

# **Background Note - Concept Paper for the Council of Valuation Professionals of India Bill 20\*\***

Corporate valuations, whether of physical, financial or intangible assets owned by a company, play an important role in guiding decisions involving investment and risk. This holds for capital market decisions, corporate restructuring, mergers and amalgamations, formation of joint ventures and strategic alliances between the companies. Valuation of the company and its assets and undertaking in a credible manner, taking into account various aspects relating to it, with the application of well recognized and rational criteria is being perceived as increasingly important. Credible valuations allow decisions to be taken by the stakeholders in a company with confidence. Equally, all existing and would-be stakeholders in a company, rely on expert valuations while assessing disclosures made by a company and the degree of risk associated with their decisions.

Keeping in view the growing relevance and importance of valuations in business and investment decisions as well as in company processes, the need for application of valuations as a specialized discipline, regulated through a credible institutional mechanism set up under a statute, has been increasingly felt. There is a need for a fully articulated academic institutional and regulatory framework for this discipline. The expert qualification of “valuation” has to be based on recognized professional courses of study, certified by a properly constituted statutory body. At the same time, valuers also need to adhere to a proper code of professional conduct with an institutional mechanism for review and discipline in cases of misconduct.

To enable the discipline of valuations to be recognized at par with other professional disciplines, education and training requirements in valuation need to be standardized along with valuation methodologies, reporting formats etc. An institutional mechanism to regulate the conduct of valuation professionals as well as the qualifications and conduct of bodies certifying their expertise is equally necessary. The Expert Committee on Company Law headed by Dr. J.J.Irani, in its report submitted in May, 2005, highlighted the requirement of

the regulation of the profession of valuers for good corporate governance. In view of growing relevance of a properly regulated profession of valuation and to ensure the credibility of the reports, it has been thought that this profession should be regulated through an Act of Parliament. Accordingly, it has been thought expedient to seek the public opinion on the thinking of the Government to regulate the profession of the valuers. Hence, a Concept Paper on the subject has been prepared for seeking public opinion.

The proposal contained in the Concept Paper envisages a Statutory Body, as in the case of other professional disciplines such as chartered accountants, cost and works accountants and company secretaries. The proposed body for regulation of valuers is intended to lay down policies, curriculum and standards and also to provide certification of professional qualifications and capacities of other institutions as well. Through the structure proposed in the Concept paper, the proposed Council of Valuers would be able to issue standards of valuation, standards of education and training of valuation professionals and provide recognition to other institutes for imparting education and training in valuation and to certify attainment of qualifications by the professionals and discipline professional misconduct. Therefore, in concept the proposed institution of valuers would be a statutory umbrella organization which would apply certification and accreditation to upgrade valuation standards in the country.

The comments are sought on the Concept Paper for the Council of Valuation Professionals of India Bill 20\*\*

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The Ministry of Corporate Affairs welcomes your suggestions and comments on the Concept Paper on regulation of valuation professionals. Any suggestion may please be sent at [umesh.jindal@mca.gov.in](mailto:umesh.jindal@mca.gov.in) or [lalit.grover@mca.gov.in](mailto:lalit.grover@mca.gov.in) latest by 16.8.2007.

It will be appreciated, if the suggestions are given in the following tabular form:

Your Name: \_\_\_\_\_

Your designation & Organisation: \_\_\_\_\_

Your e-mail address: \_\_\_\_\_

Your suggestions and/or comments: \_\_\_\_\_

Sl. No.	Chapter No. on which the suggestions made.	Clause No. with provision on which the suggestions made.	Suggestions and comments with justification. Endeavour would be appreciated, if the suggested portion is highlighted.
(1)	(2)	(3)	(4)

2. Suggestions and comments should be brief and clear with proper references to the chapter number, provisions/clause number for easy linking the provisos and the suggestions.

