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INDIAN AUDIT AND ACCOUNTS DEPARTMENT

RECEIPT AUDIT MANUAL VOL II

(STAMP DUTY AND REGISTRATION)

OFFICE OF THE ACCOUNTANT GENERAL-(AUDIT) II, MAHARASHTRA

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NAGPUR



PREFACE

This Manual has been prepared for the guidance of those entrusted with the audit of Stamp Duty and Registration Fee. The basic provisions of the relevant Acts and the Rules governing the levy of Stamp Duty and Registration Fees and the scope of audit are set out. Therefore, only the relevant provisions that may have a bearing during the course of audit are discussed.

This Manual can be regarded in a sense as arousing in the user an interest in the subject and therefore, it should be treated merely as a preliminary step in order to enable the auditor to grasp the essentials of the administration of Stamp Duty and Registration Fee.

The sources of the provisions have been indicated in websites in the footers at appropriate places so that it could also be read simultaneously with the Manual. For fuller and exhaustive study, the user of the manual should always refer to the provisions of the Acts, the rules framed thereunder and to the case laws on the subject as reported and other provisions governing the audit as summarized in impartial and academically oriented commentaries. To discharge his functions effectively, the auditor must first and foremost be thoroughly conversant with the processes and procedures relating to the levy and collection of the Duty and the Fees as well as the Laws and Rules governing such processes and procedures.

Moreover, this Manual is prepared taking into account the provisions contained in the Auditing Standards 2017 and other instructions of the CAG issued from time to time. It shall be the duty of the Head Quarters Branch of the Revenue Sector to keep this Manual upto date, by issuing timely correction slips whenever deemed necessary.

The Manual has been organised in nine chapters with appendices and abbreviations for an optimal coverage of the topic.

While reading the manual the difficult words or expressions or abbreviation in our judgment are explained in the last chapter of the manual.

Any suggestion in this regard is most welcome and may be addressed to the SRA (Hqrs), O/o The AG (Audit) II Maharashtra Nagpur for further improvement in future.

Nagpur
Maharashtra, Nagpur.

Accountant General (Audit)-II

TABLE OF CONTENTS

Chapter No.	Section	Subject	Page No.
	I	GENERAL	
1		Organisational Set-up of the Department of Stamps	4 to 9
2		The Legislative Background	10 to 12
3		Receipt Audit	13 to 19
4		Basic Features of the Levy of Stamp Duty	20 to 23
	II	PLANNING	
5		Introduction to Planning	24 to 30
6		Important Provisions of the Principal Acts governing the levy of Stamp Duty	31 to 55
7		Allied Acts in Property Laws	56 to 74
8		Miscellaneous Provisions in the Rules	75 to 82
9		Annual Guidelines issued by the Inspector General of Registration	83 to 120
	III	EXECUTION	
10		Conduct of Audit	121 to 131
11		Application in Audit	132 to 141
	IV	REPORTING	
12		Standards of Reporting	142 to 150
13		List of Appendices	151 to 198
		Glossary and Abbreviations	199 to 200

CHAPTER-1

ORGANISATIONAL SET-UP OF THE DEPARTMENT OF STAMPS

1.1 Introduction

1.1.1 The levy of stamp duty was first devised in the Netherlands in 1624 after a public competition to find a new form of tax. About seven decades later in 1694, the tax came to the United Kingdom after travelling through France (1651), Denmark (1657) and Prussia (1682), in order to finance the war against France. Over time, the duty had covered "newspapers, pamphlets, lottery tickets, apprentices' indentures, advertisements, playing cards, dice, hats, gloves, patent medicines, perfumes, insurance policies, gold and silver plate, hair powder and armorial bearings," as recounted about the UK experience. However, after stamp duty in the above form was largely abolished there have been variants of the tax. Thus, SDLT or Stamp Duty Land Tax is a self-assessed transfer tax charged on land transactions; and SDRT or Stamp Duty Reserve Tax is on agreements for transfer of shares and other securities.

The stamp duty came to India with the advent of The Indian Stamp Act 1899.

1.1.2 The Office of the 'Inspector General of Registration and Controller of Stamps' in the state of Maharashtra is established under the 'Secretary Department of Revenue' for regulating the supply of various types of stamps required for registration of documents that are admissible as evidence in the courts of law. Inter alia, it is also responsible for the administration of various statutes and enactments made by the Central and State Governments in this regard.

The erstwhile Department of Revenue and Forests where the earlier activity of revenue collection from stamps and registration fell has now been bifurcated into Revenue and Forests.

1.1.3 The 'Inspector General of Registration and Controller of Stamps' has under its authority, separate branches for Head Office, Valuation, Government Photo Registry, Field Offices (Mumbai) and Field Offices (excluding Mumbai). (*see organanogram in para 1.4 below for better understanding*).

Note: - Only crucial branches are discussed herein that are impacting audit.

1.1.4 The Field Offices (Mumbai) has below it an 'Additional Controller of Stamps' and a 'Deputy Inspector General of Registration' who have under them the 'Collector of Stamps' and 'Joint District Registrars' respectively who are duly assisted by Sub Registrars and Marriage Officers.

1.1.5 Similarly, in respect of Field Offices (excluding Mumbai) it has below it a 'Deputy IGR and Deputy Controller of Stamps' and further under it the 'Joint District Registrars and Collector of Stamps' duly assisted by Sub Registrars and Marriage Officers.

