

**IMPORTANT PROVISIONS OF
BOMBAY STAMP ACT, INDIAN STAMP ACT
&
REGISTRATION ACT.**

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STAMP DUTY

INTRODUCTION:

The Bombay Stamp Act, 1958 came into force on 16th Feb, 1959 and is applicable in the State of Maharashtra. The Act is intended to levy stamp duty on certain types of documents executed in the state or brought from outside for acting upon the same in the state. The various instruments/documents are broadly covered under different 62 articles listed in Schedule-I appended to the Act. The rates at which stamp duty is levied on these documents are mentioned in Schedule I.

The Bombay Stamp Act levies stamp duty on documents or instruments by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

What is Stamp Duty?

It is a type of tax which is paid to the State Government for the transaction performed by way of document or instrument under the provisions of Bombay Stamp Act, 1958 and Indian Stamp Act, 1899.

Whether Stamp Duty is payable on instruments or on transactions?

Stamp Duty is payable on instruments/documents and not on transactions:
Stamp duty is charged on the basis of the contents of the documents only. Any information which is vital for the purpose of working out the stamp duty must be duly mentioned in the document/instrument. If such information is missing, the Stamp Duty Valuation Officer can ask for the same. For eg. In case of an instrument for transfer of property, several important details such as

carpet area or built up area of the property, number of floors in the building, year of construction, name of the division/village, C.S. /C.T.S. number of plot of land etc are necessary and required to be mentioned in the agreement.

What is an Instrument?

The definition of the term instrument is very wide. Instrument means any document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

What is a Document?

As defined in Evidence Act, a document means only matter expressed or described upon substance by means of letters, figures or marks or by more than any of those means intended to be used or which may be used for the purpose of recording that matter.

Why is it important to pay stamp duty on instruments/ documents?

The payment of proper Stamp duty on instruments bestows legality on them; such instruments get evidentiary and are admitted as evidence in court of law. The instruments which are not properly stamped are not admitted in evidence by the court.

What is meant by execution of instruments?

Execution of instruments means putting signatures on the instruments by the person or persons who are the parties to the transaction which is being performed through such instruments. Thus, when the respective parties signs the instrument the instrument is said to have been executed.

Which are the instruments that attract stamp duty under the Bombay Stamp Act?

There are 63 types of instruments which attract Stamp duty under Bombay Stamp Act, 1958. Some of the important and foremost instruments under the Bombay Stamp Act, 1958 are :-

- a) Agreements;
- b) Conveyances;
- c) Exchange;
- d) Gifts;
- e) Certificate of Sale;
- f) Deed of Partition ;
- g) Power of Attorney to sell immovable property when given for consideration ;
- h) Deed of settlement ;
- i) Lease by way of Assignment.

Which are the instruments that attract stamp duty under the articles of the Indian Stamp Act, 1899 in the State of Maharashtra?

The following instruments under the Articles of Indian Stamp Act, 1899 attracts Stamp duty in the State of Maharashtra.

Article No.	Instruments
13	Bill of Exchange
14	Bill of lading
27	Debenture
37	Letter of Credit
47	Policy of Insurance
49	Promissory Notes
52	Proxy
53	Receipt
62	Transfer

It is to be noted that the Revenue received under the Indian Stamp Act, 1899 goes to the Central Government.

What is the relevance of the dates 04.07.1980 ad 10.12.1985?

04.07.1980 – relates to arrival of market value concept.

From 04.07.1980, on conveyance, the purchaser is required to pay stamp duty on the market value of the immovable property transferred as per article 25(b), at the time of execution of the conveyance. Whereas, prior to 04.07.1980, there was no market value concept and agreement value was accepted for stamp duty payment.

10.12.1985 – relates to the arrival of deemed conveyance concept.

From 10.12.1985, even on agreement for sale, the purchaser is required to pay stamp duty on the market value of the immovable property transferred as a deemed conveyance due to explanation appended to Article 25(d), at the time of signing the agreement for sale itself. Whereas, prior to 10.12.1985, such agreement for sale required a stamp of Rs.5 only, at the time of signing the agreement under Article 5(h) provided stamp duty as applicable to conveyance will be payable at the time of conveyance of the immovable property in future.

Who is liable to pay stamp duty?

Liability for the payment is indicated in Sec. 30 of the Bombay Stamp Act 1958.

- In the absence of an agreement to the contrary, stamp duty shall be paid by the purchaser.
- In case of lease or Agreement to lease, the stamp duty has to be paid by the lessee.
- In the case of instrument of exchange it is to be paid by the parties in equal share.

Insertion of Section 30A in the Maharashtra Stamp Act.

After Section 30 of the Maharashtra Stamp Act, a new section i.e. Section 30A has been inserted. Section 30A states the stamp duties payable by financial institutions. It provides that notwithstanding anything contained in Section 30,

where any instrument referred to in clause (a) to (g) of Section 30, is executed on or after the date of commencement of the Maharashtra Tax Law (Levy and Amendment) Act, 2013, in favour of or by any financial institution such as bank, non-banking financial company, housing finance company or alike, which creates any right in favour of any such financial institution, the liability to pay proper stamp duty shall be on such financial institution concerned without affecting their right, if any, to collect it from the other party.

In case any such instrument is executed before the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 2013 and is effective and where proper stamp duty is not paid, then the financial institution shall impound the instrument on or before the 30.09.2013 and forward the same to the Collector. If the financial institution fails to impound such instrument, then the concerned financial institution shall be liable to pay a penalty equal to the stamp duty payable on such an instrument.

When is stamp duty payable?

The Stamp duty is payable on instruments before or at the time of execution or on the next working day following the day of execution.

However, it is our practical experience that with a view to avoid harassment, one should pay stamp duty as far as possible before executing the agreement.

How is stamp duty payable (mode of payment of stamp duty)?