**CONCEPT PAPER FOR**  
**THE COUNCIL OF VALUATION PROFESSIONALS OF INDIA BILL, 20\*\***

(Act No. \*\*\*\*\* of 20\*\*)

An act to make provisions for the regulation of the Valuation Professionals

WHEREAS it is expedient to make provision for the regulation of the Valuation Professionals and for that purpose to establish a Council of Valuation Professionals of India;

It is hereby enacted as follows:

**CHAPTER I**

**PRELIMINARY**

**1. Short title, extent and commencement**

- (1) This Act may be called the Council of Valuation Professionals of India Bill, 20\*\*.
- (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 in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

**2. Interpretation**

- (1) In this Act, unless there is anything repugnant in the subject or context,
  - (a) "Authority" means the Appellate Authority constituted under section 22A of the Chartered Accountants Act, 1949
  - (b) "Board" means the Quality Review Board constituted under section 36 of this Act
  - (c) "Council" means the Council of Valuation Professionals of India set up under section 3 of the Act;
  - (d) "notification" means a notification published in the Official Gazette
  - (e) "prescribed" means prescribed by regulations made under this Act;
  - (f) "recognized institute" means an Institute recognized under section 13 of the Act;
  - (g) "register" means the Register maintained under section 18 of this Act;

- (h) "specified" means specified by rules made by the Central Government under this Act
- (i) "certified valuation professional" means a person who has been given a certificate of practice by a body recognized by the Council
- (j) "year" means the period commencing on the 1st day of April of any year and ending on 31st day of March of the succeeding year.

(2) A valuation professional shall be deemed "to be in practice", when individually or in partnership or in limited liability partnership with valuation professionals in practice or with other persons in practice who are members of other professional bodies having such qualifications as may be prescribed, he, in consideration of remuneration received or to be received:

- (i) engages himself in the practice of valuation; or
- (ii) offers to perform or performs services involving valuation of business, shares, debt, assets, goodwill, brands, intellectual property rights, or of any other item with the object of arriving at a financial value of the object being valued; or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to valuation; or
- (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a certified valuation professional in practice; and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

## CHAPTER II

### **THE COUNCIL OF VALUATION PROFESSIONALS OF INDIA**

#### **3. Constitution and composition of the Council.**

- (1) The Central Government shall cause to be constituted a Council of Valuation Professionals of India consisting of sixteen members, namely:-
- a) two members to be nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accounts Act, 1949
  - b) two members to be nominated by the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accounts Act, 1959
  - c) two members to be nominated by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980
  - d) Five members to be nominated by the Recognized Institutes, other than Institutes specified in clauses (a), (b) or (c), in the manner specified

Provided that if the total number of such Recognized Institutes is less than or equal to five, then one member shall be nominated by each of the Recognized Institute, and the Central Government shall nominate additional Members to the extent to which the number of Recognized Institutes is less than five.

e) Five Members to be nominated by the Central Government

(2) A person nominated by any Institute under clause (a) or (b) or (c) or (d) of sub-section (1) can be withdrawn by the respective Institute before the completion of the term of the Council only with the concurrence of the Central Government.

(3) No person who has been auditor of the Council shall be eligible for nomination to the Council under sub-section (1), for a period of three years after he ceases to be an auditor.

(4) No certified valuation professional who has been found guilty of any professional or other misconduct, and whose certificate of practice has been suspended or cancelled or has been awarded penalty or fine, shall be eligible to be nominated for a period of six years from the completion of period of removal of name from the Register or payment of fine, as the case may be.

#### **4. Nomination by Central Government in default of nomination by recognized institutes**

If any body of persons referred to in sub-section (1) of section 3 fails to nominate any of the members of the Council which it is empowered under that sub-section to nominate, the Central Government may nominate a person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Council as if he had been duly nominated.

#### **5. Incorporation of the Council**

The Council so constituted shall be a body corporate by the name of the Council of Valuation Professionals of India, having perpetual succession and a common seal, with power to acquire hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

#### **6. President and Vice-President**

(1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant the Council shall choose another person to be the President or the Vice-President as the case may be:

Provided further that no member nominated under proviso to clause (d) of sub-section (1) of section 3 or under clause (e) of sub-section (1) of section 3 or under section 4 shall be eligible for election as President or Vice President.

Provided further that not more than one nominee of any single recognized institute shall be eligible to be elected as President for more than one term, during a single term of the Council, until all recognized institutes, having one or more nominees in the Council, have had at least one of their nominees elected as the President during the term.

Provided further that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of the sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

(3) The President or the Vice-President shall hold office for a period of one year from the date on which he is chosen but so as not to extend beyond his term of office as a member of the Council.

(4) On the expiration of the duration of the Council, the President and the Vice-President of the Council, at the time of such expiration shall continue to hold office and discharge such administrative and other duties as may be prescribed until such time as a new President and the Vice-President shall have been elected and shall have taken over charge of their duties.