1.1.6 Under the Valuation Branch is the 'Joint Director Town Planning' assisted by the 'Deputy Director or Assistant Director of Town Planning'.

1.1.7 The Head Office Branch has the 'Joint Inspector General of Registration', 'Deputy Inspector General of Registration (HQ)', 'Deputy Inspector General of Registration (Information Technology)', 'Deputy Director Accounts' followed by an 'Assistant IGR' and 'Desk Officers'.

1.1.7.1 The Joint Director of Town Planning and Valuation, Maharashtra State prepares the Annual Statement of average rates (ASR) by dividing the properties in every tahsil, municipal corporation area or local body area into groups, sub groups or classes after taking into account the type of land, types of construction, locational and situational advantages and disadvantages of property and shall be arranged zonewise/wardwise for urban property or talukawise/villagewise for rural property and submit the same for approval to the Chief Controlling Revenue Authority by 31st October each year.

Accordingly, market value chart for each tahsil or municipal corporation area or local body area is published effective from 1st January of the next year. However with the publication of the ready reckoners on the basis of financial year from 2015-16 onwards, adjustments of dates are accordingly made.

1.2 Administrative Structure:-

1.2.1 At ministerial level, the Cabinet Minister (Revenue) and the Minister of State (Revenue) presides over the Principal Secretary followed by the 'Inspector General of Registration and Controller of Stamps, Maharashtra State (IGR)'.

1.2.2 The 'Inspector General of Registration and Controller of Stamps, Maharashtra State' (IGR) is the chief of the machinery for registration of documents in the state. Similarly, as per Stamp Act, he is the Chief Controlling Revenue Authority.

1.2.3 For the functionaries acting below the IGR (*see organanogram below in para 1.4 for better understanding*)

1.3 Structure at the Field Level

1.3.1 There are 507 offices of Sub-Registrars in the entire state for registration of documents. In the rural areas, generally there is one office for each taluka.

1.3.2 To monitor the offices of sub-Registrars, there are 34 offices of Joint District Registrars at the District level.

1.3.3 Further, there are 8 Regional Divisions of the Department in the State at Mumbai, Pune, Thane, Nashik, Aurangabad, Nagpur, Amravati and Latur and each of them are under the control of a Deputy Inspector General of Registration.

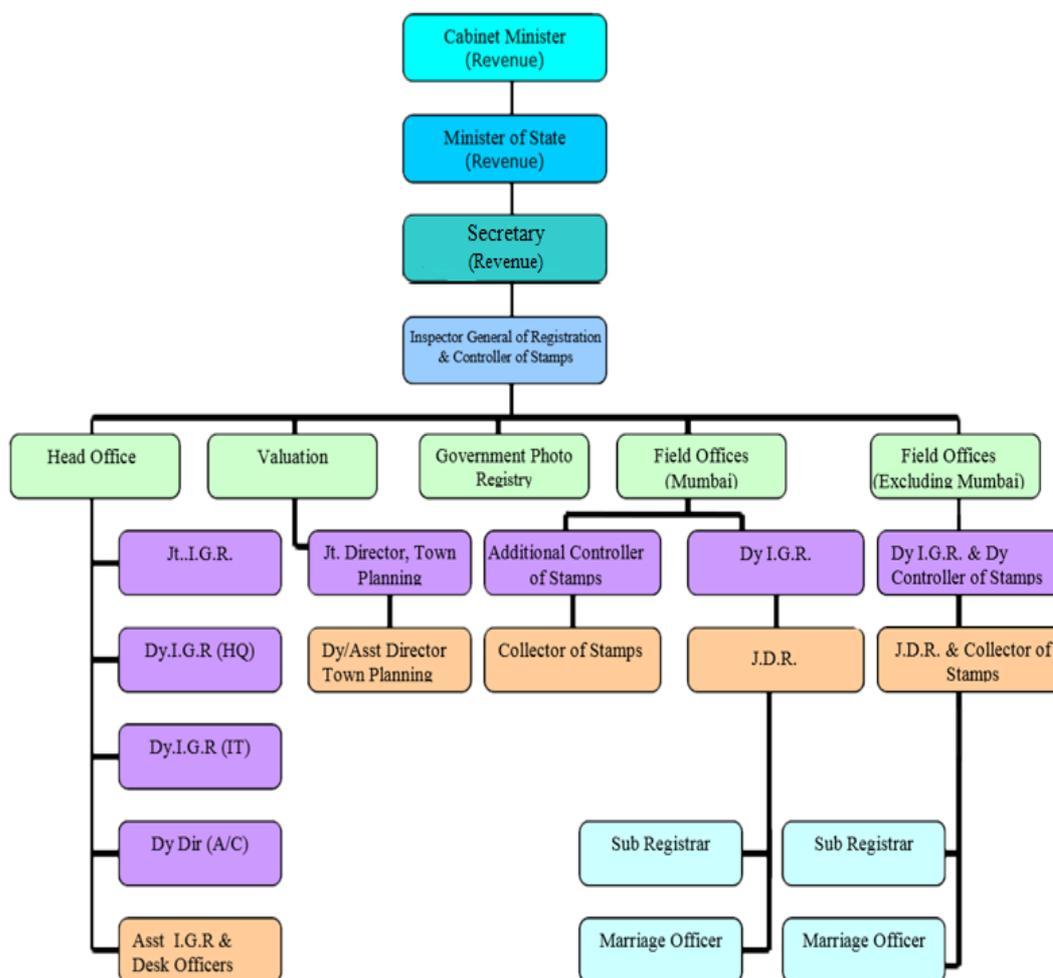
1.3.4 The Collector of Stamps of Mumbai City and Mumbai Suburban District are under the control of the Additional Controller of Stamps, Mumbai.