The Stamp duty can be paid by account payee cheque, demand draft or pay order. If it is paid by cheque, the documents are delivered after the encashment of the cheque. In case the Stamp duty has been paid by pay order, or demand draft the documents are returned within a short period of time.

If the amount of the Stamp duty is above Rs.50,000/- and one wishes to pay by cash, then the amount will have to be deposited in Reserve Bank of India and/or any other specified Bank and the challan to the effect will have to be submitted to the office of the Superintendent of Stamps.

In whose names are the stamps required to be purchased?

From 01.05.1994, the stamps are required to be purchased in the name of the one of the executors to the instrument. If the instrument is executed on the stamps which do not bear the name of one of the executors, then such instruments will not be admitted as evidence for any purpose. These instruments will also be treated as not properly stamped. Further such instruments will be liable to be impounded by any Govt or Semi Govt office or court and sent to the Collector of Stamps for recovery of proper Stamp duty.

What happens if the instrument is executed on stamps which do not bear the name of one of the executors?

Such instruments are not admitted in evidence, for any purpose. These instruments are also treated as not properly stamped. These instruments therefore cannot be registered under the Registration Act. These instruments are liable to be impounded and sent to the Collector of Stamps for recovery of proper stamp duty.

METHOD AND MECHANISM

What is meant by adjudication of instruments?

Sec. 31 of the Bombay Stamp Act, 1958 deals with the adjudication of the instruments.

Adjudication means determining the chargeability of stamps appointed in each district. In respect of the transfer of the Immovable property, adjudication means determining the amount of stamp duty payable on such transfer.

What is the procedure for adjudication of instruments?

As per Sec 31, the parties are required to file the Original instrument (signed or unsigned) with the Stamp duty officials and pay the prescribed fee of Rs.100/- as adjudication fees.

The application has to be submitted to the authorities along with:

- (i) Original instruments with one xerox copy

- (ii) Information in Form II of the Bombay Stamp determination of true market value of the property Rules 1981 in the form of affidavit on a Stamp paper of Rs. Nil duly notarized.

What remedy is available to the parties, in case they do not agree with the true market value of the property as determined by Collector of the District?

Appeal against adjudication: The chargeability of Stamp duty on the instrument as determined by the Collector of Stamps in Adjudication is not final. The person affected by the order of the Collector of Stamps can go in appeal to the Chief controlling Revenue Authority as provided in Sec. 53 of the Bombay Stamp Act 1958. Though there is no time limit prescribed for the filing of an appeal, it will be desirable to file the appeal at the earliest to avoid complications.

Why do authorities insist on disclosure of relevant facts and circumstances to be fully and truly set forth in the instrument?

Sec 28 of the Bombay Stamp Act 1958 casts the duty on the executants to disclose and truly set forth relevant facts and circumstances in the instruments. This helps in finding out the types of Transactions involved in the instruments which in turn helps in the determination of the proper Stamp duty payable on such instruments.

It is to be noted that duty is not payable on the title or the heading given on the top of the instruments but on the recitals as stated in the instruments.

What is the validity of the stamps for its usage?

Stamp paper upto 30.11.1989 was valid for any period of time. However, from 01.12.1989, all stamp paper [whether purchased before, on or after 01.12.1989] is valid for a period of six months from the date of purchase and after that, it is treated as ordinary paper as if it has no stamp. As per the provisions of section 52-B, the Stamps which are purchased and not used

within six months shall be rendered invalid thereafter. Further a person can claim refund of Stamp duty for stamps, unintentionally spoiled, rendered unfit for the purpose originally intended and also other reasons as mentioned in sec.47 of Bombay Stamp Act, 1958.

Such applications for refund must be submitted within six months from the date of purchase of Stamps to the Joint District Registrar and Collector of Stamps of the concerned district.

However, court fee stamps and court fee paper is valid for any period of time as there is no time limit specified in the Bombay Court fees Act, 1959, for its use.

How is stamp duty calculated?

The amount of Stamp duty payable on the instruments are in accordance with rates provided for the same under the provisions of Bombay Stamp Act, 1958 and the Indian Stamp Act, 1899.

The various instruments or documents are broadly covered under different 62 articles listed in Schedule I appended to the Bombay Stamp Act, 1958 & depending on the nature of the same can be grouped in three categories.

CATEGORY 1

Articles or instrument whose amount of Stamp duty is fixed irrespective of the value mentioned in the document or instrument.

CATEGORY 2

Articles or instruments where depending upon the value mentioned in the document, the amount of Stamp duty is varied.

CATEGORY 3

Articles or instruments which attracts Stamp duty depending on the consideration mentioned in the document or true market value whichever is higher.

NOTE :

For category I & II types of instruments the Stamp duty payable can be ascertained by referring to the Schedule I. But to ascertain the Stamp duty on

the instruments mentioned in category III, the expertise in valuation is required.

The true market value is determined as per the provisions of the Bombay Stamp (Determination of True market value of property) Rules 1995.

What is the procedure for payment of stamp duty?

The document which is chargeable with Stamp duty can be prepared on the non-judicial Stamp paper of appropriate value.

Unexecuted document can be got franked with special adhesive stamps by franking machine intended for stamping such document, by tendering required amount in the office of Collector of stamps wherever this facility is available. When document is lodged for adjudication, on receiving intimation as to the amount of Stamp duty payable by tendering appropriate amount equal to the amount of Stamp duty and penalty if any, the Collector of Stamp shall certify the document as to the payment of proper duty.

PENAL PROVISIONS

What is meant by impounding of instruments?

Every person having by law or consent of parties authority to receive evidence and every person in charge of Public office before whom any instrument chargeable with Stamp duty is produced or comes in the performance of his functions, shall if it appears to him that instruments is not only stamped impound the same, irrespective whether the instrument is not valid in law. Such impounded document is required to be forwarded to the Collector of Stamps for recovery of deficit Stamp duty in addition to penalty at the rate of 2% per month on the duty evaded amount. The maximum penalty is 200% of the Stamp duty evaded amount.