## **7. Resignation and removal from membership and casual vacancies**

(1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the Central Government, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

(2) The Central government or a recognized institute, as the case may be, shall withdraw its nominee to the Council, if he attracts any of the disqualifications under sub-sections (3) or (4) under section 3 of the Act.

Provided that if there is any dispute on whether the said disqualifications have been attracted, the decision of the Council on the same shall be final.

Provided further that if the recognized institute refuses to withdraw its nominee who has attracted the said disqualifications, the Central Government shall by order remove the nominee, and nominate another person from any recognized institute for the remainder of the term.

Provided further that the recognized institute which refuses to withdraw its nominee who has attracted the said disqualifications, shall be barred from having any nominee in the Council for the next three terms of the Council.

(3) A casual vacancy in the Council shall be filled by fresh nomination from the same category under sub-section (1) of section 3, from which the vacancy has taken place:

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of the Council.

## **8. Duration and dissolution of Council**

(1) The duration of any Council constituted under this Act shall be four years from the date of its first meeting, on the expiry of which it shall stand dissolved and a new Council constituted in accordance with the provisions of this Act.

(2) Notwithstanding the expiration of the duration of a Council (hereinafter referred to as the former Council), the former Council shall continue to exercise its functions until a new Council is constituted in accordance with the provisions of this Act, and on such constitution, the former Council shall stand dissolved.

## **9. Functions of the Council**

(1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include

- (a) Issuing Standards on Valuation
- (b) Setting Standard of education and training for valuation professionals
- (c) Giving recognition or cancellation of recognition of Institutes for education and conduct of exams for the valuation professionals
- (d) the prescribing of qualifications for recognition of the Institute;
- (e) approval of academic courses and their contents to be conducted by the Recognized Institutes
- (f) approval of such qualifications and experience, which a person should have for a valuation professional to seek his assistance in specific components of valuation which are beyond the curriculum of valuation professional.
- (g) approval of nature and period of training to be undergone by students before they qualify to practise as valuation professional
- (h) approval of fees which may be levied on students and valuation professionals by the Recognized Institutes
- (i) Controlling and monitoring the activities of the recognized institutes in the matter of valuation
- (j) Monitoring the Disciplinary Proceedings against a certified valuation professional by its parent Institute in case of complaint against professional misconduct.
- (k) the setting of standards of examination and benchmark of evaluation of students to be administered by the Recognized Institutes, for enrolment and the prescribing the fees therefor
- (l) Framing Ethical codes for certified valuation professionals
- (m) Issuing Guidance for Procedure for Appointment of Valuers, Disclosure requirement and Peer Review

- (n) the recognition of foreign qualifications and training for purposes of enrolment;
- (o) the granting or revocation of certificate of practice under this Act, through the recognized Institutes;
- (p) the levy and collection of fees from Recognized Institutes, certified valuation professionals and other persons;
- (q) the regulation and maintenance of the status and standard of professional qualifications of valuation professionals;
- (r) the carrying out, by financial assistance to persons other than members of the Council or in any other manner, of research in valuation;
- (s) to enable functioning of the Quality Review Board;
- (t) consideration of the recommendations of the Quality Review Board made under clause (a) of section 37 and the details of action taken thereon in its annual report.
- (u) to ensure the functioning of the Council and Recognized Institutes in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.

#### **10. Staff, remuneration and allowances**

- (1) The Recognized Institutes shall make available services of such officers and staff to the Council as may be specified.
- (2) For the efficient performance of its duties, the Council shall
  - (a) appoint a Secretary to the Council, who shall be appointed for a period of five years in the manner prescribed and shall be eligible for reappointment;
  - (b) appoint such other prescribed number of officers and staff in the manner prescribed, from those deputed under sub-section (1) or otherwise, as it deems necessary for carrying out the duties of the Council;
  - (c) require and take from the Secretary or from any other officer or staff of the Council such security for the due performance of his duties, as the Council considers necessary;
  - (d) fix the salaries, fees, allowances and other conditions of service of the Secretary, other officers and staff of the Council in the manner prescribed;
  - (e) fix the allowances of the President, Vice-President and other members of the Council and members of its Committees, in the manner prescribed
- (3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.