1.3.5 The Sub-Registrars of district headquarters in the State also perform the function of special marriages registration. However, there are independent offices of Marriage Officers for the 3 districts of Mumbai City, Mumbai Suburban and Pune.

1.3.6 Again, there are 7 offices of 'Deputy Director/Assistant Director, Town Planning (Valuation)' for preparing Annual Statement of Rates and they are under the control of Joint Director, Town Planning (Valuation) at state level.

1.3.7 Government Photo Registration Office in Pune functions to preserve the records of documents photographed in the past.

1.4 Organogram of the department:-



1.5 Store Account

Currently, there are 3556 Stamp Vendors and 252 designated Banks (17 banks for online payment of challan, 6 for counter payment, 6 for e challan /simple receipt, 4 for eSBTR, 217 for franking and 2 sub agent banks for e payments) who act as custodians of Stamp papers either receiving direct from the Govt of India Security Press, Nasik or operating digitally.

1.6 Main functions of the audit relevant departmental officers

1.6.1 Sub Registrar: - Primarily to do with -

- a) Registration of documents and appropriate stamping thereof,
- a) To generate copies of the registered documents,
- b) Indexing of the registered documents so that duplicates could be provided to citizens as and when required,
- c) Facilitate inspection and search of the registered documents,
- d) Providing relevant information to departments concerned with mutation of property and

e) To allow adjudication by Joint District Registrar if mutually agreed upon by the transacting parties.

A will or a codicil i.e an amendment to the will can be deposited with him in a sealed cover and it can be got registered after the death of the testator at the cost of the party desiring it on payment of appropriate fees , after the death of the depositor.

1.6.2 Joint District Registrar/Collector of Stamps:-

1.6.2.1 To attend to the grievances of citizens and to address the difficulties of the sub registrars.

1.6.2.2 Adjudication of stamp duty on documents produced for the purpose under Section 31 and 32, 32(A), 32(B) of the Maharashtra Stamp Act, 1958.

1.6.2.3 Recovery of stamp duty on insufficiently stamped and unstamped documents

1.6.2.4 Hears appeals and applications referred to him under section 72 and 73 of the Indian Registration Act 1908 against refusals to register documents by the sub registrars.

1.6.2.5 Under section 25 and 34 of the Indian Registration Act 1908 he is empowered to condone delays in presentation of documents and appearance of executants provided the delay does not exceed four months and to direct registration of documents concerned on payments of fine not exceeding ten times of the proper registration fees

1.6.2.6 Visiting the sub registry offices at least once in two years and submit memoranda of inspection to the inspector general.

1.6.2.7 He is also competent to order refunds in cases of surcharges and to grant full or partial remission of the safe custody fees in suitable cases.

1.6.2.13 Furnishing replies to the Audit queries made by the Accountant General during the course of the Local Inspection and complying with the irregularities and omission pointed out in the Test Audit reports.

1.6.3 Deputy Inspector General of Registration / Additional Controller of Stamps / Deputy Controller of Stamps:-

1.6.3.1 Adjudicate cases flowing from the JDR where the market value determined by JDR is not acceptable to the transacting parties.

1.6.3.2 Order refund of stamp duty in excess of Rs 1 lakhs upto 10 lakhs.

1.6.4 Inspector General of Registration and Controller of Stamps:-

1.6.4.1 Administrative control of the Sub Registrars, Joint Sub Registrars, Joint District Registrars/Collector of Stamps and Deputy Inspectors General of Registration/Additional Controller of Stamps.

1.6.4.2 Order refund of stamp duty in excess of Rs 10 lakhs.

1.6.4.3 As the Chief Controlling Revenue Authority to scrutinise the schedules of assets of the deceased persons in matters of application for probates or letters of administration (nothing but a copy of Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator) submitted to the High Court, Mumbai. Recovery of additional probate duty (which is in the nature of court fees) in cases of under valuations of estates of the deceased persons. On the other hand, refunds are granted on account of the excess payment of probate duties.

1.6.2.4 Scrutiny of clearance lists received from the Associations dealing in shares, cotton, bullion, spices and other commodities and stamping them with special adhesive stamps on receipt of recovery of the requisite stamp duty.

1.6.2.5 Explaining to the members or non-members of various associations and the mercantile community in general, the provisions of stamp law, scrutiny of Bazar Suda Books, Cash Books and Client's Contract Books and recovering the Stamp duty along with the penalty on contracts struck outside the ring and upon which stamp duty has not been paid.

1.6.2.6 Compilation of the Annual Stamps Statistical Tables of the transactions of the Stamp Department in the entire State of Maharashtra.

1.6.2.7 In addition to the above functions, it has to look into matters relating to the establishment, stamp and court fee references received from Government, other Governments and Semi Governments officers and Public in general.

