

The background of the top half of the page is a light gray area filled with various business-related icons. These include a network of people, a bar chart with an upward arrow, a pie chart, a person at a desk, a checklist, gears, a lightbulb, a person celebrating, stacks of coins, and two people shaking hands. The word "Chapter" is written in a bold, black, sans-serif font, positioned to the left of the large number "33".

Chapter

33

COMPANIES (ARRESTS IN CONNECTION WITH INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE) RULES, 2017

 Notes

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 Answers



Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017

1. Short title and commencement

- (1) These rules may be called the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. (1) Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person;
Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.
(2) The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
3. Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government.
Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.
4. The Director, Additional Director or Assistant Director, while exercising powers under sub section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.
5. The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.
6. An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
7. The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
8. The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years
 - a) From the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or
 - b) From the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later
9. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.



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NOTES

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Chapter

34

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

 Notes

 Questions

 Answers



COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

In exercise of the powers conferred by section 247 read with sections 458 and 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Rules, namely:-

CHAPTER I

PRELIMINARY

1. Short title and commencement

- (1) These Rules may be called the Companies (Registered Valuers and Valuation) Rules, 2017.
- (2) These Rules shall come into force with effect from 15th July, 2017.

2. Definitions

- (1) In these Rules, unless the context otherwise requires-
 - (a) "Act" means the Companies Act, 2013 (18 of 2013);
 - (b) "certificate of registration" means the certificate of registration granted to a valuer under Rule 7(6) and the term "registration" shall be construed accordingly;
 - (c) "certificate of recognition" means the certificate of recognition granted to a valuation professional organisation under Rule 13 or 14 and the term "recognition" shall be construed accordingly;
 - (d) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
 - (e) "valuation professional organisation" means a valuation professional organisation recognised under Rule 13(5);
 - (f) "registered valuer" is a valuer registered with the Registration Authority under Rule 7(6) for carrying out valuation of assets belonging to a class or classes of assets;
 - (g) "Registration Authority" means the Insolvency and Bankruptcy Board of India established under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (h) "Schedule" means a schedule to these Rules;
 - (i) "Valuation Standards" means standards on valuation referred to in Rule 16.
- (2) Words and expressions used but not defined in these Rules, and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.

CHAPTER II

ELIGIBILITY, QUALIFICATIONS AND REGISTRATION OF VALUERS

3. Prohibition

- (1) Except as provided elsewhere in these Rules, no person shall practice as a registered valuer without obtaining a certificate of registration.
- (2) Any person who, not being a registered valuer -

- (a) practices as a registered valuer, under any name, style, title or description; or
 - (b) holds himself/ itself out, whether directly or by implication, to be a registered valuer shall be liable for punishment provided under section 247(3) of the Act.
- (3) Any person who has been convicted under sub-section (3) of Section 247 of the Act shall not be eligible for registration under these rules until expiry of three years from the date of completion of punishment referred to in that sub-section.

4. Valuation Examination

- (1) The Registration Authority shall, either on its own or through a designated agency, conduct a Valuation Examination to test the knowledge, practical skills and ethics of individuals in respect of valuation.
- (2) The Registration Authority shall, on the recommendations of a Committee of Experts constituted by it, determine the syllabus for the Valuation Examination.
- (3) The format and frequency of the Valuation Examination, including qualifying marks, shall be published on the website of the Registration Authority at least three months before the examination.
- (4) A person who passes the Valuation Examination, shall receive acknowledgement of passing the examination.
- (5) A person may appear for the Valuation Examination any number of times.

5. Eligibility

- (1) No individual shall be eligible to be a registered valuer if he-
 - (a) has not passed the Valuation Examination in the three years preceding the date of making an application under Rule 7:

Provided that if an individual has completed fifty years of age and has been substantially involved in at least ten valuation assignments of the assets (for valuation of which class of assets he is seeking registration) amounting to five crore rupees or more, during the five years preceding the commencement of these rules, he shall not be required to pass the Valuation Examination;
 - (b) does not have the qualification and experience specified in Rule 6;
 - (c) is a minor;
 - (d) has been declared to be of unsound mind;
 - (e) is an undischarged bankrupt, or has applied to be adjudicated as an bankrupt;
 - (f) is a person not resident in India;
 - (g) 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 a person 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;