## **11. Committees of the Council**

- (1) The Council shall constitute from amongst its members the following Standing Committees, namely
  - (i) an Executive Committee, which shall be responsible for administrative matters relating to the Council, making recommendations with regard to certification/recognition/ de-recognition of other valuation institutes and any other matter which may be prescribed
  - (ii) an Academic and Standards Committee, which shall be responsible for standard setting for Education, examinations, training and valuation methodology, issue of certificates of practice and any other matter which may be prescribed
  - (iii) a Finance Committee, which shall be responsible for management of finances of the Council, and any other matter which may be prescribed
  - (iv) a Disciplinary Committee, which shall be responsible for framing guidelines on ethical standard and monitoring disciplinary proceedings conducted by Recognized Institutes, and any other matter which may be prescribed.
- (2) The Council may also form such other committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act, and any committee so formed may, with the sanction of the Council, co-opt such other persons not exceeding one-third of the members of the committee as the committee thinks fit, and any members so co-opted shall be entitled to exercise all the rights of member of the committee, other than voting.
- (3) Each of the Standing Committee shall consist of the President and the Vice-President ex-officio, and minimum of three and maximum of five other members of the Council elected by the Council from amongst its members;
- (4) Every member of the Standing Committee other than the Chairman and the Vice-Chairman shall hold office for one year from the date of his election, but, subject to being a member of the Council, he shall be eligible for re-election.
- (5) The Standing Committees shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

## **12. Finances of the Council**

- (1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.
- (2) Without prejudice to any other source of funds, which may be available to it, the Council shall levy the following fees, which shall accrue to the fund constituted under sub-section (1) above:

- i) Fees, as may be prescribed, for processing applications for recognition of Institutes, and for granting of recognition to Institutes
- ii) Annual fees, as may be prescribed, to be paid by Recognized Institutes
- iii) Share, as may be prescribed, of fees paid by students and certified valuation professionals registered with the Recognized Institutes
- iv) Fees, as may be prescribed, to be paid by certified valuation professionals who have been given certificate of practice or for restoration of certificate of practice which had been cancelled

(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership or limited liability partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of the Council's finances, the Council itself may cause a special audit to be conducted:.

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, the Council shall cause a special audit and furnish an action taken report on it to the Central Government;

(6) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to the Central Government and the recognized institutes at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(7) The Council shall cause to be published in the Gazette of India not later than the 30<sup>th</sup> day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the recognized institutes, in addition to publishing it on its web-site.

(8) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

(9) The Council may borrow from a scheduled bank, as defined in the Reserve Bank of India Act, 1934 (II of 1934) or from the Central Government

(a) any money required for meeting its liability on capital account on the security of the fund or on the security of any other assets for the time being belonging to it, or

(b) for the purpose of meeting current liabilities pending the receipt of income, by way of temporary loan or overdraft.

## CHAPTER III

### RECOGNIZED INSTITUTES

#### 13. Recognition of Institutes:

(1) The Institute of Chartered Accountants of India constituted under the Chartered Accounts Act, 1949, (\*)the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 and the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 shall be deemed to be Recognized Institutes under the Act, unless they are derecognized under section 15 of the Act..

(2) The Council may recognize any other Institute, in the manner prescribed, as a Recognized Institute when it is satisfied that the Institute fulfills such conditions as may be specified.

(3) An Institute so recognized by the Council shall sign a recognition agreement with the Council in the format prescribed.

#### 14. Functions of the Recognized Institute:

A Recognized Institute shall, without prejudice to any other activity which it may be performing, shall have the following duties, in the manner prescribed:

- i) Registering and imparting education to persons desiring to become valuation professionals as per Course curriculum and standard set or approved by the Council
- ii) Conduct of examinations of students as per standards set or approved by the Council
- iii) Imparting training to persons in valuation as per standards approved by the Council
- iv) Maintenance and publication of a Register of persons qualified to practice as certified valuation professional in the relevant discipline, in such manner as may be prescribed by the Council;

(\*) Corrigendum dated 12.06.2007

- v) the removal of names from the Register and the restoration to the Register of names which have been removed, in such manner as may be laid down by the Council
- vi) Following the guidelines of ethical standard set the Council in relation to the valuation service provided by certified valuation professionals registered with it.
- vii) Setting up a disciplinary mechanism and carrying out disciplinary action against certified valuation professionals accused of professional misconduct in such manner as may be specified.
- viii) Payment of fees to the Council in time-bound manner

**15. Cancellation of recognition of an Institute and other penalties:**

(1) If a Recognized Institute fails to perform any duty entrusted to it under the Act, Rules or Regulations, or violates any condition of the recognition agreement or fails to pay any due, including any fine levied on it, to the Council, the Council may

i) cancel, in the manner specified, the recognition given to the recognized institute

ii) may levy such fine and in such manner, as specified, on the recognized institute, but which shall not be more than rupees ten lakhs.

