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No sight of rules on business valuation, even after three-year wait

Veena Mani & Indivjal Dhasmana/New Delhi 19 Feb 17 | 06:07 AM

It has been more than three years since the ministry of corporate affairs (MCA) had issued the draft rules on valuation of businesses, under the Companies Act, 2013. These are yet to be finalised.

However, MCA has clarified that Securities and Exchange Board of India (SEBI)-registered merchant bankers and chartered accountants with 10 years of experience will do valuation of shares and debentures until the final rules come in.

The draft rules had been issued in September 2013.

The rules defined who could be a registered valuer, a process of registration and deregistration, and methods of valuation.

An email query to ministry officials on when these rules would be finalised elicited no response.

Chander Sawhney, partner and head, valuations and deals at Corporate Professionals Capital, said there were no standards for valuation of businesses, specifically for unlisted and private companies in India. He said in many cases, valuation process lacks uniformity and generally accepted global valuation practices.

He said there were organisations which regulate the valuation process globally, such as the Valuation Standards of American Institute of CPAs , American Society of Appraisers , Institute of Business Appraisers , National Association of Certified Valuation Analysts and The Canadian Institute of Chartered Business Valuers.

A substantial part of the litigation in mergers & acquisitions (M&A) takes place on the issue, as it involves an element of subjectivity that often gets challenged, Sawhney said.

He said India had limited judicial guidance available on the subject.

Saket Shukla, partner at Phoenix Legal, said while the intention of the rules is to ensure fair valuation to protect the interest of the non-promoters, these seem to micro-regulate the process, avoidable, especially when India continues to rank 130th on the ease of doing business rankings of the World Bank.

He said the ministry should perhaps take a leaf out of the Reserve Bank's books, which no longer prescribe the methodology to determine the value of shares in a deal between residents and non-residents.

He also said the provision setting out the requirement for valuers to register needs reconsideration, as the valuers proposed to be covered are already subject to supervision by professional bodies such as the Institute of Chartered Account of India (ICAI).

Parliament’s standing committee on finance in its report on the Companies Bill, 2011, had suggested only those valuers already subject to rules on professional conduct required to be registered.

Sebi has its own valuation guidelines for listed companies on takeovers, preferential allotment of shares and so on.

Sawhney, however, said absence of any stringent course of action and non-regulation under any statute is also leading to loose ends.

Though a consensus is building among professional valuers on generally accepted approaches, methods, and procedures, numerous conceptual controversies remain even among the most prominent practitioners, he added.

He said the concept of registered valuers was likely to have huge impact on professionals, shareholders and government. Depending upon who would be eligible to register, with the increase in the number of valuation requirements, professional opportunities shall emerge.

Also, a proposed provision of personal liability on misleading or incorrect information would lead to a true, fair and complete view, he added.

Stakeholder confidence would largely get boosted with the transparency and fairness the system of valuation indicates, Sawhney added.

WHAT THE DRAFT SAYS

Who could become valuer?

Chartered accountants, company secretaries, or cost accountants with at least 5 years of experience Sebi-registered merchant bankers with at least 5 years of experience Members of the Indian Institution of Engineers at least with 5 years of experience Members of the Institute of Architects with 5 years of experience
1 & **2** will be financial valuers and **3** and **4** technical valuers If a valuer defaults with an intention to defraud a firm, he could be imprisoned for up to a year and fined up to Rs 5 lakh Standing committee on finance in its report on the Companies Bill, 2011, had suggested only those valuers not already subject to rules on professional conduct required to be registered