a degree or equivalent qualification in any of the specified disciplines; or

(c) has passed the valuation examination of the respective asset class, having experience of rendering valuation services for at least five years and having completed the limited valuation programme of the relevant asset class; or

(d) has passed the valuation examination of the respective asset class, having completed specified hours of training from a valuation professional organisation, and having qualification and experience as under:

| Asset Class | Eligibility | |
|---------------------|---|---|
| | Qualification (obtained from a recognised Indian University or Deemed University, whether in India or abroad) | Post-qualification experience of valuation in the asset class |
| Plant and Machinery | Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Post-Graduate in above disciplines. | Five Years |
| | Post-Graduate in Valuation of Plant and Machinery | Three years |
| Land and Building | Graduate in Civil Engineering, Architecture, Town Planning or Valuation Surveying or Post-Graduate in above disciplines | Five years |
| | Post-Graduate in Valuation of Land and Building or Real Estate Valuation | Three years |
| Financial Assets | Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration, Post-Graduate Diploma in Business Management (specialisation in finance) or Post-Graduate in Finance | Three years |

Provided that the eligibility under clause (c) shall be available for two years from the date of commencement of the provisions of this section.

Provided further that the eligibility under clause (d) shall be available for three years from the date of commencement of the provisions of this section.

(2) An individual shall not be eligible for registration as a valuer, if he-

(a) is a minor;

(b) is a bankrupt, or has applied to be adjudicated as a bankrupt;

(c) has been declared to be of unsound mind;

(d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if an individual has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(e) is not a person resident in India;

(f) is not a fit and proper person;

Explanation: - For the purpose of this section, 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual.

(3) A partnership firm or company, other than a subsidiary, joint venture or associate of another company or body corporate, shall be eligible for registration as a valuer, if -

(a) its primary objective is to provide valuation services;

(b) it is not undergoing an insolvency resolution, liquidation or bankruptcy process;

(c) none of its partners or directors, as the case may be, is ineligible under sub-section (2);

(d) majority of its partners, or majority of directors and majority of whole-time directors, as the case may be, are valuers having certificate of practice;

(e) none of its partners or directors, as the case may be, is a partner or director of another partnership firm or company, which is a valuer;

(f) at least one of its partners or directors, as the case may be, is a valuer of the asset class for which the partnership firm or company is seeking registration;

Provided that: -

(i) valuation reports shall be signed and certified by a partner or director, who is a valuer of the relevant asset class; and

(ii) the partnership firm or company, as the case may be, and all its partners or directors, who are valuers, shall be jointly and severally liable for all acts of omission and commission of the partnership firm or company, in respect of valuation services.

Explanation 1: The objective shall be considered primary where at least 50% of revenue is derived from valuation services.

Explanation 2: A partner or a director of a Limited Liability Partnership or a Company shall not be liable where the acts of omission and commission in respect of valuation service were without his knowledge or he had exercised all due diligence to prevent the same.

(4) The following persons may be registered as a valuer subject to such safeguards, as may be specified, that preserve the professional character of the valuation service:

(a) a multi-disciplinary firm, and

(b) a subsidiary, joint venture or associate of another company or body corporate.

Explanation: For the purpose of this sub-section, a multi-disciplinary firm means a partnership firm formed by members of different professions to carry on multi-disciplinary practice.

Clarification: A firm formed by valuers of different asset classes shall not be considered a multi-disciplinary firm.

50. Registration of valuers.

(1) A person, who is eligible under section 49 and enrolled with a valuation professional

organisation as a member, may make an application to the Institute in such manner, in such Form and with such fee, as may be specified, for a certificate of registration as a valuer.

(2) If the Institute is satisfied, after such inquiry as it deems necessary that the applicant is eligible for registration, it may grant a certificate of registration to the applicant as a valuer.

(3) Notwithstanding anything contained in section 49, a valuer, who is registered under the Companies (Registered Valuers and Valuation) Rules, 2017 made under the Companies Act, 2013 (18 of 2013), as on the date of commencement of provisions of this Chapter, shall be deemed to be an associate valuer registered under this Act, from the date of registration under the said Rules.

(4) The Institute shall not refuse to grant a certificate of registration to a person under this section except by a reasoned order after providing the person concerned of a reasonable opportunity of being heard.

(5) The Institute may, by order, suspend or cancel a certificate of registration of a valuer, where the valuer

(a) is dead; or

(b) has made a request to surrender his certificate of registration, or

(c) does not comply with the conditions of registration as prescribed under clauses (b), (d) or (f) of sub-section (6), in such manner as may be specified.