(2) On cancellation of recognition of the Institute, the Council may provide for any or all of the following:

a) Reallocation of students registered with such Institute to other recognized Institutes

b) Reallocation of certified valuation professionals registered with such Institute to other Recognized Institutes

(3) On reallocation of such certified valuation professionals to a Recognized Institute, the latter shall have all rights and duties towards such students and professionals, as if they had been registered with it from the beginning.

**16. Restoration of Recognition of a Institute:**

(1) An Institute whose recognition has been cancelled under section 15, may apply, in such manner and on payment of such fees as may be prescribed, for restoration of its recognition after rectifying the deficiencies for which its recognition had been cancelled.

(2) The Council, on satisfying itself that the deficiencies have been rectified and the Institute has fulfilled all conditions for recognition, may restore recognition to such an Institute.

(3) The students and certified valuation professionals of the recognized institute, whose recognition has been so restored under sub-section (2), reallocated to other recognized Institutes under sub-section (2) of section 15 may be restored, on their option, back to the Institute whose recognition has been so restored.

## CHAPTER IV

### **REGISTER OF CERTIFIED VALUATION PROFESSIONALS AND CERTIFICATE OF PRACTICE**

#### **16. Certificate of practice**

(1) After successful completion of the curriculum and training laid down for this purpose from a Recognized Institute, a person shall apply to the Recognized Institute from where he has completed the same for issue of the Certificate of Practice as a Certified Valuation Professional, with proof of successfully having completed the same and with such fees as may be prescribed

(2) The Recognized Institute, after satisfying itself that the person applying for the same under sub-section (1) has successfully completed the curriculum and training, shall issue a Certificate of Practice to such person.

(3) Where any foreign qualification relevant to valuations is recognized by the Council in the manner prescribed, a person possessing such qualification may apply for registration and issue of certificate of practice to the Council along with such fees as may be prescribed. The Council may after consulting the Recognized Institute in such discipline in which the applicant possess the necessary qualifications, if any, may direct the concerned Recognized Instituted to issue a certificate of practice which shall be issued accordingly.

(4) Every such person who has been issued certificate of practice, shall pay such annual fee for his certificate as may be prescribed, and such fee shall be payable on or before the 1st day of April in each year.

#### **17. Persons issued certificate of practice to be known as certified valuation Professional**

Every person issued certificate of practice under section 16 may use the designation of a certified valuation professional, without prejudice to any other designation to which he may be eligible for due to his having any other qualification.

#### **18. Entry of names in the Register**

(1) Each Recognized Institute shall maintain a Register of certified valuation professionals regulated by it in a manner prescribed by the Council.

(2) A person shall be entitled to have his name entered in the Register, if

(i) he has been issued a certificate of practice under section 16; and

(ii) he does not attract any disability under section 19; and

(iii) he has paid the annual fees, as may be prescribed.

(3) Each Recognized Institute shall cause to be published in such manner as may be prescribed, a list of certified valuation professional registered with it as on the 1st day of April of each year, and shall, if requested to do so by any such certified valuation professional, on payment of such fees as may be set by the Council, send to him a copy of such list.

(4) The Council shall maintain on its web-site, the register of certified valuation professionals of each recognized Institute

(5) Every valuation professional whose name is entered in the Register, shall pay such annual membership fee as may be prescribed.

### **19. Disabilities**

Notwithstanding anything contained in Section 18, a person shall not be entitled to have a certificate of practice issued to him or his name entered in or borne on the Register if he

- (i) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or
- (ii) is of unsound mind and stands so adjudged by a competent Court; or
- (iii) is an undischarged insolvent; or
- (iv) being a discharged insolvent, has not obtained from the Court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or
- (v) has been convicted by a competent Court whether within or without India, of an offence punishable with imprisonment and six years have not passed after completion of punishment; or
- (vi) has had his certificate of practice cancelled, whether temporarily or permanently, on having been found guilty of professional or other misconduct, and the same has not been restored:

### **20. Removal from the Register**

(1) The Recognized Institute may remove from the Register the name of any certified valuation professional

- (a) who is dead; or
- (b) from whom a request has been received to that effect; or
- (c) who has not paid any prescribed fee required to be paid by him; or
- (d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in

Section 19, or who for any other reason has ceased to be entitled to have his name borne on the Register.