1.6.2.8 It shall inter alia be the duty of IGR to revise the Joint District Collector's decision as exercised under section 32, 39 and 41 of the Maharashtra Stamp Act.

[http://www.cag.gov.in/sites/default/files/manuals/RA_Manual_2015.pdf] & [Local SRA HQ]

CHAPTER-2

THE LEGISLATIVE BACKGROUND

2.1 Powers of the Union and States

Registration of a document with the registering authority involves levy of Stamp Duty and Registration Fee. They are levied by the State Government by virtue of the powers given to the State Legislature in the Seventh Schedule of the Constitution of India in Entry No 63 of List II i.e State List (narration being 'Rates of stamp duty in respect of documents other than those specified in the provisions of List I') read with Entry No 66 thereof (narration being 'Fees in respect of any of the matters in this List II, but not including fees taken in any court'). Again, Entry No 44 of the List III i.e Concurrent List of the Constitution (narrated as 'Stamp duties other than duties or fees collected by means of Judicial Stamps but not including rates of Stamp Duty') is a subject matter in the Concurrent List of the Seventh Schedule to the Constitution. As such there are both the Union and State Legislations. The Union Legislations as amended in their application to the state of Maharashtra has been adopted by the State Government.

It only means that the rates of stamp duty shall be determined by the states and the instruments shall be as notified in List I, II or III of the constitution. Exception is the fees taken in a court of law. The Lists I, II and III signifies subjects that could be legislated by the Union Government, State Government and by either the Union or State respectively.

2.2 Indian Stamp Act and the scheme of the Constitution

The Indian Stamp Act, 1899 (2 of 1899) is a fiscal statute laying down the law relating to tax levied in the form of stamps on instruments recording transactions. Briefly, the scheme relating to stamp duties, provided for in the Constitution is as follows:-

Under Article 246, stamp duties on documents specified in Entry 91 of the Union List (viz. Bills of Exchange, Cheques, Promissory notes, Bills of Lading, Letters of Credit, Policies of Insurance, transfer of Shares, Debentures, Proxies and Receipts) are levied by the Union but under Article 268, each State, in which they are levied, collects and retains the proceeds (except in the case of Union Territories in which case the proceeds form part of the Consolidated Fund of India). At present, duty is levied on all these documents except cheques.

Stamp duties on documents other than those mentioned above are levied and collected by the States by virtue of the legislative entries 63 and 66 in the State List in the 7th Schedule of the Constitution;

Provisions other than those relating to rates of duty (which fall within the scope of Entry 91 of the Union List and entry 63 of the State List mentioned above) fall within the legislative power of both the Union and the States under Entry 44 of the Concurrent List in the 7th Schedule which reads as under:-

"44 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty"

2.3 Dutiability of Instruments under both the Acts are mutually exclusive

Under section 8 of the Indian Stamp Act, 1899 regarding Bonds, Debentures or other Securities issued on Loans made under Act 11 of 1879 it is stated that -

(1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of one per centum on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities, from the duty chargeable in respect thereof, prior to the twenty-sixth day of March, 1978, when such duty has not already been paid or remitted by order issued by the Central Government.

(3) In the case of willful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

In other words, such bonds, debentures or other securities shall be charged with duty but is exempted for its renewal, consolidation and outstanding as is laid down therein.

However an analogous provision is also made in section 30 of the Maharashtra Stamp Act to charge with duty the instruments purporting to be debentures as are not covered under section 8 of the Indian Stamp Act 1899.

2.4 Acts and the Rules made there under

The levy of Stamp Duty and Registration fee in Maharashtra is based on and regulated by the following Acts and Rules: -

- (a) The Indian Stamp Act, 1899
- (b) Maharashtra Stamp Act, 1958
- (c) The Maharashtra Stamp Rules, 1939
- (d) The Maharashtra Stamps Sale and Supply Rules, 1963
- (e) The Bombay Stamp Refund Rules, 1963
- (f) The Maharashtra e payment of Stamp Duty and Refund Rules 2013
- (g) The Maharashtra Stamp (Determination of True Market Value of property) Rules, 1995
- (h) The Indian Registration Act, 1908
- (i) The Maharashtra Registration Manual, 1929
- (j) The Maharashtra Registration Rules, 1961
- (k) Annual Statement of Rates Guidelines for Mumbai and Rest of Maharashtra
- (l) Maharashtra e Registration and e Filing Rules, 2013

CHAPTER-3

RECEIPT AUDIT

3.1 History of Receipt Audit

In 1959, at the conference of the Chairman of Public Accounts Committees, it was recommended that the Public accounts Committee (PAC) in the States might suggest to the State Governments that audit of receipts should be entrusted to the Comptroller and Auditor General (C&AG).

Between 1961 and 1968, audit of sales tax receipts and refunds was entrusted to the C&AG. The next major reorganization took place when the Mukherjee Committee was set up in 1972 for suggesting guidelines for discharging responsibilities in an effective manner. It said that a separate report may be prepared on revenue receipts of the State Governments and scope and extent of audit was modified. As regards State Receipt audit, 19 States prepare a separate report on State Receipts and while in 12 States with one Union Territory-Chandigarh, the results of audit of receipts forms a chapter in the Civil Report (now a separate report is tabled under the revenue sector).

The reports include paragraphs related to all types of receipts by the States, a change that has been brought in from January 1997.

