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DETAILED CONTENTS | PRINT THIS PAGE | HELP | SEARCH

Back Up Next

BOMBAY STAMP ACT

I. APPLICABILITY

The Bombay Stamp Act applies to the entire State of Maharashtra. Only the instruments specified in the Schedule I to the Act are covered by this Act. All other instruments are either chargeable under the Indian Stamp Act (e.g., transfer of shares) or are not chargeable at all (i.e., if they are not specified under the Act as well as under the Indian Stamp Act).

II. CHARGE OF STAMP DUTY

2.1 It is very important to note that stamp duty is on an instrument and not on a transaction.

2.2 S. 3 of the Act levies stamp duty at the rate provided in Schedule I on any instrument executed in the State. Even instruments executed outside the State are liable to duty only on their receipt in the State, provided it relates to a property situated in the State or a matter or thing to be done in the State.

2.3 An instrument covering or relating to several distinct matters is chargeable with the aggregate amount of duty with which each separate instrument would have been chargeable.

2.4 In case an instrument is so drafted that it is covered within the ambit of more than one Article under Schedule I, then it shall be taxed by that Article which levies the highest amount of stamp duty.

2.5 The term "Instrument" has been defined to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.

However, it does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt.

III. CERTAIN DEFINITIONS

3.1 "Conveyance" has been defined to include:

- a. a conveyance on sale,
- b. every instrument,
- c. every decree or final order of any Civil Court,
- d. every order made by the High Court u/s. 394 of the Companies Act, 1956 in respect of amalgamation of companies; by which property, whether movable or immovable or any estate or interest in any property is transferred to, or vested in any other person *inter vivos* and which is not otherwise specifically provided for by Schedule I.

The Explanation to the definition provides that any instrument by which one co-owner transfers his property to another co-owner would be deemed to be a conveyance provided that it is not an instrument of partition.

3.2 "Instrument of gift" has been defined to include, in case of an oral gift any instrument recording its making or acceptance, whether by way of declaration or otherwise.

3.3 "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property and includes:

- a. any final order for effecting a partition passed by any revenue authority or any civil court,
- b. an award by an arbitration directing a partition, and
- c. when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.

The expression 'co-owners' includes all kinds of co-ownership such as joint tenancy, tenancy in common, coparcenary, membership of HUF, etc. and the partnership.

3.4 "Immovable Property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. The two leading decisions on this definition are those of the Supreme Court in the case of *Sirpur Paper Mills (1998) 1 SCC 400* and the case of *Duncan's Industries (2000) 1 SCC 633*.

IV. PAYMENT OF STAMP DUTY

4.1 S. 17 of the Act provides that all instruments chargeable with duty and executed in Maharashtra **should be stamped before or at the time of execution or immediately thereafter or on the next working day following the date of execution.**

4.2 Instrument executed only out of Maharashtra may be stamped within three months after it is first received in India.

4.3 Duty can be paid by way of adhesive or impressed stamps on the instruments. Adhesive Stamps affixed should be cancelled at the time of execution so that they are not available for reuse.

4.4 Further, s. 14 prohibits writing of a second instrument chargeable with duty on a stamp paper on which an instrument chargeable with duty has already been written.

4.5 The stamp papers must be in the name of one of the parties to the transaction. They cannot be in the name of the Chartered Accountant or Lawyer of the parties.

4.6 The date of issue of the stamp paper must not be more than 6 months older than the date of the transaction.

4.7 Who bears and pays the stamp duty is a matter of agreement between the parties. In the absence of any such agreement, the Act provides that in the case of a Conveyance, duty is to be paid by a buyer and by the lessee in case of a lease. In cases of Bonds, Release, Settlement, it is to be paid by the person making or drawing the instrument. In case of exchange, it is to be paid by the parties in equal shares and in case of partition, by the parties in proportion to their respective shares. In all other cases, it is to be paid by the person executing the instrument.

4.8 Stamp duty is payable at rates mentioned in Schedule I. Depending upon the Instrument, it may be based upon the Market Value, Area, or various other criterion. In case of instruments which are based upon Market Value of the property, the term in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on date of execution of such instrument or consideration stated in the instrument whichever is higher.

The stamp office determines the market value of the property by referring to an Annual Statement of Rates (commonly known as Stamp Duty Ready Reckoner) which gave the Market Values of various immovable properties in Mumbai. The Reckoner divides the immovable property into various categories such as developed land, undeveloped land, residential units, industrial units/office, shops, etc., and fixes their market value accordingly.