(2) The Recognized Institute shall inform the Council details of persons removed and update its website from the register within thirty days of such removal, which shall then revoke the certificate of practice issued to such a person.

(3) If the name of any member has been removed from the register under sub-section (1) and if a member is no longer suffering from any disability for which his name was removed from the register, on receipt of an application, his name may be entered again in the register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be prescribed by the Council.

## CHAPTER V

### MISCONDUCT

#### **21. Professional misconduct defined**

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 22 to inquire into the conduct of certified valuation professional under any other circumstances."

#### **22. Disciplinary Directorate.**

(1) Each recognized institute shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it;

Provided that concurrence of the Council shall be taken by every recognized institute before designating an officer as Director (Discipline)

Provide further that if the recognized institute already has a disciplinary directorate, and which is found to be of acceptable quality by the Council, then the officer in charge of such a directorate may be designated as Director (Discipline) by the recognized institute.

(2) On receipt of any information or complaint, along with the prescribed fee, or a reference from the Central government or the Council, the Director (Discipline) shall arrive at a prima-facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a certified valuation professional is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a certified valuation professional is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee;

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedures as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said authorities may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

(6) Whenever withdrawal is made under sub-section (5) in a case referred to by the Central Government or the Council, information of such withdrawal along with reasons for the same shall be sent to the Central Government or the Council, as the case may be.

### **23. Board of Discipline.**

(1) Each recognized institute shall constitute a Board of Discipline consisting of -

(a) a person with experience in law and having knowledge of disciplinary matters, to be its presiding officer;

(b) two members, one of whom shall be a certified valuation professional nominated by the recognized Institute, and the other member, having eminence and experience in the field of law, economics, business, finance, accountancy, shall be nominated by the Council and who shall not be a valuation professional or be associated anyway with the recognized institute;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The allowances payable to the member nominated by the Council shall be such as may be specified.

(3) The Board of Discipline shall follow summary disposal procedure, in the manner specified, in dealing with all cases before it.

(4) Where the Board of Discipline is of the opinion that a certified valuation professional is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to him an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -

(a) reprimand the certified valuation professional;

(b) remove the name of the certified valuation professional from the Register and direct the Council to suspend the certificate of practice, up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(5) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima-facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

(6) All decisions of the Board of Discipline in cases taken up on reference received from the Central Government or the Council, shall be sent to the Central Government or the Council, as the case may be

#### **24. Disciplinary Committee.**

(1) Each recognized institute shall constitute a Disciplinary Committee, consisting of:

(a) a person with experience in law and having knowledge of disciplinary matters, to be its presiding officer;

(b) two members, who shall be certified valuation professionals nominated by the recognized Institute, and

(c) two members, having eminence and experience in the field of law, economics, business, finance, accountancy, nominated by the Council and who shall not be certified valuation professional, or be associated anyway with the recognized institute;

(2) The allowances payable to the members nominated by the Council shall be such as may be specified.

(3) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(4) Where the Disciplinary Committee is of the opinion that a certified valuation professional is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to him an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -

(a) reprimand the certified valuation professional;

(b) remove the name of the certified valuation professional from the Register and direct the Council to suspend the certificate of practice, permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(5) All decisions of the Disciplinary Committee (Board of Discipline) in cases taken up on reference received from the Central Government or the Council, shall be sent to the Central Government or the Council, as the case may be

#### **25. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court.**

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation.-For the purposes of sections 21, 22, 23, 24 and 25, “certified valuation professional” includes a person who was a certified valuation professional on the date of the alleged misconduct although he has ceased to be a certified valuation professional at the time of the inquiry.

## **26. Constitution of Appellate Authority**

(1) The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely: -

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been certified valuation professionals nominated by a recognized institute to the Council for at least one full term and who is not a sitting member of the Council or the Councils of Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India or Institute of Company Secretaries of India.