Also from June 2003, Chapter- I of the report was reorganized and now contains valuable information such as trend analysis of receipts, follow-up measures taken by the government on commitments made in the budget speech, Memorandum of Understanding with the Government of India etc.

In 2005-06, the separate Audit Report for the revenue receipts was printed. In March 2012, the restructuring of State Receipt Audit was done and renamed as Revenue Sector.

The Receipt and Expenditure Audit of the following Departments are being dealt in by the Revenue Sector: 1) Commercial/Sales Tax Department (now GST) 2) Motor Vehicle Tax Department 3) Energy Department 4) State Excise Department 5) Mining Department 6) Forestry and Wild life Department 7) Stamp Duty and Registration Department 8) Land Revenue Department.

3.2 Authority of the Comptroller and Auditor General of India

The C & AG derives his authority and functions mainly from the provisions of Articles 149 to 151 of the Constitution of India. Article 149 provides that the C & AG shall exercise such powers and perform such duties in relation to the accounts of the Union and of the States and

of any other authority or body as may be prescribed by or under any law made by the Parliament. The Parliament passed the C & AG's DPC Act in 1971, which came into force with effect from 15 December 1971.

Section 16 of the C&AG's DPC Act authorises C & AG to audit all receipts (both revenue and capital) of the Government of India and of Governments of each State and of each Union Territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed.

3.3 Audit Regulations

The Comptroller and Auditor General (C & AG) in 2007 passed the 'Regulations on Audit and Accounts, 2007', in pursuance to Section 23 of the C&AG's DPC Act. These Regulations shall apply to the officers and staff of the Indian Audit and Accounts Department (IA & AD) and all Ministries and Departments of the Government of Union, States and Union Territories as well as bodies, authorities and enterprises, to which the audit or accounts jurisdictions of the C & AG extend.

Audit Regulation No 54 therein describes that audit of receipts is an examination of the systems and procedures and their efficacy in respect of the followings:

- a. Identification of potential tax assesses, ensuring compliance with laws as well as detection and prevention of tax evasion;
- b. Pursuit of claims with due diligence and that these are not abandoned or reduced except with adequate justification and proper authority;
- c. Prompt investigation of losses of revenue through fraud, default or mistake including, if required, through the review of other similar cases;
- d. Exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
- e. Appropriate action to safeguard the interests of the Government on the orders passed by the Departmental Appellate Authorities;
- f. Any scheme as may be introduced by the Government from time to time;
- g. Any measures introduced to strengthen or improve revenue administration;
- h. Amounts that may have fallen into arrears, maintenance of records of arrears and action taken for the recovery of the amounts in arrears;
- i. Other ancillary and non-assessment functions including expenditure incurred by the Departments;

- j. Achievement of targets, accounting and reporting of receipts and their cross-verification and reconciliation with the accounts records;
- k. Amounts of refunds, rebates and exemptions to see that these are correctly assessed and accounted for; and
- l. Any other matter, as may be determined by the C&AG.

Further it provides in Regulation 55 that the scope of Audit of receipts includes examination of integrity of data, information and documents which form the basis of a policy. Also in Regulation 56 that the Audit Officer shall have access to individual registered documents on which stamp duty has been paid as may be necessary subject to provisions of applicable laws and rules. Auditee concerned shall provide access to these records and also to any computerised systems including the databases maintained by it in hard copy or/and electronic form.

Regulation 68 provides that Performance Audit is an independent assessment or examination to the extent to which an organisation, programme or scheme operates economically, efficiently and effectively.

Also it is stated in Regulation 71 that, Audit may critically review the measurable objectives and performance indicators for their reasonableness and soundness in reviewing performance against the outputs and outcomes. Audit may also set criteria for reviewing programme performance based on best practices.

Performance Audit envisages a high degree of interaction with auditable entities right from the selection of subject(s) for review to all subsequent stages like definition of Audit objectives and criteria, preparation of detailed Audit programmes, development of Audit findings, formulation of recommendations and other related matters. Before commencing detailed work of Performance Audit, the Accountant General shall hold an Entry conference and after the draft Performance Audit report is ready, shall hold an Exit conference with the concerned departments.

3.4 Prerequisites for functioning as a Supreme Audit Institution (SAI)

The Auditing Standards 2017 issued in March of that year improves upon the 2002 edition by restructuring the chapters into Basic Postulates, General Standards and Specific Standards. It inter alia lays down the pre-requisites that constitute the principles essential for the functioning of Supreme Audit Institution (SAI) which is the Comptroller and Auditor General (C&AG) of India and for proper practice of public sector auditing within the SAI which are as under :-

3.4.1 Independence

3.4.1.1 It envisages independence from both the legislature and executive branches of the government to ensure credibility of the results of audit. In the first place this is enshrined in the Constitution of India which stipulates that the C&AG shall only be removed from office in like manner and on like grounds as a Judge of the Supreme Court of India. The other terms for appointment and demitting of office of the C&AG are provided under the Duties Powers and Conditions of Service (DPC) Act that ensures due autonomy and security of tenure. Further, the C & AG has also the functional and organizational autonomy required for carrying out its mandate and is free from direction or interference from the Legislature or the Executive in the following areas:

- 1) Selection of audit issues;
- 2) Planning, programming, conduct, reporting and follow up of audits; and
- 3) Organization and management of its office.