4.9 Any person can apply to the Collector of Stamps for adjudication of the stamp duty payable on the instrument who shall determine the duty, if any with which the instrument shall be chargeable. It may be noted that now adjudication is compulsory in all cases where an instrument requires registration as the Registrar of

Sub-Assurances insists upon the same. The instrument should be brought to the Collector *within 1 month of execution* of such instrument in the State and *within 3 months from date of receipt* of such instrument in the State.

V. UNDERSTAMPED DOCUMENT

5.1 Under s. 34 of the Act, any instrument which is inadequately/not stamped, then it shall be inadmissible in evidence for any purpose, e.g., in a Civil Court. Such instruments can be admissible in evidence on payment of the requisite amount of duty and a penalty @ 2% per month on the deficient amount of duty calculated from the date of execution. However, the maximum penalty cannot exceed twice the amount of duty involved.

5.2 Further, any public officer can impound such improperly stamped instruments if it comes to his notice. Such impounded instruments must be sent to the Collector who would then determine the amount of duty and penalty, if any, payable on the same. Any party to an instrument can also *suomotu* submit an instrument for adjudication by the Collector u/s. 31.

5.3 A person can be punished with rigorous imprisonment for up to 6 months (not less than 1 month) and with fine up to ₹ 5,000, if it is proved that the instrument was undervalued or short payment of duty was made with intention to evade duty.

SCHEDULE I RATES (IMPORTANT ARTICLES)

MAHARASHTRA

Article	Description of Instrument	Stamp Duty
4	Affidavit (Exemption: for use in the Court or Tribunal)	₹ 100
5	Agreement	
(c)	relating to shares & securities	0.005% of the value of security
(e)	relating to purchase or sale of bullion	0.005% of the value of gold/silver
(g-a) (i)	Development Rights Agreement	Same as in the case of a Conveyance as on the market value
(g-a) (ii)	relating to purchase of units in any scheme by an investor from a developer – when the investor sells the unit a set off of the duty paid would be allowed against duty on Conveyance under Art.25	Same as in the case of a Conveyance as on the market value
(g-d)	relating to transfer of tenancy rights for residential property in:	
	i) Greater Bombay having area up to 300 sq. ft. having area above 300 sq. ft.	₹ 200 Same duty as on a Conveyance on the market value
	ii) Thane, Pune, Nagpur, Navi Mumbai having area up to 300 sq. ft. having area above 300 sq. ft.	₹ 200 Same duty as on a Conveyance on the market value
	iii) Other Municipal Corporations having area up to 300 sq. ft. having area above 300 sq. ft.	₹ 200 Same duty as on a Conveyance on the market value
	relating to transfer of tenancy rights for non-residential property in the above locations for any area	Same duty as on a Conveyance on the market value

(g-e)	relating to hire purchase	Same duty as on a Lease
(h) (i)	relating to certain advertising contracts	₹ 2.5 for every ₹ 1,000 (approx. 0.25%) if the amount agreed is up to
(ii)	relating to contracts for exclusive broadcasting/exhibition rights of a film	₹ 10 lakhs and ₹ 5 for every ₹ 1000 (approx. 0.5%) if the amount exceeds ₹ 10 lakhs
(iii)	relating to specific performance by a person where contract > ₹ 100,000	
(v)	relating to assignment of Copyrights	
(iv)	relating to creation of any obligation, right or interest and having monetary value	₹ 1 for every ₹ 1000 (approx. 0.10%) if the amount agreed is up to ₹ 10 lakhs and ₹ 2 for every ₹ 1000 (approx. 0.20%) if the amount exceeds ₹ 10 lakhs
	General (not otherwise provided for)	₹ 100
6	Agreement for Deposit of Title Deeds, Pawn, Pledge or Hypothecation Deposit of title deeds securing amount of loan or for pawn, pledge or hypothecation securing amount of loan	₹ 1 for every ₹ 1,000 (approx. 0.1%) or part thereof of the amount secured by the deed if the amount secured is up to ₹ 5,00,000 and ₹ 2 for every ₹ 1,000 (approx. 0.2%) in all other cases
10	Articles of Association of a Company On the share capital, thereof subject to a nominal capital or increased share capital (Exemption S. 25 companies)	₹ 1,000 for every ₹ 5,00,000 or part thereof subject to a maximum of ₹ 50,00,000 (approx. 0.2%)
12	Award by an Arbitrator or Umpire (not being an Award directing a Partition)	
(a)	On the property value to which the award relates	₹ 5 for every ₹ 500 or part thereof subject to a maximum of ₹ 100
(b)	Other cases	₹ 100
15	Cancellation (Exemption: Revocation of will)	₹ 100
17	Certificate or Other Document (Shares, Scrip, Stock, etc. on face value and premium)	₹ 1 for every ₹ 1,000 or part thereof (approx. 0.1%)
24	Composition Deed	₹ 200
25 (a)	Conveyance (on the true market value) Movable Property	₹ 15 for every ₹ 500 or part thereof (approx. 3%)
(b) (A)	Immovable Property	Duty on every ₹ 500 of Market Value
	Within the Municipal limits of any urban area	5% of market value of property
	Within the limits of any Municipal Council / Panchayat /Cantonment of any area within MMRDA	4% of market value of property
	Within the limits of any Gram Panchayat	3% of market value of property
(c)	High Court order u/s. 394 of the Companies Act, in respect of amalgamation or reconstruction of companies	10% of market value of shares allotted in exchange and consideration if any paid but not exceeding the higher of :