Provided in case no suitable person satisfying the above condition is available, the Central Government shall nominate any two persons who have been members of the Council of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India or Institute of Company Secretaries of India for at least one full term and who are not a sitting member of the respective Councils or the Council under the Act.

## **27. Term of office of members of Authority**

A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

## **28. Procedure, etc of Authority**

The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

## **29. Officers and Staff of Authority**

(1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be specified.

### 30. **Appeals to Authority**

(1) Any certified valuation professional aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (4) of section 23 and sub-section (4) of section 24, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorized by the Recognized Institution, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (4) of section 23 and sub-section (4) of section 24 and may –

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.”.

## CHAPTER VI

### **PENALTIES**

#### **31 Penalty for falsely claiming to be a certified valuation professional, etc.**

Any person who

- (i) not being a certified valuation professional
  - (a) represents that he is a certified valuation professional; or
  - (b) uses the designation certified valuation professional; or

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

### **32. Penalty for using name of the Council, misrepresenting as Certified Valuation Professional, etc.**

- (1) Save as otherwise provided in this Act, no person shall
  - (i) use a name or the common seal which is identical with the name or the common seal of the Council or so nearly resembles it as to deceive or as is likely to deceive the public;
  - (ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a valuation professional; or
  - (iii) seek to regulate in any manner whatsoever the profession of valuation professionals.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

### **33. Companies not to engage in profession of valuation**

(1) No company, whether incorporated in India or elsewhere, shall practise as valuation professionals.

(2) If any company contravenes the provisions of sub-section (1), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.

### **34. Unqualified persons not to sign documents**

(1) No person other than a certified professional shall sign any document on behalf of a certified valuation professional or a firm of such valuation professionals, either including or not including such other persons also who are members of other professional bodies having such qualifications as may be prescribed in his or its professional capacity.

(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.

### **35. Sanction to prosecute**

No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

## **CHAPTER VII**

### **QUALITY REVIEW BOARD**

#### **36. Establishment of Quality Review Board.**

- (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and ten other members.
- (2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance, valuation or accountancy.
- (3) Two members of the Board shall be nominated by each of the Council of the three Institutes and four members shall be nominated by the Central Government.

#### **37. Functions of Board**

The Board shall perform the following functions, namely:-

- (a) to make recommendations to the Council with regard to the quality of services provided by the certified valuation professionals;
- (b) to review the quality of services provided by the certified valuation professionals including audit services; and
- (c) to guide the certified valuation professionals to improve the quality of services and adherence to various statutory and other regulatory requirements.

#### **38. Procedure of Board**

The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

#### **39. Terms and conditions of service of Chairperson and members of Board and its expenditure.**

- (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.
- (2) The expenditure of the Board shall be borne by the Council."

## **CHAPTER VIII**

## MISCELLANEOUS

### 40. Reciprocity

(1) The Council may prescribe the conditions, if any, subject to which foreign qualifications relating to valuation shall be recognised for the purposes of issue of certificate of practice and entry in the Register of a recognized institute.

### 41. Imparting education by universities and other bodies

(1) Subject to the provisions of this Act, any university established by law or any body affiliated to the Council, may impart education on the subjects covered by the academic courses of the Council.

(2) The universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Council.

(3) Nothing contained in this section shall enable a university or a body to adopt a name or nomenclature which is in any way similar to that of the Council.”

### 42. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

...

### 43. Power to make regulations

(1) The Council may, by notification in the "Gazette of India", make regulations for the purpose of carrying out the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:-

....

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2) the Central Government may frame the first regulations for the purposes mentioned in this section, and such regulations shall be deemed to have been made by the Council, and shall remain in force from the date of the coming into force of this Act, until they are amended, altered or revoked by the Council.

#### **44. Powers of Central Government to direct regulations to be made or to make or amend regulations**

(1) Where the Central Government considers it expedient so to do, it may by order in writing, direct the Council to make any regulation or to amend or revoke any regulations already made within such period as it may specify in this behalf.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.

#### **45. 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 the regulation, or both Houses agree that the rule or the 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.”.