3.4.1.2 The C & AG shall have unrestricted access to information from any offices under the control of the executive and to require the production of all necessary documents and information necessary for the proper discharge of its statutory responsibilities.

3.4.1.2 The C & AG shall have the freedom to decide the form and content of its audit reports after taking into consideration the compliance of the audited entity to the objections raised and is also free to decide the timing of audit reports subject to specific requirements of law. It is free to publish and disseminate them once they are formally tabled in the appropriate legislature as required by law.

3.4.1.3 There shall exist an effective follow up mechanisms on C & AG's recommendations in the form of the action taken reports from the Government following the tabling of the audit reports in the legislature.

3.4.1.4 The C & AG shall have financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources since the laws in this regard could only be prescribed by the president after consultation with the C & AG. Thus the Legislature is responsible for ensuring that Comptroller and Auditor General (C & AG) has the necessary resources to fulfill its mandate.

3.4.2 Accountability and Transparency

Accountability refers to meeting legal obligations of the C & AG with regard to its audit mandate and transparency relates to relevant public reporting on its activities. The principles in brief are as under:-

3.4.2.1 It shall perform its duties under a legal framework that provides for accountability and transparency.

3.4.2.2 It shall make public its mandate, mission and responsibilities.

3.4.2.3 The Comptroller and Auditor General (C & AG) shall adopt audit standards, processes and methodologies that are objective and transparent and aligned to the International Standards of Supreme Audit Institutions (ISSAI) issued by the International Organization of Supreme Audit Institutions (INTOSAI).

3.4.2.4 It shall manage its operations economically, efficiently, effectively and in accordance with laws and regulations and report publicly on these matters

3.4.2.3 The C & AG shall report publicly on the results of audits by tabling the conclusions and findings to legislature regarding overall public sector activities

3.4.2.4 It shall communicate timely and widely on its activities and communicate the audit results through the website, media and other means and its reports shall be such as are understandable to the wide public through various means.

3.4.3 Ethics

The C & AG shall apply high standards of integrity and ethics for staff of all levels as is aligned with the Code of Ethics ISSAI 30. It includes integrity (quality of being honest and having strong moral principles), independence, objectivity (without having a pre determined inclination) and impartiality, confidentiality and competence (professional efficiency) thereby ensuring transparency and legality of its operations and actively promotes ethical behavior throughout the organization.

A Code of Ethics is a comprehensive statement of the values and principles which should guide the daily work of the Auditors. The independence, powers and responsibilities of the Public Sector Auditor place high ethical demands on the C & AG and the staff he employs or engages for auditing and accounting work. The Code of Ethics for Comptroller and Auditor General (C & AG) comprises the general ethical requirements prescribed for civil servants in India as enunciated in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the particular requirements of Auditors, including the latter's professional obligations.

3.4.4 Quality assurance and Quality Control

9.4.4.1 The C & AG shall establish policies and procedures designed to promote an internal culture recognizing that quality is essential in performing all of its work. He shall retain overall responsibility for the system of quality control.

3.4.4.2 Further there shall be established policies and procedures designed so as to provide it with reasonable assurance that all personnel and any parties contracted to carry out work for the C & AG comply with the relevant ethical requirements.

3.4.4.3 Moreover, it shall establish policies and procedures that are designed to provide reasonable assurance that its audits and other work are carried out in accordance with relevant standards, applicable legal and regulatory requirements, that it issues reports that are appropriate in the circumstances and that it has sufficient resources with the competence, capabilities and commitment to ethical principles as required to carry out its range of work.

3.4.4.4 Also shall establish a monitoring process designed to provide it with reasonable assurance that the policies and procedures relating to the system of quality control are relevant and adequate and is operating effectively.

3.4.5 Control of Audit Quality

3.4.5.1 Auditing Standards

The Indian Audit and Accounts Department (IA&AD) performs its functions as per C&AG's Auditing Standards 2017 which provide the framework for performing high quality audits with competence, integrity, objectivity and independence. Auditing Standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of audit.

They provide guidance to the Auditor that helps to determine the extent of auditing steps and procedures that should be applied in the audit and constitute the criteria or yardstick against which the quality of audit results are evaluated.

3.4.5.2 Audit Quality Management Framework:

The Comptroller and Auditor General (C & AG) has introduced Audit Quality Management Framework (AQMF) in 2014 which has been designed for ensuring compliance with Auditing Standards, in particular with International Organisation of Supreme Audit Institutions (INTOSAI) Auditing Standards and Asian Organisation of Supreme Audit Institutions (ASOSAI) guidelines and applicable legislative requirements. It ensures that C&AG of India and Indian Audit and Accounts Department (IA&AD) maintains and follows quality standards rigorously.

3.5 Structure of State Receipt Audit Wing of the Revenue Sector

3.5.1 The State Receipt Audit wing of the Revenue Sector audits the state revenues and is headed by a Senior Deputy Accountant General followed by a Senior Audit Officer and Assistant Audit Officer(s). The Assistant Audit Officer(s) manages the work of individual tables through the Auditors/Senior Auditors pertaining to Stamp Duty, Land Revenue and

Maharashtra Value Added Tax (now Goods Services Tax) as per geographical distribution of the work between Mumbai and Nagpur Field Offices.