(6) The registration granted under this section shall be subject to the conditions that the valuer shall—

(a) comply with the applicable provisions of this Act, rules and regulations made thereunder, and orders and directions issued by the Institute;

(b) continue to satisfy the eligibility norms under section 49;

(c) make disclosures regarding valuations services, as may be specified;

(d) undergo continuing professional education, as may be specified by the Institute;

(e) pay to the Institute such fee, as may be specified;

(f) take adequate steps for redressal of grievances;

(g) maintain records of all assignments undertaken by it for such period, as may be specified;

(h) abide by the Code of Conduct, as may be specified;

(i) submit such reports, as may be specified; and

(j) comply with such other conditions, as may be specified by the Institute.

51. Certificate of practice.

(1) No person shall act as a valuer or hold out as a valuer except under, and in accordance with, a certificate of registration granted under this Act.

(2) A valuer shall not render valuation services except under, and in accordance with, the conditions of a certificate of practice granted under this Act.

(3) A valuer shall not be eligible to hold a certificate of practice, while he is in employment of any person.

Explanation: - For the purposes of this section, a whole-time director of a company registered as valuer under section 50 shall not be considered to be in employment.

(4) A certificate of practice shall be issued, renewed, withdrawn, surrendered, terminated in such manner and subject to such conditions, as may be specified.

CHAPTER III VALUATION PROFESSIONAL ORGANISATIONS

52. Eligibility.

- (1) A person shall be eligible for registration as a valuation professional organisation in respect of an asset class if-
- (a) it is registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013), or any other person as may be specified;
 - (b) it has the sole object of carrying on the functions of a valuation professional organisation;
 - (c) it has such net worth, paid-up capital, shareholding, and composition of Board of Directors, as may be specified;
 - (d) its promoters, directors and shareholders are fit and proper persons; and
 - (e) it meets the requirements as may be specified by the Institute.

53. Registration as valuation professional organisation.

- (1) No person shall carry on the functions as a valuation professional organisation except under and in accordance with a certificate of registration issued in this behalf by the Institute.
- (2) A person, who is eligible under section 52, may make an application to the Institute in such manner, in such Form and with such fee, as may be specified, for a certificate of registration as a valuation professional organisation.
- (3) If the Institute is satisfied, after such inquiry as it deems necessary that the applicant is eligible for registration, it may grant a certificate of registration as a valuation professional organisation to the applicant.
- (4) Notwithstanding anything contained in section 52, a registered valuers organisation, which is recognised under the Companies (Registered Valuers and Valuation) Rules, 2017 made under the Companies Act, 2013 (18 of 2013), as on the date of commencement of provisions of this chapter, shall be deemed to be a valuation professional organisation registered under this Act:
- Provided that it shall comply with the eligibility norms under section 52, within such time as may be specified.
- (5) The Institute shall not refuse to grant a certificate of registration to a person under this section except by a reasoned order after providing the person concerned of a reasonable opportunity of being heard.
- (6) The Institute may, by order, suspend or cancel a certificate of registration of a valuation professional organisation where it
- (a) ceases to exist; or
 - (b) has made a request to surrender its certificate of registration; or
 - (c) does not comply with the conditions of registration as prescribed under clauses (b) or (d) of sub-section (7) of this section,
- in such manner as may be specified.
- (7) The registration granted under this section shall be subject to the conditions that the valuation professional organisation shall-
- (a) comply with the applicable provisions of this Act, rules, and regulations made thereunder;
 - (b) continue to satisfy the eligibility norms under section 52;

- (c) make disclosures regarding its activities, as may be specified;
- (d) pay to the Institute such fee, as may be specified;
- (e) submit such reports as may be specified; and
- (f) comply with such other conditions, as may be specified by the Institute.

54. Functions of a valuation professional organisation.

- (1) Subject to the provisions of this Act and any rules or regulations made thereunder, a valuation professional organisation shall make bye-laws consistent with the model bye-laws, as may be specified.
- (2) A valuation professional organisation shall -
 - (a) promote the professional development of its members;
 - (b) promote professional and ethical conduct amongst its members;
 - (c) monitor the activities of its members to ensure compliance with this Act, rules and regulations made thereunder and its bye-laws;
 - (d) redress of grievances of users against its members;
 - (e) safeguard the rights, privileges and interests of its members; and
 - (f) any other function as may be specified by the Institute.