What are the penalties on parties for evasion of Stamp duty?

In addition to recovery of deficit Stamp duty, the Collector of Stamps had the power to recover the penalty from the parties upto 2 times the amount of

evaded Stamp duty in terms of Provisions contained in sub-sec 1(b) of section 39 of Bombay Stamp Act, 1958.

The penalty shall be charged at a uniform rate of 2% per month the maximum penalty is 200% of the Stamp duty amount.

In addition the parties can also be prosecuted under sec. 42 of the Bombay Stamp Act.

What are the penalties on detection of the evasion of stamp duty?

The Collector of the Stamps, if he has reason believe that all or any of the instruments specified in Schedule I of the Bombay Stamp Act have not been charged or incorrectly charged he may himself or through his authorized officer enter upon the premises and inspect such instruments and take such notes and extracts as he may deem necessary and if necessary he may seize and impound such instruments under sec.33 of the Bombay Stamp Act.

The Collector of the Stamp is further authorized not only to collect deficit Stamp duty but penalty as well, which will be at a uniform rate of 2% per month subject to the maximum which is 200% of the evaded Stamp duty.

What is the penalty for not setting forth all the facts and circumstances in the instruments which affects its chargeability?

Any person which also includes persons employed or concerned in preparation of the instrument who with intent to defraud the Government, executes any instrument without setting forth therein the full and true facts or makes any false statements or does any other acts calculated to deprive the Government of any duty or penalty under the Bombay Stamp Act, can be prosecuted under the provisions of section 62 of the Bombay Stamp Act.

The parties are penalized for not stating true facts and circumstances in the instruments because non-disclosure of relevant facts and circumstances lead to evasion of Stamp duty.

STAMP DUTY & TRANSFER OF IMMOVABLE PROPERTY & RELATED ISSUES.

(i) What is meant by market value of the property ?

Ans : Market value in relation to any property which is subject matter of instrument means the price at which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher.

(ii) Whether Stamp Duty is payable on the market value of the property or on consideration as stated in the document ?

Ans: Stamp duty is paid on the market value of the property. The market value of the property is determined by the stamp duty authorities on the basis of the stamp duty ready reckoner issued by the government every year on the 1st of January. If the consideration amount is higher than the market value, then the consideration amount will be treated as the market value of the property. The Stamp Duty is payable on the agreement value of the property or the market value whichever is higher, stated in the document.

(iii) Which types of instruments attract payment of Stamp duty on market value of property ?

Ans: Agreements, Conveyances, Exchange, Gift, Certificate of Sale, Deed of Partition, Power of Attorney to sell immovable property given for consideration, Deed of Settlement and Transfer of Lease by way of assignment attract Stamp Duty on market value of the property.

(iv) On what basis are the rates fixed by the stamp authorities?

Ans: For the purpose of determination of true market value of the property, the built up area is taken into consideration.

(v) Is stamp duty required to be paid on all documents regarding transfer of properties?

Ans: All transfer instruments/ documents including agreements to sale, conveyance, gift, mortgage, exchange, partition, power of attorney either general or specific, leave and license agreement, tenancy agreement,

lease deeds are required to be stamped before registration. A will or original nomination in a co-operative housing society is not required to be stamped. However, when a nominee transfers a flat subsequently in the name of the legal heirs then, it is required to be stamped as per the market value.

(vi) What are the modes of measurement for stamp duty valuation?

Ans: Stamp duty is charged on the basis of built up area of the premises. Built- up area is taken to be 20% more than the carpet area. Hence, all the documents must record either carpet area or built up area in sq. mtrs only. There is no recognition to super built up area or saleable area hence, the same should be avoided in the agreement to avoid excess payment of stamp duty. Rates mentioned for land is per sq. mtr. Considering FSI to be 1 and rates mentioned for buildings whether residential, office, shop/ commercial or industrial are for per sq. mtr. Built up rea (rate is inclusive of the value of land).

Previously when it was difficult to determine built up area and if the carpet area was mentioned in the agreement then, the same was increased by 20 per cent to arrive at built up area. If super built up area mentioned in the agreement, then 20% was reduced from such super built up area i.e 80 per cent of the ser built u area was built up area. But stamp duty and registration department has not withdrawn this method partially and adopt a uniform method as mentioned in the valuation factor. This method of calculation was primarily a shortcut to an acceptable solution when built up area was not mentioned in the document. It should nnever be adopted to calculate carpet area from the super built up area or vice versa, because arithmetically, it will not give a correct figure.

Relation between sq. feet and sq. mtr.

1 sq. mtr. = 10.764 sq.ft.

1sq. ft. = 0.0929 sq. mtr.

SCHEDULE 1
STAMP DUTY ON INSTRUMENTS

Article	Description of Instrument	Proper Stamp Duty
4	Affidavit [Exemption: For use in the Court or Tribunal]	Rs.100/-
5	<p>Agreement</p> <p>(a) Relating to sale of bill of exchange</p> <p>(b) Relating to purchase or Sale of Government Security</p> <p>(g-a) (i) Development Rights Agreement: if relating to giving authority or power to a promoter or a developer by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immoveable property.</p> <p>(ii) Relating to the purchase of one or more units in any</p>	<p>0.005 % of the amount of the bill of exchange.</p> <p>0.005% of the value of security at the time of its purchase or sale, as the case may be.</p> <p>The same duty as leviable on a conveyance under clauses (b) or (c) , as the case may be, of Article 25, on the market value of the property.</p> <p>Provided that the provisions of Section 32A shall, mutatis mutandis, apply to such agreement, records thereof or memorandum, as they apply to an instrument under that section:</p> <p>Provided further that, if proper stamp duty is paid under clause (g) of Article 48 on a power of attorney executed between the same parties in respect of the same property then, the stamp duty under this article shall be one hundred rupees.</p> <p>Same duty as is leviable on conveyance under clause (a),</p>