[http://www.cag.gov.in/sites/default/files/manuals/RA_Manual_2015.pdf] & [Local SRA HQ]

CHAPTER-4

BASIC FEATURES OF THE LEVY OF STAMP DUTY

4.1 Model of the Stamp Law

'Stamp duty' means a tax payable on certain legal documents specified by the statute to safeguard them as future evidence in a court of law; the duty may be either a fixed or ad valorem meaning that the tax paid as a stamp duty may be either a fixed amount or an amount which varies according to the value of the products, services or property on which it is levied. It is basically a kind of tax paid on any transaction based on either exchange of documents or execution of instruments.

The law is mostly modeled on the English law. English decisions have furnished valuable guidance in the matter of the administration of the law in India. In the past three quarters of a century, a considerable body of Indian Case-Laws has accumulated. The numerous rulings of the Revenue Boards also form useful precedents. The treatment of the subject therefore requires as much legal acumen as the treatment of any other branch of law.

4.2 Requirement of Stamp Duty as per the Act on certain transactions

4.2.1 The Stamp Act is a fiscal statute dealing with payment of stamp duty to the central or state government when certain transactions take place, such as buying, selling or leasing property, business agreements, making deeds, etc, that has a financial aspect to it.

This payment is done through the purchase of stamp paper and is a proof that the government has been paid its share for future reference.

4.2.2 The process may seem simple enough, but it begins to get complicated when figuring out jurisdiction, meaning who decides how much duty is to be paid. Depending upon the nature of the transaction, the central or state government will set the stamp duty. The tax is levied in the shape of stamps on instruments recording the transactions.

4.3.3 In states where there is no stamp act the levy shall be in accordance with the Indian Stamp Act 1899.

4.3 Scrutiny of payment of Stamp Duty

4.3.1 Unlike the collection of Court fees, the collection of stamp duties cannot, in the nature of things, be under the immediate scrutiny and supervision of the Government officers at the stage when they fall due. The scrutiny comes in at a later stage when the document is sought to be used before a Court or other officer or when it is presented for registration. As it is possible, that in many cases, there may be no occasion to use the document, parties may be

tempted to make some illegal saving on stamps. To discourage this, penalties are provided for non-payment of proper duty in the first instance and in glaring cases of evasion the Collector is also authorized to launch prosecution.

4.3.2 With regard to compulsorily registrable documents, this duty of protecting the revenue falls primarily on the registering officers but the officers of Courts also need to be vigilant. It is true that documents once admitted in evidence must go through without question in that proceeding but the deficit duty and penalty can always be collected by following the procedure prescribed under the Act.

4.3.3 Audit is equally empowered to intervene in this matter and demand that the deficit stamp duty may be made good by the concerned parties through the executive.

4.3.4 A cross section of table of court fees could be seen in **Appendix 3**.

4.4 Instrument and Documents

4.4.1 As defined in the Indian Evidence Act, 1872, document means matter expressed or described upon substance by means of letters, figures or marks or by more than one of these means, intended to be used, or which may be used, for the purpose of recording that matter.

It further means a document is the record of the conditions agreed upon by the parties involved in a transaction in a proper format.

A document whose stamp duty has been paid or more simply, a stamped document is considered an authentic and legal document. It gets evidentiary value and can be admitted as evidence in Courts under the provisions of the Indian Stamp Act, 1899 or other similar Acts.

Instrument, on the other hand is a document by which a right or liability is created, transferred, extended, limited, extinguished or recorded.

4.4.2 In the application of the Stamp law, the Stamp duty is leviable on the instrument and not on the transaction and the form of the instrument matters for the purpose as much as the substance of the transaction. If it be possible to be able to carry out any transaction without an instrument or with an instrument that requires a lesser amount of duty so much the better for a person. Conversely, when the instrument employed is such, as to fall within two or more categories requiring different duties, the highest of such duties is chargeable.

4.5 Types of Stamps

4.5.1 There are basically two types and they are -

Impressed stamps i.e using papers bearing impressed stamps (non-judicial stamp paper) and
Adhesive stamps

4.5.2 Impressed stamps can be:

1. Labels affixed and impressed by proper officer
2. Stamps embossed or engraved on stamp paper, and
3. Impressions by franking machines generally done by the bank or franking agencies by depositing the necessary amount of stamp duty with them.
4. E Stamping

4.5.3 Adhesive stamps on the other hand can be labels which are conveniently stuck on the instruments. Adhesive stamps can be further categorized into two categories: postal and non-postal stamps. Postal stamps are used only for transaction with the post office and related function whereas a non-postal stamp can be a court fee stamp, revenue stamp, notarial stamp, special adhesive stamp, foreign bill stamp, brokers' note, insurance policy stamp or a share transfer stamp.

4.6 Kinds of Stamp Papers

There are two types of Stamp Papers which are mainly used in India:-

Judicial Stamp Paper - These are used for transactions with judiciary i.e. for payment of stamp duty in respect of transactions with civil and criminal courts.

Non Judicial Stamp Paper - These are used for execution of documents to register contracts, agreements, deeds, wills etc

4.7 E Stamping

4.7.1 The Indian Government introduced e-stamping to tackle counterfeiting and make the payment of stamp duty easier. In fact, in certain states, such as Delhi, all stamp duty needs to be paid only through e-stamping.