- (h) is not a valuer member (holding certificate of practice) of a valuation professional organisation; or
- (i) is not a fit and proper person:

Explanation: For determining whether an individual is a fit and proper person under these Rules, the Registration 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, including financial solvency and net worth.
- (2) No partnership entity shall be eligible to be a registered valuer if-
- (a) it has incurred any of the disqualifications listed in sub-rule (1) (f) to (i);
 - (b) it is undergoing an insolvency resolution or bankruptcy process or is an undischarged bankrupt;
 - (c) any of its partners have incurred the disqualifications listed in sub-rule (1) (a) to (i);
 - (d) if a majority of its partners practicing in India are not registered valuers; or
 - (e) if none of its partners is a registered valuer for the class of assets, for the valuation of which it seeks to be a registered valuer.

6. Qualifications and experience

An individual shall have the following qualifications to be eligible for registration under Rule 5 -

- (i) post-graduate degree, in the specified discipline, from a University established, recognized or incorporated by law in India and at least three years of experience in the discipline thereafter; or
- (ii) a Bachelor's degree, in the specified discipline, from a university established, recognized or incorporated by law in India and at least five years of experience in the discipline thereafter; or
- (iii) membership of a professional institute set up under an Act of Parliament and at least five years' experience after such membership.

Explanation: The 'specified discipline' referred to in (i) and (ii) shall mean the specific discipline which is relevant for valuation of the class of asset for which the registration is sought and a valuation professional organisation recognised under these rules.

7. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under Rule 5 may make an application to the Registration Authority in Form A of Schedule II, along with a non-refundable application fee of ten thousand rupees in favour of the Registration Authority.
- (2) A partnership entity eligible for registration as a registered valuer under Rule 5 may make an application to the Registration Authority in Form B of Schedule II, along with a non-refundable application fee of ten thousand rupees in favour of the Registration Authority or partnership entity
- (3) The Registration Authority shall examine the application, and give an opportunity to the applicant to remove the deficiencies, if any, in the application.
- (4) The Registration Authority may require the applicant to submit, within reasonable time, additional documents or clarification that it deems fit.
- (5) The Registration Authority may require the applicant to appear, within reasonable time, before the Authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the Registration Authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these Rules, it may grant a certificate of registration to the applicant

to carry on the activities of a registered valuer for the relevant class of assets in Form C of the Schedule II, within sixty days of receipt of the application, excluding the time given by the Registration Authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.

8. Refusal to grant certificate

- (1) If, after considering an application made under Rule 7, the Registration Authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- (2) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under subrule (1), to enable the Registration Authority to form a final opinion.
- (3) After considering the explanation, if any, given by the applicant under sub-rule (2), the Registration Authority shall communicate its decision to-
 - (a) accept the application, along with the certificate of registration, or
 - (b) reject the application by an order, giving reasons thereof within thirty days of receipt of explanation.

9. Conditions of Registration

The registration granted under Rule 7 or 8 shall be subject to the conditions that the valuer shall –

- (a) at all times comply with the provisions of the Act and these Rules;
- (b) at all times comply with the Valuation Standards;
- (c) in his/ its capacity as a registered valuer, not conduct valuation of the assets or class of assets other than for which he/it has been registered by the Registration Authority;
- (d) take prior permission of the Registration Authority for shifting his/ its membership from one valuation professional organisation to another, after receiving no objection from both the concerned valuation professional organisations;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of all assignments undertaken by him/it under the Act and these Rules for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the valuation professional organisation of which he/it is a member;
- (h) allow only the partner who is a registered valuer for the class of assets that are being valued to sign and act on behalf of it, where it is a partnership entity;
- (i) be jointly and severally liable with the partnership entity which is a registered valuer, of which he is a partner, and on whose behalf he signs and acts in respect of a valuation assignment; and
- (j) comply with such other conditions as may be imposed by the Registration Authority.