	<p>Nagpur and Navi Mumbai –</p> <p>(A) For the purpose of non residential use of any nature whatsoever</p> <p>(B) For the purpose of residential use</p> <p>(1) Having area upto 27.88 sq. mtrs. (300 sq. ft.)</p> <p>(2) Having area more than 27.88 sq.mtrs. (300 sq.ft.)</p> <p>(iii) Any Municipal Corporations other than those Municipal Corporations mentioned in columns (i) and (ii) –</p> <p>(A) For the purpose of non residential use of any nature whatsoever.</p> <p>(B) For the purpose of residential use</p> <p>(1) Having area upto 27.88 sq.mtrs (300 sq. ft.)</p> <p>(2) Having more than 27.88 sq. mtrs. (300 sq. ft.)</p> <p>(g – e) if relating to hire purchase</p> <p>(h) (A) if relating to:</p> <p>(i) any advertisement on mass media, made for promotion of any product; or programme or event with an intention to make profits or business out of it –</p> <p>(a) if the amount agreed does not exceed Rs. 10 lakhs.</p> <p>(b) in any other case</p>	<p>The same duty as payable under Article 60</p> <p>Rs.100/-</p> <p>The same duty as payable under Article 60</p> <p>The same duty as payable under Article 60</p> <p>Rs.50/-</p> <p>The same duty as payable under Article 60</p> <p>The same duty as payable under Article 36.</p> <p>Rs.2.50/- for every Rs.1000 or part thereof on the amount agreed in the contract subject to minimum rupees 100.</p> <p>Rs.5 /- for every Rs,1,000 or part thereof on the amount</p>
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	<p>(ii) Conferring exclusive rights of telecasting, broadcasting or exhibition of any event or a film-</p> <p>(a) if the amount agreed does not exceed Rs.10 lakhs.</p> <p>(b) In any other case.</p> <p>(iii) Specific performance by any person or group of person where the value of contract exceed Rs.1 Lac-</p> <p>(a) If the amount agreed does not exceed Rs.10 lakhs</p> <p>(b) In any other case.</p> <p>(iv) Creation of any obligation, right or interest & having monetary value but not covered under this article:</p> <p>(a) If the amount agreed does not exceed Rs. 10 lakhs.</p> <p>(b) In any other case</p>	<p>agreed in the contract.</p> <p>Rs.2.50/- for every Rs.1,000 or part thereof on the amount agreed in the contract subject to a minimum of Rs.100.</p> <p>Rs.5/- for every Rs.1,000 or part thereof on the amount agreed in the contract.</p> <p>Rs.2.50/- for every Rs.1,000 or part thereof on the amount agreed in the contract subject to a minimum of Rs.100.</p> <p>Rs.5/- for every Rs.1,000 or part thereof on the amount agreed in the contract.</p> <p>Rs. 1 /- for every Rs. 1,000 or part thereof on the amount agreed in the contract subject to the minimum of Rs.100.</p> <p>Rs.2/- for every Rs.1,000 or part thereof on the amount agreed in the contract.</p>
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	<p>(v) Assignment of copyright under the Copyrights Act, 1957. (a) If the amount agreed does not exceed Rs.10 lakhs.</p> <p>(b) In any other case</p> <p>(vi) Project under Built, operate and transfer, whether with or without toll or free collection rights-</p> <p>(a) If the amount agreed does not exceed Rs.5 lakhs</p> <p>(b) In any other case.</p> <p>(B)If not otherwise provided for, <i>Explanation:</i> No duty shall be chargeable on agreements or its record covered under sub-clauses (b) and (c) of this article, if proper stamp duty is paid under Article 51A.</p>	<p>Rs.2.50/- for every Rs.1,000 or part thereof on the amount agreed in the contract subject to minimum of Rs.100.</p> <p>Rs.5/- for every Rs.1,000 or part thereof in the contract.</p> <p>Rs.1/- for every Rs.1,000/- or part thereof on the amount agreed in the contract subject to a minimum of Rs.100.</p> <p>Rs.2/- for every Rs 1,000/- or part thereof on the amount agreed in the contract.</p> <p>Rs.100/-</p>
6	<p>Agreement relating to Deposit of Title Deed, Pawn, Pledge, or Hypothecation: Any instrument evidencing an agreement relating to: (1) The deposit of title deeds or</p>	

	<p>instrument constituting or being evidence of the title to any property whatever (other than a marketable security), where such deposit has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing future debt.</p> <p>(a) If the amount secured by such deed does not exceed Rs. 5 lakhs.</p> <p>(b) In any other case.</p> <p>(2) The pawn, pledge or hypothecation of movable property, where such pawn, pledge or hypothecation has been made by way of security for their repayment of money advanced or to be advanced by way of loan or an existing or future debt.</p> <p>(a) If the amount secured by such deed does not exceed Rs.5 lakhs.</p> <p>(b) In any other case.</p>	<p>Rs.1/- for every Rs.1,000 part for the amount secured by such deed subject to the minimum of Rs. 100/-.</p> <p>Rs.2/- for every Rs.1,000 or part for the amount secured by such deed.</p> <p>Rs.1/- for every Rs. 1,000 or part thereof for the amount secured by such deed subject to the minimum of Rs.100/-.</p> <p>Rs.2/- for every Rs.1,000/- or part for the amount secured by such deed.</p>
10	<p>Articles of Association of a Company</p> <p>Where the company has no share capital or nominal share capital or increased share capital.</p>	<p>Rs.1, 000 /- for every Rs.5,00,000 /- or part</p>