CHAPTER IV VALUATION EDUCATION

55. Registration as valuer institute.

- (1) No person shall carry on the business as a valuer institute except under and in accordance with a certificate of registration issued in this behalf by the Institute.
- (2) A person shall be eligible for registration as a valuer institute in respect of an asset class or an educational course, if-
 - (a) it has such experiences and resources in terms of faculty, research, training, library, etc., as may be specified by the Institute; and
 - (b) promoters, directors, shareholders and persons in control of the person are fit and proper persons.
- (3) A person, who is eligible under sub-section (2), may make an application to the Institute in such manner, in such Form and with such fee, as may be specified, for a certificate of registration as a valuer institute.
- (4) If the Institute is satisfied, after such inquiry as it deems necessary that the applicant is eligible for registration, it may grant a certificate of registration to the applicant as a valuer institute.
- (5) The Institute shall not refuse to grant a certificate of registration to a person under this section except by a reasoned order after providing the person concerned of a reasonable opportunity of being heard.
- (6) The Institute may, by order, suspend or cancel a certificate of registration of a valuer institute where it ceases to exist or has made a request to surrender its certificate of registration, in such manner as may be specified.
- (7) The registration granted under sub-section (4) shall be subject to the conditions that the valuer institute shall-
 - (a) comply with the applicable provisions of this Act, rules, and regulations made thereunder;

- (b) continue to satisfy the eligibility norms under sub-section (2);
- (c) make disclosures regarding its activities, as may be specified;
- (d) conduct such minimum research and knowledge management as may be specified;
- (e) submit such reports as may be specified; and
- (f) comply with such other conditions, as may be specified.

56. Educational courses.

- (1) A valuer institute shall-
 - (a) deliver educational courses in accordance with the syllabus and in the manner of delivery, as may be specified;
 - (b) levy such fee from students undergoing educational courses as may be commensurate with its cost of delivery in a competitive market environment; and
 - (c) endeavour to arrange financial support for deserving students who cannot afford the full cost of the educational course.
- (2) The Institute shall review performance of a valuer institute once in three years and take appropriate measures, including cancellation of registration, in case any deficiency is observed.
- (3) Subject to the provisions of this Act, any person may impart education on the subjects covered by any of the educational courses.
- (4) The person referred to in sub-section (3) shall not award any degree, diploma or certificate or bestow any designation that resembles or is identical to one awarded by the Institute or a valuer institute under the provisions of this Act or the rules or regulations made thereunder.
- (5) Nothing contained in this section shall enable a person to adopt a name or nomenclature which is in any way similar to that of the Institute.

57. Examinations.

- (1) The Institute shall conduct examinations of national valuation programme and graduate valuation programme, in the manner as may be specified, for grant of credits to successful candidates.
- (2) The Institute shall conduct valuation examinations envisaged in clauses (c) and (d) of sub-section (1) of section 49 in the manner as may be specified.
- (3) The Institute shall issue certificates to individuals who complete the examinations.

CHAPTER V MARKET FOR VALUATION SERVICES

58. Market for valuation services.

The Institute shall endeavour to promote competition in the market for valuation services.

59. Conduct of valuation.

- (1) A valuer shall, while conducting a valuation or rendering valuation services, comply with the valuation standards as notified or modified by the Institute under section 21:

Provided that until the valuation standards are notified or modified by the Institute, a valuer shall make valuations or render valuation services in accordance with -

- (a) internationally accepted valuation standards and guidelines; or

(b) valuation standards and guidelines adopted by the valuation professional organisation of which he is a member.

(2) A valuer shall conduct valuation, render valuation services and prepare valuation reports in such form and manner as may be specified.

(3) A valuer shall not outsource valuation services to another person, except to the extent and the manner, as may be specified.

Clarification 1.- For the purpose of this sub-section, the expression "outsource" means the use of a third party to perform the services which have been sought by a client from the valuer.

Clarification 2.- The services which are generally expected to be carried out by a valuer shall not be outsourced. The services which are generally not expected to be carried out by a valuer may be outsourced.

(4) A valuer may seek opinion or get valuation conducted by another valuer of an asset class, where the scope of valuation services includes valuation of any asset or liability belonging to an asset class in respect of which he is not registered:

Provided that he discloses the details of such opinion or valuation in his report and he and the other valuer, as the case may be, shall be jointly and severally responsible for such valuation.

(5) Where a valuer considers it necessary to get an opinion in relation to the rendition of valuation services, he may engage one or more experts for assistance, subject to making such disclosures as may be specified.