10. Temporary surrender

A valuation professional organisation shall inform the Registration Authority if any valuer who is its member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender,



not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

11. Transitional Arrangement

A person who is allowed under any provision of the Act or rules made thereunder or under any other law to act as a registered valuer may continue to act as such, without getting registered under these Rules, for a period not exceeding six months from the commencement of these rules.

CHAPTER III

RECOGNITION OF VALUATION PROFESSIONAL ORGANISATIONS

12. Eligibility for valuation professional organisations

An organisation may be recognised as a valuation professional organisation for valuation of a specific class or classes of assets of valuation if it:-

(a) has been -

- (i) set up under an Act of Parliament, or;
- (ii) registered under section 25 of Companies Act, 1956 or section 8 of Companies Act, 2013, or;
- (iii) registered as a society under the Societies Registration Act, 1860 or any relevant state law, or;
- (iv) set up as a trust governed by the Indian Trust Act, 1882;

Provided that no organisation established after 1st April, 2017 shall be recognised unless it is registered under section 8 of the Companies Act, 2013 and has bye laws and governance structure as specified in Schedule III.

- (b) conducts an examination for the individuals who are its members or intend to be its members and, as applicable, possessing qualifications in specific discipline with regard to valuation of specific class of assets for which it is recognised as a valuation professional organisation before granting membership or certificate of practice to them;
- (c) grants membership or certificate of practice, to individuals or partnership entities, who fulfil the requirements laid down by it in this regard, in respect of valuation of class of assets for which it is recognised as a valuation professional organisation;
- (d) conducts training for the individual members before a certificate of practice is issued to them;
- (e) lays down a code of conduct for valuers who are its members, which includes all the provisions specified in Schedule I;
- (f) provides for continuing education of individuals who are its members;
- (g) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
- (h) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.

13. Application for recognition

- (1) An applicant organisation which meets the conditions prescribed in Rule 12 may make an application for recognition as a valuation professional organisation for specific class or classes of assets to the Registration Authority in Form D of the Schedule II.

- (2) The Registration Authority shall examine the application, and give an opportunity to the applicant to remove the deficiencies, if any, in the application.
- (3) The Registration Authority may require the applicant to submit, within reasonable time, additional documents or clarification that it deems fit.
- (4) The Registration Authority may require the applicant to appear, within reasonable time, before the Authority through its authorised representative for explanation or clarifications required for processing the application.
- (5) If the Registration Authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary that the applicant is eligible under these Rules, it may grant a certificate of recognition as a valuation professional organisation in Form E of Schedule II.

14. Refusal to grant recognition

- (1) If, after considering an application made under Rule 13(1), the Registration Authority is of the prima facie opinion that recognition ought not to be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing through authorised representative, as the case may be.
- (2) The applicant shall submit an explanation as to why its application should be accepted within fifteen days of the receipt of the communication under sub- rule (1), to enable the Registration Authority to form a final opinion.
- (3) After considering the explanation, if any, given by the applicant under sub- rule (2), the Registration Authority shall communicate its decision to-
 - (a) accept the application, along with the certificate of registration; or
 - (b) reject the application by an order, giving reasons thereof within thirty days of receipt of explanation.

15. Conditions of Recognition.

The recognition granted under Rule 13 or 14 shall be subject to the conditions that the valuation professional organisation shall

- (a) at all times continue to satisfy the requirements under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) make such reports to the Registration Authority as may be required by it;
- (d) comply with any directions, including with regard to examination to be conducted by valuation professional organisation under rule 12(b), issued by the Registration Authority;
- (e) be registered as company under section 8 of the Act with governance structure and bye laws specified in Schedule III, within a period of one year from the commencement of these Rules if it is not a body set up under an Act of Parliament or a company registered under section 25 of Companies Act, 1956 or section 8 of Companies Act, 2013 on the date of recognition; and
- (f) comply with such other conditions as may be specified by Registration Authority.



CHAPTER IV

VALUATION STANDARDS

16. Valuation Standards

- (1) A registered valuer shall make valuations as per the Valuation Standards notified from time to time by the Central Government.
- (2) Until such time as the Valuation Standards are notified by the Central Government, a valuer shall make valuations as per-
 - (a) an internationally accepted valuation methodology;
 - (b) valuation standards adopted by any valuation professional organisation; or
 - (c) valuation standards specified by Reserve Bank of India, Securities and Exchange Board of India or any other statutory regulatory body.