		thereof subject to a maximum of Rs.50,00,000/-
12	<p>Award Any decision in writing by an arbitrator or umpire, not being an award directing partition:</p> <p>(a) On the amount of value of the property to which the award relates as set forth in the award</p> <p>(b) In any other case.</p>	<p>The same duty as bond [Article 13] subject to a maximum of Rs.100/-.</p> <p>Rs.100/-</p>
15	<p>Cancellation [Exemption: Revocation of will]</p>	Rs.100/-
17	<p>Certificate of Other Document (Shares, Scrip, Stock, etc. on face value + premium)</p>	Rs.1 for every Rs.1, 000 or part thereof of the value of the shares, scrip or stock.
24	Composition Deed	Rs.200/-
25	<p>Conveyance [not being a transfer charged or exempt under Article 59]</p> <p>On the true market value of the property which is the subject matter of the conveyance-</p> <p>(a) If relating to the movable property, for every Rs.500 or part thereof.</p> <p>(b) If relating to immoveable property situated:</p> <p>(i) Within the limits of any Municipal Corporation or any Cantonment area annexed to it or any urban area not mentioned in sub-clause.</p> <p>(ii) within the limits of any Municipal Council or Nagar Panchayat or Cantonment, area annexed to it, or any rural area within the limits of the Mumbai Metropolitan Region</p>	<p>Rs.15/-</p> <p>5% of the market value of the property</p> <p>4% of the market value of the property</p>

	<p>Development Authority, or the influence areas as per the annual statement of rates published under the Bombay Stamp [Determination of True Market Value of Property] Rules, 1995.</p> <p>(iii) within the limits of any Grampanchayat area or any such area not mentioned in sub-clause (ii).</p> <p>(c) If relating to both movable and immovable property</p> <p>(d-a) if relating to order of High Court in respect of the amalgamation or reconstruction of companies under section 394 of the Companies Act, 1956 or under the order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949</p>	<p>3% of the market value of the property</p> <p>The same duty as is payable under clauses (a) and (b).</p> <p>10% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such amalgamation:</p> <p>Provided that, the amount of duty, chargeable under this clause shall not exceed, -</p> <ul style="list-style-type: none"> (i) An amount equal to [5%] of the true market value of the immovable property located within the state of Maharashtra of the transferor company or; (ii) An amount equal to 0.7% of the aggregate of the market value of the shares issue and allotted in exchange or otherwise and the amount of consideration paid,
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	<p>Exemption: Assignment of copyright under the Copyright Act, 1957</p> <p>Special points for conveyance: <i>Explanation I</i> – Where in case of an agreement to sell an immovable property, the possession is transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement shall be deemed to be</p>	<p>for such amalgamation, whichever is higher</p> <p>Provided further that, in case of reconstruction or demerger, the duty chargeable shall not exceed,-</p> <ul style="list-style-type: none"> (i) An amount equal to [5%] of the true market value of the immovable property located within the state of maharashtra transferred by the demerging company to the resulting company; or (ii) An amount equal to 0.7% of the aggregate of the market value of the shares issued or allotted to the resulting company and the amount of consideration paid for such demerger, whichever is higher.
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conveyance and stamp duty thereon shall be leviable accordingly.

Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section.

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement for sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification then such a conveyance shall be treated as other instrument under section 4 and the duty of once hundred rupees shall be charged.

Explanation III – For the purpose of clause (da) the market value of shares-

- (a) In relation to the transferee company, whose shares are listed and quoted for trading on a stock exchange, means the market value of shares as on the appointed day mentioned in the scheme of amalgamation or when appointed day is not so fixed, the date of order of the High Court, and
- (b) In relation to the transferee

	<p>company, whose shares are not listed/ or listed but not quoted for trading on a stock exchange, means the market value of the shares issued or allotted with reference to the market value of the shares of the transferor company or as determined by the collector after giving the transferee company an opportunity of being heard.</p> <p>For the purpose of clause (da), the number of shares issued or allotted in exchange or otherwise shall mean, the number of shares of the transferor company accounted as per exchange ratio as on the appointed date.</p>	
27	Counterpart/ Duplicate	The stamp duty as is payable on the original, subject to a maximum of rupees one hundred.
32	<p>Exchange of property</p> <p><i>Explanation:</i> For the purposes of this Article, notwithstanding anything contained hereinabove, the highest duty on either of the property exchanged shall be chargeable.</p>	The same duty as leviable on a conveyance under clause (a) , (b) or (c) as the case may be, of Article 25, on the market value of the property of the greatest value.
34	Gift (other than a settlement, will or transfer)	<p>The same duty as leviable on a conveyance under clause (a), (b) or (c) as the case may be of Article 25, on the market value of the property which is subject matter of the gift</p> <p>Provided that if the property</p>

		is gifted to a family member being the husband, wife, brother or sister of the donor or any lineal descendant of the donor, then the amount of duty chargeable shall be at the same rate as specified in this article or at the rate of Rs.10/- for every Rs.500/- or part thereof on the market value of the property which is the subject matter of the gift, whichever is less
35	Indemnity Bond	Rs.200/-
36	<p>Lease Including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease- Where such lease purports to be-</p> <p>(i) For a period not exceeding five years</p> <p>(ii) For a period exceeding five years but not exceeding ten years with a renewal clause contingent or otherwise.</p> <p>(iii) For a period exceeding ten years but not exceeding twenty nine years with a renewal clause contingent or otherwise.</p> <p>(iv) For a period exceeding twenty nine years or in</p>	<p>The same duty as is leviable on a conveyance under clause (a), (b) or (c), as the case may be, of article 25, on 10 % of the market value of the property.</p> <p>The same duty as is leviable on a conveyance under clause (a), (b) or (c) as the case may be, of article 25, on 25% of the market value of the property.</p> <p>The same duty as is leviable on a conveyance under clause (a), (b) or (c) as the case may be of article 25, on 50% of the market value of the property.</p> <p>The same duty as is leviable on conveyance under clause</p>