Explanation - For the purposes of this sub-section, the expression "expert" includes an engineer, a chartered accountant, a company secretary, a cost accountant and any other person who is authorised to issue a certificate in pursuance of any law for the time being in force, except a valuer registered under the provisions of this Act.

(6) The valuer shall be deemed to be responsible for the opinion or valuation received under sub-section (4) or sub-section (5).

Provided that the valuer shall not be deemed to be responsible under this sub-section if he proves that he had exercised due diligence.

(7) A valuation report shall not carry a disclaimer or condition, which has potential to dilute the responsibility of the valuer under this Act or makes the valuation unsuitable for the purpose for which the valuation was conducted and the valuation report shall be admissible as expert evidence within the meaning of section 45 of the Evidence Act, 1872 (1 of 1872).

(8) A valuer shall not conduct a valuation where he has any conflict of interest.

Provided that the Institute may specify the circumstances or instances of conflict of interest for guidance of valuers.

Provided further that where a valuer comes to know of or discovers any conflict of interest while conducting a valuation, he shall immediately apprise the same to the stakeholders in the manner specified.

(9) A valuer shall not charge a fee which is linked to the value of assets under valuation or success of the relevant transaction.

PART V OFFENCES AND PENALTIES

60. Punishment for offences.

(1) Any person who

(a) not being a service provider, -

(i) represents that he is a service provider; or

(ii) uses the designation valuer; or

(iii) signs any document on behalf of a partnership firm or company registered as valuer; or

(b) being a valuer registered with the Institute, but not having a certificate of practice, represents that he is in practice or practises as a valuer,

shall be punishable on first conviction with fine which may extend to ten lakh rupees, and on any subsequent conviction with imprisonment which may extend to three years or with fine which may extend to five crore rupees, or with both.

(2) Save as otherwise provided in this Act, any person who -

(a) uses a name or the common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(b) awards any degree, diploma or certificate or bestows any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a valuer; or

(c) seeks to regulate in any manner whatsoever the profession of valuer,

shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which on first conviction shall not be less than one lakh rupees but may extend to ten lakh rupees, and on any subsequent conviction with imprisonment which may extend to three years, or with fine which shall not be less than ten lakh rupees but which may extend to five crore rupees, or with both.

(3) Any person, who signs any document relating to valuation of an asset, except to the extent and manner provided in this Act, shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than one lakh rupees but which may extend to ten lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to three year or with fine not less than ten lakh rupees but which may extend to five crore rupees or with both.

61. Punishments where no specific penalty or punishment is provided.

If any person contravenes any of the provisions of this Act or the rules or regulations made thereunder for which no penalty or punishment is provided in this Act, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

62. Contraventions by companies.

(1) Where a person found guilty of professional or other misconduct or committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a professional or other misconduct or a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued there under has been committed by a company and it is proved that the professional or other misconduct or contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purposes of this section, -

- a. "company" means a body corporate and includes a partnership firm; and
- b. "director", in relation to a firm, means a partner in the partnership firm.

63. Trial of offences by Special Court.

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), offences under this Act shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013 (18 of 2013).

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Institute or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Institute before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

64. Bar of jurisdiction.

No order passed by the Panel or the administrative law member under this Act shall be appealable except as provided in section 43 or section 49 respectively and no civil court shall have jurisdiction in respect of any matter which the Institute, the Panel or the administrative law member is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Institute, the Panel or the administrative law member by, or under, this Act.

PART VI MISCELLANEOUS

65. Provisions of this Act to override other laws.

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

66. Rules and regulations to be laid before Parliament.

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

67. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

68. Power of Central Government to amend Schedules.

(1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the entries and provisions contained in any of the Schedules to this Act, except the Fifth Schedule.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

69. Amendments of Act 18 of 2013 and savings.

(1) The Companies Act, 2013(18 of 2013) shall be amended in the manner specified in the Fifth Schedule.

(2) Notwithstanding such amendment, anything done or any action taken or purported to have been done or taken under the provisions hereby amended shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) With effect from such date as the Central Government may appoint in this behalf, the Companies (Registered Valuers and Valuation) Rules, 2017 made under Section 247 of the Companies Act, 2013 (18 of 2013) shall stand rescinded.

(4) Notwithstanding the rescission of the Rules referred to in sub-section (2), it shall not affect, -

(a) the previous operation of the Rules so rescinded, or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Rules so rescinded; or

(c) any penalty incurred in respect of any contravention under the Rules so rescinded; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Rule had not been rescinded.