		<p>i) 5% of market value of the immovable property located in Maharashtra or</p> <p>ii) 0.7% of market value of shares allotted in exchange and consideration if any paid</p>
	<p>Special Points for Conveyance:</p> <ol style="list-style-type: none"> 1. An agreement for sale providing for transfer of possession shall be deemed to be a 'Conveyance' and will be stamped accordingly. However, a set off of the duty paid will be given at the time of execution of the conveyance. 2. Assignment of copyrights is exempt from stamp duty. 3. In case of amalgamation/reconstruction of companies, the market value of the shares of transferee company is the value of shares on stock exchange on the "appointed day" mentioned in the scheme or else the date of the court's order. If the shares are not listed or not quoted, the market value means the value of shares to the transferor company or the value as determined by the Collector. 	
27	Counterpart/Duplicate	Maximum ₹ 100
32	Exchange	Same duty as on conveyance but on the market value of that property which has the greater value
34	Gift (other than a settlement, will or transfer)	Same duty as on a conveyance. In case of a gift to spouse, brother, sister, lineal ascendants or descendants @ ₹ 10 for every ₹ 500 or part thereof (approx. 2%) of market value
35	Indemnity Bond	₹ 200
36	<p>Lease including sub-lease:</p> <ol style="list-style-type: none"> a) where lease period is <ol style="list-style-type: none"> i) up to 5 years ii) 5 years to 10 years with a renewal clause iii) 10 years to 29 years with a renewal clause iv) exceeding 29 years or for indefinite period or for perpetuity <p>Special Points for Lease:</p> <ol style="list-style-type: none"> 1. Consideration such as premium, security deposit, advance, will for market value be treated as consideration passed on. 2. An agreement for lease will not be treated as lease if there is no immediate demise – Atur India P Ltd., (1994) 2 SCC 497 	<p>Same Duty as on conveyance on the following values:</p> <ol style="list-style-type: none"> i) 10% of market value ii) 25% of market value iii) 50% of market value iv) 90% of market value
36A	LEAVE & LICENCE	
	For a term not exceeding 60 months with or without a renewal clause	<p>0.25% of the total sum of:</p> <ul style="list-style-type: none"> • Licence fees; • Non-refundable deposit or premium; plus • Interest @ 10% p.a. on the refundable

		security deposit or money advanced
37	Letter of Allotment of Shares	₹ 1
39	Memorandum of Association a) if accompanied with Articles b) if not so accompanied	₹ 200 Same duty as on Articles of Association under Article 10
40	Mortgage Deed	
a)	Where possession is given	Same duty as on conveyance on the amount secured by the deed
b)	Where possession is not given	₹ 5 for every ₹ 1000 or part thereof (approx. 0.5%); subject to a Maximum of ₹ 10,00,000 and a Minimum of ₹ 100
42	Notary (attestation, etc., by Notary Public)	₹ 25
46	Partition Special Points : 1. The value of largest share remaining after the partition will be excluded for duty 2. In case of order of partition by a Civil Court rebate will be given to the extent of the Court Fees paid 3. ₹ 100 in case of agricultural land	₹ 10 for every ₹ 500 or part thereof (approx. 2%) of the market value of the separated share or shares
47	Partnership	₹ 500
(a)	No contribution or cash contribution < ₹ 50,000	₹ 500 for every ₹ 50,000 or part thereof (approx. 1%) subject to a maximum of ₹ 5,000
(b)	Cash Contribution > ₹ 50,000	Same as on a conveyance on the market value of property
(c)	Contribution by way of property (not cash)	Same as on a conveyance on the market value subject to a minimum of ₹ 100
(d)	Dissolution or Retirement i) where any property is transferred to a partner other than the one who brought it ii) in any other case NOTE: There is no mention about an LLP nor is there a separate Article dealing with the same	₹ 200
48	Power of Attorney	
	a. for sole purpose of registration	₹ 100
	b. for suits in small causes court	₹ 100
	c. for acting in a single transaction to one or more persons	₹ 100
		₹ 100
	d. for acting in more than one transaction or generally to one person	₹ 100