	<p>perpetuity or does not purport for any definite period, or for lease for period exceeding twenty nine years, with a renewal clause contingent or otherwise.</p> <p><i>Explanation I:</i> any consideration in the form of premium or money advanced or to be advanced or security deposit by whatever name called shall, for the purpose of market value be treated as consideration passed on.</p> <p><i>Explanation II-</i> the renewal period, if specifically mentioned, shall be treated as part of the present lease.</p> <p><i>Explanation III-</i> For the purpose of this article, the market value, for the instruments falling under section 2(n)(iii) [toll agreements] and article 5 (g-e) [Hire Purchase Agreements] shall be the total contract value and they shall be chargeable to duty same as under clause (a) of article 25.</p>	<p>(a), (b) or (c) as the case may be, or article 25, on 90% of the market value of the property.</p>
<p>36A</p>	<p>Leave and License Agreement</p> <p>(a) Where the leave and license agreement purports to be for a term not exceeding sixty months with or without renewal clause.</p>	<p>0.25% of the total sum of:</p> <ul style="list-style-type: none"> (i) the license fees or rent payable under the agreement; plus (ii) the amount of non refundable deposit or money advanced or to be advanced or premium, by whatever name called; plus (iii) The interest

	(b) Where such leave and license agreement purports to be for a period exceeding sixty months with or without renewal clause;	<p>calculated at the rate of 10% per annum on the refundable security deposit or money advanced or to be advanced, by whatever name called.</p> <p>The same duty as is leviable on lease, under clause (ii), (iii), (iv) as the case may be of Article 36.</p>
37	<p>Letter of allotment of shares In any company or proposed company, or in respect of any loan to be raised by any company or proposed company.</p>	Rs. 1/-
39	<p>Memorandum of Association of company (a) If accompanied by articles of association under section 26 of the Companies Act, 1956 (b) If not so accompanied</p> <p>[Exemption: Memorandum of any association nor formed for profit and registered under section 25 of the Companies Act, 1956.]</p>	<p>Rs.200/-</p> <p>The same duty as is leviable on Articles of Association under Article 10 according to the share capital of the company.</p>
40	<p>Mortgage Deed (a) When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given</p>	The same duty as is leviable on a conveyance under clauses (a), (b) or (c) as the case may be, of Article 25, for the amount secured by such deed.

	(b) When possession is not given or agreed to be given as aforesaid	Rs.5/- for every Rs.1,000 or part thereof for the amount secured by such deed , subject to the minimum of one hundred rupees and the maximum of ten lakh rupees.
42	Notary (attestation etc., by Notary Public)	Rs.25/-
46	Partition	<p>Rs.10/- for every rs.500/- or part thereof of the amount or the market value of the separated share or shares of the property.</p> <p>Note: The largest share remaining after the property is partitioned (or , if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.</p> <p>Provided that always, -</p> <p>(a) When an instrument of partition containing an agreement to divide the property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first</p>

		<p>instrument, but shall not be less than five rupees.</p> <p>(b) Where the instrument relates to the partition of agricultural land, the rate of duty applicable shall be one hundred rupees.</p> <p>(c) Where a final order for effecting a partition passed by any Revenue Authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed Rs.10/-.</p>
47	<p>Partnership</p> <p>(1) Instrument of partnership</p> <p>(a) Where there is no share of contribution un partnership, or where such contribution [brought in by way of cash] does not exceed Rs.50,000.</p> <p>(b) Where such share contribution [brought in by way of cash] is in excess of Rs.50,000, for every Rs.50,000 or part thereof.</p>	<p>Rs.500/-</p> <p>Rs.500/-, subject to maximum of Rs.5000/-</p>

	<p>(c) Where such share contribution is brought in by way of property, excluding cash.</p> <p>(2) Dissolution of partnership or retirement of partner:</p> <p>(1) Where on dissolution of the partnership or on retirement of a partner, any property is taken as his share as a partner other than a partner who brought in that property as his share of contribution in the partnership.</p> <p>(2) In any other case</p>	<p>The same duty as is leviable on conveyance under clause (a), (b) or (c) as the case may be, of article 25, on the market value of the property.</p> <p>The same duty as is leviable on a conveyance under clause (a), (b), (c) as the case may be of Article 25 on the market value of such property, subject to minimum of Rs.100/-.</p> <p>Rs.200/-</p>
48	<p>Power of Attorney [not being a proxy]</p> <p>(a) When executed for the purpose of registration of documents in relation to a single transaction or for admitting execution of one or more such documents.</p> <p>(b) When required in suits or proceedings under the Presidency Small Cause Courts Act, 1882</p> <p>(c) When authorizing one person or more to act in more than one transaction other than the case</p>	<p>Rs.100/-</p> <p>Rs.100/-</p> <p>Rs.100/-</p>