(5) Notwithstanding the rescission of the aforesaid Rules, any recognition granted to an registered valuer organisation and registration granted to a registered valuer under the Rules, which are in force as on the date of commencement of this Act, shall continue to be valid as if they had been granted under the provisions of this Act or the rules or regulations made thereunder.

THE FIRST SCHEDULE
(under clause (a) of sub-section (4) of section 41)

Contraventions by a Valuer

A valuer shall be deemed to be guilty of professional or other misconduct if he -

- (1) renders valuation services without having a valid certificate of practice; or
- (2) allows any person to practise in his name as a valuer; or
- (3) pays or allows or agrees to pay or allows, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person"

Provided that payment made for the services received from a valuer or an expert under sub-section (4) and (5) of section 59 will not amount to any share, commission or brokerage in the fees or profits; or

- (4) accepts or agrees to accept any part of the profits of the professional work of a person who is not a valuer unless such payment is made for the valuation services rendered by the valuer; or
- (5) secures, either through the services of a person who is not an employee of such valuer or is not a partner or director where valuer is a company or partnership firm or by means which are not open to a valuer, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in this Act or rules and regulations framed therein; or

- (7) solicits clients or professional work either directly or indirectly by any unfair or unethical means or by any form of advertisement:

Provided that nothing herein contained shall be construed as preventing or prohibiting -

- (a) any valuer from applying or requesting for or inviting or securing professional work from another valuer; or
- (b) a valuer from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work, as a consequence; or
- (8) advertises his professional attainments or services, or uses any designation or expressions other than valuer on professional documents, visiting cards, letter heads or sign Institutes, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating class of valuers under sub-section (1) of section 48 or a title indicating membership of a valuation professional organisation or of any other institution that has been recognised by the Central Government or may be recognised by the Institute:

Provided that a valuer in practice may advertise through a write up setting out the services rendered by him subject to such guidelines as may be issued by the Institute; or

- (9) charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act; or

(10) engages in any business or occupation other than the profession of valuers unless permitted by the Institute so to engage:

Provided that nothing contained herein shall disentitle a valuer from being a whole-time director of a company registered as valuer under section 50; or

(11) allows a person or a valuer, not being a partner or a director who is a valuer of the relevant asset class where the valuer is a partnership firm or a company, to sign in its behalf, any professional assignment including valuation report; or

(12) does not supply the information called for, or does not comply with the requirements asked for, by the Institute or any of its Committees, Panel, Administrative Law Member or High Court; or

(13) while inviting professional work from another valuer or while responding to tenders or enquiries or while advertising through a write up, gives information knowing it to be false; or

(14) fails to submit in timely manner such information, and in such form, under provisions of this Act and the rules and regulations framed thereunder; or

(15) fails to inform the Institute in a timely manner about the fact that it is that it does not continue to satisfy the eligibility norms under section 49; or

(16) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months; or

(17) in the opinion of the Institute, brings disrepute to the profession or the valuation professional organisation as a result of his action, whether related to his professional work or not.

THE SECOND SCHEDULE
(under clause (b) of sub-section (4) of section 41)

Contraventions by a Valuer

A valuer shall be deemed to be guilty of professional or other misconduct if he –

(1) discloses information acquired during his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force; or

(2) certifies or submits in its name, a valuation report unless the valuation has been made by it;

Provided that the valuer may undertake to cause such components of valuation to be undertaken by such other valuer as provided under sub-section 4 of Section 59; or

(3) permits his name to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast; or

(4) expresses his opinion on valuation of any business or enterprise in which the valuer, or its partner or director where valuer is a company, has a substantial interest; or

(5) fails to disclose a material fact known to him, which is not disclosed in a valuation, but disclosure of which is necessary in making such valuation where he is concerned with that valuation in a professional capacity; or

(6) fails to report a material misstatement known to him to appear in a valuation with which he is concerned in a professional capacity; or

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; or

(8) fails to invite attention to any material departure from the generally accepted procedure of valuation applicable to the circumstances; or

(9) contravenes any of the provisions of this Act or the regulations made thereunder, or any guidelines issued by the Institute; or

(10) contravenes any of the provision of the bye-laws of the valuation professional organisation including the professional and ethical code of conduct issued by the valuation professional organisation; or

(11) being an employee of any company, firm, limited liability partnership or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer; or

(12) submits any information, statement, return or form to the Institute or any of its Committees, Panel, Administrative Law Member or High Court knowing it to be false; or

(13) defalcates or embezzles moneys received in his professional capacity; or

(14) renders valuation services after it does not continue to satisfy the eligibility norms under section 49; or

(15) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months; or

(16) does not satisfy the conditions of registration under sub section (6) of section 50.

