Government notifies provisions for registered valuers

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The Ministry of Corporate Affairs notified the provision relating to registered valuers (section 247) in the Companies Act, 2013 (CA 2013) on 18 October. Section 247 states that any valuation of an asset of a company (including property, stocks, shares, debentures, securities, goodwill), or net worth of a company, is required to be made by a person who is registered as a valuer, and has requisite qualifications and experience in such capacity. Such a valuer may be appointed by the audit committee or board of directors of the company.

The valuation is to be done in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017. The following are some of the important provisions:

Eligibility criteria. The eligibility criteria include having the qualifications prescribed, being a member of, and being recommended by a registered valuer's organization, is of sound mind, not being a minor/adjudged bankrupt, being a resident of India, not having been punished with imprisonment for a prescribed minimum duration, being a fit & proper person, etc. Similar criteria have been prescribed for recognition of registered valuers organizations.

A partnership/company cannot become a registered valuer if its objects are anything other than rendering professional/financial services, including valuation services; it is undergoing insolvency; all partners/directors are ineligible under the CA 2013 or three or more of them are not registered valuers, or none of them are registered valuers for valuation for the asset class that it seeks to be a registered valuer of.

Registration. All persons who receive such registration must comply with certain prescribed conditions at all times, including continued compliance with CA 2013 and the rules, compliance with the code of conduct prescribed in the rules, etc.

Conduct of valuation. The central government, based on the advice of a committee to be set up for valuation standards, will notify (and may, from time to time, modify) the valuation standards. Until such notification, the registered valuers are to ensure that all valuations are as per internationally accepted valuation standards, and valuation standards adopted by any registered valuers organization. Registered valuers should furnish a report, which includes the background information of the asset being valued, purpose of valuation, identity of the valuer and other experts involved in the valuation, procedures adopted, major factors taken into account for valuation, and caveats, limitations and disclaimers which limit the responsibility of the valuer.

Transitional arrangement. All existing valuers providing valuation services on the date of commencement of the rules may continue to render their services under the rules up to 31 March 2018 until obtaining registration. If any relevant law/regulatory body requires that the valuation conducted by any person be in accordance with the rules, then the rules shall apply to such person from the date specified under such law/by regulatory body.

Any contravention of the CA 2013 or the rules by a registered valuer would lead to a minimum fine of ₹25,000 (US$387), which may extend to ₹100,000. A valuer who has contravened provisions with the intention of defrauding the company or its members, may be imprisoned for a year, and may be fined between ₹100,000 and ₹500,000.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley and Munich. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.