	<p>mentioned in clause (a)</p> <p>(d) When authorizing one person to act in more than one transaction or generally.</p> <p>(e) When authorizing more than one person to act in single transaction or more than one transaction jointly or severally or generally.</p> <p>(f) (i) when given for consideration and authorizing to sell an immovable property.</p> <p>(ii)when authorizing to sell or transfer immovable property without consideration or without showing any consideration, as the case may be,</p> <p>(a) If given to the father, mother, brother, sister , husband, wife, daughter, grandson, granddaughter or such other close relative; and</p> <p>(b) In any other case</p> <p>(g) When given to a promoter or developer by whatever name called, for construction on, development of, or sale or transfer (in any manner whatsoever) of, any immovable</p>	<p>Rs.100/-</p> <p>Rs.100/-</p> <p>The same duty as is leviable on a conveyance under clause (a), (b), (c) as the case may be of Article 25 on the market value of such property</p> <p>Rs.500/-</p> <p>The same duty as is leviable on a conveyance under clause (a), (b), (c) as the case may be of Article 25 on the market value of such property</p> <p>The same duty as is leviable on a conveyance under clause (a), (b), (c) as the case may be of Article 25 on the market value of such</p>
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	<p>property.</p> <p>(h) In any other case</p>	<p>property</p> <p>Provided that , the provisions of Section 32A shall , mutatis mutandis apply to such an instrument of power of attorney as they apply to a conveyance under that section.</p> <p>Provided further that, when proper stamp duty is paid under clause (g-a) of article 5 on an agreement, or records thereof or memorandum of an agreement executed between the same parties and in respect of the same property, the duty chargeable under this clause shall be Rs.100/-.</p> <p>Rs.100 for each person authorized</p>
51	<p>Reconveyance of Mortgaged Property</p> <p>(a) If the consideration for which the property was mortgaged does not exceed Rs.2500</p> <p>(b) In any other case</p>	<p>The same duty as a bond (Article 13)for such consideration</p> <p>Rs.200/-</p>
51A	<p>Record of transactions [Electronics or otherwise] effected by a trading member through a stock exchange or the association referred to in section 10B-</p> <p>(a) If relating to the sale or</p>	

	<p>purchase of government securities</p> <p>(b) If relating to the purchase or sale of securities, other than those falling under item (a) above,</p> <p>i. In case of delivery</p> <p>ii. In case of non delivery</p> <p>(c) If relating to futures and options trading</p> <p>(d) If related to forward contracts of commodities traded through an association or otherwise.</p>	<p>0.005% of the value of the security</p> <p>0.005% of the value of the security</p> <p>0.005% of the value of the security</p> <p>0.005% of the value of the futures and options trading</p> <p>0.005% of the value of the forward contract.</p>
52	<p>Release Any instrument whereby a person renounces a claim upon other person or against any specified property,-</p> <p>(a) If the release deed of an ancestral property or part thereof is executed by or in favour of brother or sister or son or daughter or son of predeceased son or daughter of predeceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations.</p> <p>(b) In any other case.</p>	<p>Rs.200/-</p> <p>The same duty as is leviable on a conveyance under clause (a), (b), (c) as the case may be of Article 25 on the</p>

		market value of the share, interest, part or claim renounced.
58	<p>Surrender of Lease Including an agreement for surrender of lease:</p> <p>(a) Without any consideration</p> <p>(b) With consideration</p>	<p>Rs.200/-</p> <p>The same duty as is leviable under clause (a), (b) or (c) of Article 25 on the amount of consideration.</p>
59	<p>Transfer [whether with or without consideration]</p> <p>(a) Of debentures, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8 of the Indian Stamp Act, 1899. [Debenture includes debenture stock]</p> <p>(b) Of any interest secured by bond, mortgage deed or policy of insurance.</p> <p>(c) Of any property under section 22 of the Administration General Act, 1963.</p> <p>(d) Of any trust property without consideration from one trustee to another or from a trustee to a beneficiary.</p> <p>Exemptions: Transfer by endorsement –</p> <p>(a) Bill of exchange, cheque or promissory note</p>	<p>Fifty paise for every Rs.100 or part thereof of the consideration amount of the debenture</p> <p>The same duty as a bond (Article 13) for such amount or value of the interest as set forth in the transfer, subject to maximum of Rs.200/-.</p>

	<p>(b) Bill of lading delivery order, warrant for goods or other mercantile document or title to goods</p> <p>(c) Policy of insurance</p> <p>(d) Of securities of the central government</p>	
61	<p>Trust</p> <p>(A) Declaration of, or concerning, any property when made by any writing not being a will-</p> <p>(a) Where there is disposition of property</p> <p>(i) where the trust is made for a religious or charitable purpose.</p> <p>(ii) in any other case</p> <p>(b) Where there is no disposition of property –</p> <p>(c)</p> <p>(i) where the trust is made for a religious or charitable purpose.</p> <p>(ii) in any other case.</p>	<p>Rs.10 for every Rs.500 or part thereof of a sum equal to the amount settled or market value of the property settled.</p> <p>The same duty as a conveyance under clause (a), (b), (c) as the case may be of article 25 for a sum equal to the amount settled or the market value of the property settled.</p> <p>The same as a bond (Article 13) for a sum equal to the amount settled or market value of the property settled, but not exceeding Rs.200/-.</p> <p>The same as a bond (Article 13) for a sum equal to the amount settled or market value of the property settled, but not exceeding Rs.200/-.</p>

	(B) Revocation of – or concerning any property when made by any instrument other than a will.	The same as a bond (Article 13) for a sum equal to the amount settled or market value of the property settled, but not exceeding Rs.200/-.
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REGISTRATION

What is registration of documents and lay down the procedure for registration?

As per section 17(1) & Section 17(1A) of The Registration Act, 1908, various documents relating to transfer of movable and immovable properties are required to be registered. Registration is legal formality wherein the document, which is required under the law to be registered, undergoes the following procedure by the Sub- Registrar of Assurance of the respective district. After completion of these procedures, the document is regarded as being registered.