THE THIRD SCHEDULE
(under clause (c) of sub-section (4) of section 41)**Contraventions by a Valuation Professional Organisation**

A valuation professional organisation shall be deemed to be guilty of contravention, if it –

- (1) carries on its business in a manner which is not in accordance with its bye-laws; or
- (2) fails to bring to the notice of the Institute facts pertaining to the non-compliance of the provisions of this Act or rules and regulations framed thereunder by its members; or
- (3) fails to submit in timely manner such information, and in such form, under provisions of this Act and the rules and regulations framed thereunder; or
- (4) fails to comply with the directions issued by the Institute under this Act or the rules or regulations made thereunder; or
- (5) carries on the business after it does not continue to satisfy the eligibility norms under section 52; or
- (6) in the opinion of the Institute, brings disrepute to the profession as a result of its action; or
- (7) contravenes any of the provisions of this Act or the regulations made thereunder, or any guidelines issued by the Institute; or
- (8) does not supply the information called for, or does not comply with the requirements asked for, by the Institute or any of its Committees, Panel, Administrative Law Member or High Court; or
- (9) submits any information, statement, return or form to the Institute or any of its Committees, Panel, Administrative Law Member or High Court knowing it to be false; or
- (10) does not satisfy the conditions of registration under sub section (7) of section 53.

THE FOURTH SCHEDULE
(under clause (d) of sub-section (4) of section 41)

Contraventions by a Valuer Institute

A valuer institute shall be deemed to be guilty of contravention, if it -

(1) grants admission contrary to merit determined in accordance entry examination conducted by the Institute; or

(2) commits any irregularity in the process under the declared admission policy of the valuer institute and in accordance with the provisions of this Act and the rules and regulations framed thereunder;

Explanation: – For the purpose of this Schedule, “declared admission policy” means such policy, including the process there under, for admission to an educational course as may be offered by the valuer institute by publication in the prospectus of the valuer institute.

(3) refuses to admit in accordance with the declared admission policy of the valuer institute and in accordance with the provisions of this Act and the rules and regulations framed thereunder; or

(4) publishes any information regarding admission, either in its prospectus or otherwise, which is false or misleading, and not based on facts; or

(5) demands money in excess of that specified to be charged in the declared admission policy of the valuer institute; or

(6) fails to provide students amenities as set out in the prospectus, or is required to be extended by the institute under any provisions of this Act and the rules and regulations framed thereunder or any law for the time being in force; or

(7) denies quality education as promised at the time of admission or required to be provided under any provisions of this Act and the rules and regulations framed thereunder; or

(8) carries on the business after it does not continue to satisfy the eligibility norms under section 55; or

(9) contravenes any of the provisions of this Act or the regulations made thereunder, or any guidelines issued by the Institute; or

(10) does not supply the information called for, or does not comply with the requirements asked for, by the Institute or any of its Committees, Panel, Administrative Law Member or High Court; or

(11) submits any information, statement, return or form to the Institute or any of its Committees, Panel, Administrative Law Member or High Court knowing it to be false; or

(12) does not satisfy the conditions of registration under sub section (7) of section 55.

**THE FIFTH SCHEDULE
(Sub-section (1) of section 69)****Amendments to the Companies Act, 2013 (18 of 2013)**

1. In section 2, -

(a) after sub-section (92), the following sub-section shall be inserted, namely-

“(92A) “valuer” means a valuer as defined sub-section (48) of section 2 of the Valuers Act, 2020 (Act of 2020) and who holds a certificate of practice under section 51 of that Act.

2. In section 62, for the words “registered valuers”, the word “valuer” shall be substituted.

3. In section 192, for the words “registered valuers”, the word “valuer” shall be substituted.

4. In section 230, for the words “registered valuers”, the word “valuer” shall be substituted.

5. In section 236, for the words “registered valuers”, the word “valuer” shall be substituted.

6. In section 281, for the words “registered valuers”, the word “valuer” shall be substituted.

7. For section 247, the following section shall be substituted, namely: -

“247. Valuation - (1) 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 valuer, appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) If a valuer contravenes any provision of this Act or rules framed thereunder, he shall be punishable in manner as provided in the Valuers Act, 2020.”.



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