17. Advisory Committee

- (1) The Central Government may constitute an Advisory Committee to advise it and the Registering Authority on issues relevant to formulation and prescription of Valuation Standards and policies pertaining to valuation.
- (2) The Advisory Committee shall comprise of-
 - (a) a chairperson who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics or similar discipline;
 - (b) one member nominated by the Ministry of Corporate Affairs;
 - (c) one member nominated by the Insolvency and Bankruptcy Board of India;
 - (d) one member nominated by the Reserve Bank of India;
 - (e) one member nominated by the Securities and Exchange Board of India;
 - (f) one member nominated by the Central Board of Direct Taxes;
 - (g) one member nominated by the Central Board of Excise and Customs;
 - (h) one member who is an eminent academician in valuation, nominated by the Central Government;
 - (i) three members to represent industry and other stakeholder nominated by the Central Government in consultation with the Registering Authority.;
 - (j) three members who are representatives of valuation professional organisations, nominated by Central Government for a tenure not exceeding two years at a time.

Provided that till such period that representatives of all valuation professional organisations have been nominated at least once to form part of the Advisory Committee, the Central Government shall not nominate a representative of a valuation professional organisation more than once.

18. Valuation Report

The valuer shall, in his/ its report, state the following:-

- (a) background information of the asset being valued;
- (b) purpose of valuation and appointing authority;

- (c) identity of the valuer and any other experts involved in the valuation;
- (d) disclosure of valuer interest/conflict, if any;
- (e) date of appointment, valuation date and date of report;
- (f) sources of information;
- (g) procedures adopted in carrying out the valuation;
- (h) valuation methodology;
- (i) major factors that influenced the valuation;
- (j) conclusion; and
- (k) caveats, limitations and disclaimers

CHAPTER V

DISCIPLINARY PROCEEDINGS

19. Cancellation or suspension of certificate of registration or recognition

The Registration Authority may cancel or suspend the registration of a valuer or recognition of a valuation professional organisation-

- (a) in public interest; or
- (b) on violation of the provisions of the Act, these Rules or any condition of registration or recognition, as the case may be; in the manner prescribed in Rule 20.

20. Disciplinary Proceedings

- (1) Based on the findings of an inspection or investigation, or on material otherwise available on record, if the Registration Authority is of the prima facie opinion that sufficient cause exists to cancel or suspend the registration of a valuer or cancel or suspend the recognition of a valuation professional organisation, it shall issue a show-cause notice to the valuer or valuation professional organisation.
- (2) The show-cause notice shall be in writing and shall state-
 - (a) the provisions of the Act and Rules 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 the Act or Rules or certificate of registration or recognition allegedly violated, or the manner in which the public interest has allegedly been affected;
 - (e) the actions or directions that the Registration Authority proposes to take or issue if the allegations are established;
 - (f) the manner in which the person is required to respond to the show-cause notice;
 - (g) consequences of failure to respond to the show-cause notice within the given time; and
 - (h) procedure to be followed for disposal of the show-cause notice.



- (3) The show-cause notice shall be served in the following manner by-
 - (a) sending it to the valuer or valuation professional organisation at its registered address by registered post with acknowledgment due; or
 - (b) an appropriate electronic means to the email address provided by the valuer or valuation professional organisation to the Registration Authority.
- (4) The Registration Authority shall dispose of the show-cause notice by reasoned order in adherence to the principles of natural justice.
- (5) The order in disposal of a show-cause notice may provide for-
 - (a) no action;
 - (b) warning; or
 - (c) suspension or cancellation of the registration or recognition.
- (6) An order passed under sub-rule (5) cancelling the recognition of a valuation professional organisation, shall specify the time within which its members may take membership of another valuation professional organisation recognised for valuation of relevant class(es) of assets without prejudice to their registration.
- (7) The order passed under sub-rule (5) shall be issued to the concerned person immediately, and published on the website of the Registration Authority.
- (8) The order passed under sub-rule (5) shall not become effective until thirty days have elapsed from the date of issue of the order unless stated otherwise.



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