The Sub-Registrar of Assurance does the following:

- (i) He verifies the document to ascertain whether it is legal to register such a document.
- (ii) He further verifies that full stamp duty is paid on that document before registration.
- (iii) In his presence all parties, executing the document, admit that they have executed the document presented for registration. Parties who are present and admitting to execute the document are then personally identified by two independent witnesses. All the parties and all the witnesses present, again sign in the presence of sub-registrar on an additional page attached to the document.
- (iv) Parties to the document are photographed and their left hand thumb impression is taken and such photograph and thumb impression is affixed on additional pages attached to the document apart from coloured photographs and thumb impression which a person affixes in the agreement while executing the document. Now a days photographs & left hand thumb impression of witnesses is also affixed.
- (v) He puts his official seal on each page and puts a unique numbering block on each page of the document including the additional pages. On the last page he signs the document as being registered.
- (vi) After completing the above procedure, he records the content of the document, including the additional pages, either by photocopying the content or by scanning the content of the document. The photocopy or scanned image is permanently retained by him in his records so that in future whenever a copy of the document is required it can be

- obtained. Such copy becomes a public document, which anybody can inspect by paying the requisite inspection fees and can obtain a certified true copy.
- (vii) After taking a copy of the document, as mentioned above, on the record and after completing the above formalities original document is handed over to the party for obtaining one photocopy of the registered document. Photocopy should be taken on only one side of paper and paper should be of 90 GSM thickness and there should be butter paper in between two sheets of the photocopy. After original and photocopy is given back to sub-registrar, he verifies the original and the photocopy and then the original document is returned to the party presenting the document for registration. This completes the whole process of registration.

Which are the documents to be registered compulsorily?

Sec.17 of the Indian Registration Act, 1908 deals with the list of documents that have to be compulsory registered. The said section states that the following documents should be registered if the property to which they relate is situated in district in which and if they have been execute on or after the date on which Act No. XVI of 1864, of Indian Registration Act, 1866 (XX of 1866) or The Registration Act, 1871 (VII of 1871), or The Registration Act, 1877 (III of 1877) , or this Act come or comes into force, namely ;

- (a) Instrument of gift of immovable property ;
- (b) Other non-testamentary instruments which purport or operate to create, declare assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of One Hundred Rupees and upwards, to or in an immovable property ;
- (c) Non-testamentary instruments, which acknowledge the receipt or payment of any consideration. On account of the creation, assignment, limitation or extinction of any such right title or interest .
- (d) Lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent ; and
- (e) Non-testamentary instruments transferring or assigning any decree or order of a court or any Award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of One Hundred Rupees and upwards, to or in an immovable property.

Provided that the State Government may, by order published in the official gazette exempt from the operation of this sub-section any

lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed Fifty Rupees.

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the registration and other related laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purpose of the said section 53-A.

(2) Nothing in clause (b) and (c) of sub-section (1) applies to :-

- (i) Any composition deed; or
- (ii) Any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property ; or
- (iii) Any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or ,
- (iv) Any endorsement upon or transfer of any debenture issued by any such company ;or
- (v) Any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of the hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title, or interest ; or
- (vi) Any decree or order of a court or
- (vii) Any grant of immovable property by the government or
- (viii) Any instrument of partition made by a Revenue Officer, or
- (ix) Any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (XXVI of 1871), or the Land Improvement Act, 1883 (XIX of 1883) ; or
- (x) Any order granting a loan under the Agriculturists Loans Act, 1884 (XII of 1884) ; or instrument for securing the

repayment of a loan made under this Act ; or any order made under the Charitable Endowments Act, 1890 (VI of 1890), vesting any property in a Treasurer or Charitable Endowments of divesting any such Treasurer of any property ; or

- (x-a) any order made under the Charitable Endowments Act, 1890, vesting any, property in a Treasurer or Charitable Endowments or divesting any such treasurer of any property; or
 - (xi) Any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage ; or
 - (xii) Any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer. (Explanation – A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.)
- (3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.

Is registration compulsory for all types of transfer of immovable properties?

Except in case of transfer of shares of a co-operative housing society and housing limited company where registration is optional, virtually in all cases of transfer of immovable property like family arrangement, agreement to sell, conveyance, gift deed, lease deed, leave and license agreement, tenancy agreement, declaration deed, mortgage deed, exchange deed, power of attorney to sell for consideration etc has to be registered compulsorily under Indian Registration Act 1908.

What is the effect of non-registration?

If a particular document is required to be registered under the Registration Act, 1908, and is not registered then as per Section 49 of the Registration Act, 1908, that document becomes inadmissible in the court of law. In other

words, it loses its legal validity in the eyes of law i.e. the proper legal title will not pass on to the purchaser/ transferee i.e. the title will be defective if registration of the document is not done.

However, documents such as agreement for sale made by the builder in favour of the purchaser is to be registered compulsorily under the Maharashtra Ownership Flats Act, 1963, and lease deed (below one year), leave and license agreement and tenancy agreement is to be registered compulsorily under the Maharashtra Rent Control Act, 1999, otherwise there will be penalty/imprisonment on the person responsible for registering the same, however, the documents will not be considered defective on account of non-registration and will be accepted by court as an evidence.

What is a registration fee?

The registration fee is a fee for the service provided by the Sub- registrar's office, of recording and preserving the document for years together and in proper condition. If one does not pay registration fees, he will not be able to register the document and will be deprived of these services but there is no penalty for non-payment of registration fees as is the case with stamp duty. Stamp duty is a tax whereas registration fees, as mentioned earlier, is a fee for services provided. So whenever, a person goes for registration, he is charged the same registration fees as is chargeable on his document on the date of registration and no interest etc. is charged.

The registration fees are 15 of the market value of the property or Rs.30,000/-, whichever is less in case of documents pertaining to sale or conveyance. This is applicable from 01.04.2003 to date.

Computer service charges at the rate of Rs.20/- per page is charged in addition to above Registration fees. Registration fees is now payable by way of pay-order and computer service charges is to be paid in cash at the time of registration.

What are the penal provisions with respect to registration?

One must keep in mind that when one goes for registration after four months and before eight months of execution of the document, he is charged a penalty which could be upto ten times of registration fees. This is the penalty for delay in presenting the document before the registrar and is not a penalty for non-payment.

Normally, this penalty is charged at the rate of 2.5 times of the registration fees per month for delay beyond the permissible 4 months.