	<p>e. for acting in one or more transactions or generally to one or more persons</p> <p>f. (i) for or without consideration and authorising to sell an immovable property</p> <p>(ii) for authorising to sell immovable property without consideration and given to parents, siblings, spouse, children, grand children, other close relatives</p> <p>g. for construction, development, sale, etc. to a developer or promoter</p> <p>h. in any other case</p> <p>Special Points:</p> <p>1. In case of (f), set off of duty paid will be given on execution of the conveyance</p> <p>2. Duty payable under (g) will be ₹ 100 only if duty is already paid under Article 5 (g-a) on Development Rights' Agreement</p>	<p>Same as on a conveyance on the market value</p> <p>₹ 500</p> <p>Same as on a conveyance on the market value</p> <p>₹ 100</p>
52	<p>Release whereby a person renounces a claim upon other person or property</p> <p>If the release is of an ancestral property in favour of certain specified relatives</p> <p>Every other Case</p>	<p>₹ 200</p> <p>Same duty as on a conveyance as on the market value of the share, interest or part renounced</p>
54	<p>Security Bond (where the amount secured exceeds ₹2500)</p>	<p>₹ 5 for every ₹ 1,000 or part thereof (approx. 0.5%) of the amount secured</p> <p>Maximum ₹ 10,00,000</p> <p>Minimum ₹ 100</p>
58	<p>Surrender of Lease</p> <p>i) without consideration</p> <p>ii) with consideration</p>	<p>₹ 200</p> <p>Same duty as on a conveyance on amount of consideration</p>
59	<p>Transfer</p> <p>of marketable debentures</p>	<p>₹ 0.50 for every ₹ 100 (approx. 0.05%) of the consideration amount</p>
60	<p>Transfer of lease by way of assignment</p>	<p>Same as on a conveyance on the market value</p>
61	<p>Trust</p> <p>A. a) where there is disposition of property</p> <p>i) for charitable or religious purpose</p> <p>ii) in any other case where there is no disposition</p> <p>b) where there is no disposition</p> <p>B. Revocation</p>	<p>₹ 10 for every ₹ 500 or part thereof (approx. 2%)</p> <p>Same as on a conveyance on the amount settled</p> <p>Maximum ₹ 200</p>

SOME IMPORTANT INSTRUMENTS UNDER INDIAN STAMP ACT

27	Debenture being a marketable security Transferable	
(a)	by endorsement and exceeding ₹ 1,000	₹ 1.85 for every ₹ 500 or part thereof (approx. 0.375%)
(b)	by delivery and exceeding ₹ 1,000	₹ 3.75 for every ₹ 500 or part thereof (approx. 0.75%)
62	Transfer of shares	25 paise for every ₹ 100 or part thereof (approx. 0.25%)

**AD VALOREM COURT FEES PAYABLE UNDER THE BOMBAY COURT FEES ACT, 1959
(Wherever Applicable)**

Amount or Value of Subject Matter *	Court Fees
₹ 10,000	₹ 1,505
₹ 25,000	₹ 3,530
₹ 50,000	₹ 5,080
₹ 75,000	₹ 5,830
₹ 1,00,000	₹ 6,430
Over ₹ 1,00,000 and up to ₹ 11,00,000 ₹ 10,000 or part thereof (approx. 2%)	₹ 6,430 + ₹ 200 for every
₹ 11,00,000	₹ 26,430
Over ₹ 11,00,000 or part thereof (approx. 1.2%) – subject to a maximum fee of ₹ 3,00,000	₹ 26,430 + ₹ 1,200 for every ₹ 1,00,000
₹ 2,38,97,500	₹ 3,00,000
₹ 2,50,00,000	₹ 3,00,000 (maximum fee)

* Only some of the slabs are given



Back



Home



Up



Next