#### **46. Power of Central Government to issue directions.**

(1) In the event of non-compliance by the Council of any provisions of this Act, the Central Government may give to the Council such general or special directions as it considers necessary to ensure compliance and the Council shall, in the discharge of its functions under this Act, comply with such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

Provided that the Central Government shall ensure constitution of a new Council in accordance with the provisions of this Act within a period of one year from the date of its dissolution.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it shall, pending the constitution of a new Council in accordance with the provisions of this Act, nominate any person or body of persons not exceeding five members to manage the affairs and discharge all or any of the functions of the Council under this Act.

#### **47. Protection of action taken in good faith**

No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Board or the Board of Discipline or the Director (Discipline) or the Disciplinary Directorate or any officer of that Central Government or the Council or the Authority or the Disciplinary Committee or the Board or the Board of Discipline or the Director (Discipline) or the Disciplinary Directorate, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

#### **48. Members, etc., to be public servants**

The President, Chairperson, Members and other officers and employees of the Council or the Authority or the Disciplinary Committee or the Board or the Board of Discipline or the Director (Discipline) or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code

### **THE FIRST SCHEDULE**

[See sections 21, 22 (3) and 23 (4)]

A certified valuation professional shall be deemed to be guilty of professional misconduct, if he -

(1) allows any person to practice in his name as a certified valuation professional unless such person is also a certified valuation professional and is in partnership or limited liability partnership with or employed by him; or

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a certified valuation professional or a partner or a retired partner or a limited liability partner or retired limited liability partner or the legal representative of a deceased partner or a limited liability partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India;

Explanation. - In this item, "partner" or "a limited liability partner" includes a person residing outside India with whom a certified valuation professional has entered into partnership or a limited liability partnership, as the case may be, which is not in contravention of item (4) of this Part; or

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a certified valuation professional:

Provided that nothing herein contained shall be construed as prohibiting a certified valuation professional from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part; or

(4) enters into partnership or a limited liability partnership, in or outside India, with any person other than a certified valuation professional or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under subsection (3) of section 16 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships or limited liability partnerships; or

(5) secures, either through the services of a person who is not an employee of such a certified valuation professional or who is not his partner or a limited liability partner or by means which are not open to a certified valuation professional, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part; or

(6) solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;

Provided that nothing herein contained shall be construed as preventing or prohibiting -

(i) any certified valuation professional from applying or requesting for or inviting or securing professional work from another certified valuation professional; or

(ii) a member 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

(7) advertises his professional attainments or services, or uses any designation or expressions other than certified valuation professional on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of a recognized institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm or a limited liability partnership and particulars of his firm or a limited liability partnership subject to such guidelines as may be issued by the Council; or

(8) accepts a position as auditor previously held by another certified valuation professional without first communicating with him in writing; 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 valuation professionals unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a certified valuation professional from being a director of a company (not being a managing director or a wholetime director) unless he or any of his partners or limited liability partners is interested in such company as an auditor; or

(11) allows a person not being a certified valuation professional, not being his partner or a limited liability partner to sign on his behalf or on behalf of his firm or a limited liability partnership, any professional assignment undertaken as a certified valuation professional

(12) does not supply the information called for, or does not comply with the requirements asked for, by the Recognized Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority ; or

(13) while inviting professional work from another certified valuation professional or while responding to tenders or enquiries or while advertising through a write up, as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

(14) 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

(15) in the opinion of the Council or the recognized Institute, brings disrepute to the profession or the recognized Institute as a result of his action whether or not related to his professional work.

## **THE SECOND SCHEDULE**

[ See sections 21, 22(3) and 24 (4)]

A certified valuation professional shall be deemed to be guilty of professional misconduct, if he -

(1) discloses information acquired in the course of 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 his name, or in the name of his firm or his limited liability partnership, a report of a valuation unless the valuation has been made by him or by a partner or a limited liability partner or an employee in his firm or his limited liability partnership or by another certified valuation professional; or

Provided that he may undertake to cause such components of valuation to be undertaken by such other professionals which the Council may have permitted, being outside the curriculum of valuation professionals.

(3) permits his name or the name of his firm or his limited liability partnership 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 he, his firm or limited liability partnership, or a partner or a limited liability partner in his firm or limited liability partnership, as the case may be, 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 obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion; or
- (9) fails to invite attention to any material departure from the generally accepted procedure of valuation applicable to the circumstances; or
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.
- (11) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council; or
- (12) 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
- (13) includes in any information, statement, return or form to be submitted to a recognized Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false; or
- (14) defalcates or embezzles moneys received in his professional capacity.
- (15) if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.