4.7.2 The Central Government has appointed the Stock Holding Corporation of India Limited (SHCIL) as the Central Record Keeping Agency (CRA) for all e-stamps used in the country. Currently, SHCIL is responsible for everything-from user registration to administration, all e-stamping applications and maintenance of records. SHCIL has also designated Authorised Collection Centres, or ACCs say Scheduled Banks that will issue certificates to the users.

4.7.3 The major flaw in this procedure is that if the e-stamp certificate is misplaced, a duplicate copy cannot be issued. Also, if you wish to cancel the request for an e-stamp for a refund, it can be done only at SHCIL offices and not at the ACC that issued the certificate.

4.7.4 Electronic-stamping is however not available in Maharashtra as the licence for SHCIL was not renewed by the state. Hence, since July 2013, the government has provided an alternative. You can pay stamp duty online via an electronic secured bank treasury receipt (eSBTR) - an online payment service. It is not an option in any other state.

You can log onto the website of the authorised banks click the link for payment of stamp duty/registration fees. Enter the details and pay the duty through your Internet banking account.

You can get the eSBTR on giving a printout of proof of payment online at nominated branches of the bank. The eSBTR is a receipt of duty paid to the government. It is printed on secure stationery issued by banks.

4.8 iSARITA

The Government initiated in 2002 the development of a software application named SARITA (Stamps and Registration Information Technology Application) to be a repository of all registered documents. During the period between 2006 and 2012, SARITA was updated periodically and finally a web based application iSARITA (integrated SARITA) was implemented (July 2012). The iSARITA was developed by National Informatics Center (NIC), Pune.

4.9 Franking

The document for which stamp duty is to be paid is printed on plain paper (before the parties sign it) and a stamp is affixed on the paper indicating the value of the stamp duty paid.

The major benefit is that it is quick, especially if payment is made in cash or using a demand draft.

The primary drawback is that franking machines are not available at all bank branches. In addition, there are no uniform rules for authorised franking agencies. This could result in difference in rules among states and even among banks within a state.

Also, each bank has a franking quota. This means that if the denomination you need is higher than the bank's quota, the bank should be informed sufficiently early to conclude the transaction.

Finally, do remember that in certain states, such as in Maharashtra, all stamps, however purchased, will be rendered invalid if not used within six months from the date of purchase.

4.10 Restoration of conventional methods of payment

With the withdrawal of IGR circular of December 2013 by the state government that mandated payment of these levies only through the e-payment system called Government Receipt Accounting System (GRAS) the conventional method including demand draft and pay order is deemed to have been restored.

CHAPTER 5

INTRODUCTION TO PLANNING

5.1 Planning, Reporting and Capacity Building in C &AG (HQRS Office)

- a.** The SMU (Strategic Management Unit) in CAG HQ prepares strategic plan for five years and identifies key areas of topics/issues to be covered each year. On the basis of strategic plan, topics of Performance Audit (PA) are taken up for audit in each Annual Audit Plan (AAP);
- b.** The CAG HQ approves the AAPs received from Field Audit Offices and monitors their implementation;
- c.** The CAG HQ prescribes/revises the monetary limits for paras of Local Audit Report (LAR) and Draft Paras; powers of settlement of audit observations by Branch Officers/Group Officers/Head of Department; targets of Draft Paras for Field Audit Offices (FAOs);
- d.** The CAG Hqrs also accords approval to the guidelines of PA (Performance Audits), mid-term PA's report and finalises the Draft PA's Reports received from FAOs/Lead Office for issuing to the Department of the State Government and finalises the Bond copy of the Audit Report (s);
- e.** It also conducts workshops for mid-term appraisal of the ongoing PA and topics for future Audit Reports. Besides, it conducts seminars on important issues;
- ~~**f.** Approved Draft Paras are issued to the Departments of the State Government for their views/comments. These are incorporated in Chapter III of Compliance Audit Report. Information for Chapter I (General) is called for from the IGR and its attached offices and Chapter III (Audit Impact) from FAOs. On receipt of information, the Wing finalises Chapter I and III. A separate Chapter on selected theme is also being incorporated in the Compliance Audit Report;~~
- ~~**g.** Bond copy of the Compliance Audit (CA) Report is submitted for approval of C & AG after consolidation;~~
- ~~**h.** The CA and each PA Report (both English and Hindi versions) are got printed through the selected printer empanelled by the Report wing of Comptroller and Auditor General (C & AG) HQ. Printed copies of Audit Reports duly countersigned by the C & AG are placed in the Parliament;~~
- ~~**i.** Hindi translation of the PA's and CA's done by Rajbhasha Anubhag is checked and corrected;~~

- j. The wing conducts technical inspection of FAOs;
- k. The wing provides the technical advice to officers, other wings of C & AG HQ/Field Offices on the matters relating to revenue; and
- l. The wing also accords approval and design to the annual training programmes of field offices pertaining to Revenue Audit, being conducted in different Regional Training Institutes (RTIs)/ Regional Training Centres (RTCs).

j Integrated Audit Plan

The Strategic Management Unit (SMU) Wing at C & AG HQ prepares an Integrated Audit Plan for the IA & AD as a whole covering both Union and States, on the basis of proposed Annual Audit Plan (AAP) of functional wings in coordination with the respective field offices. State Receipts Audit Wing at C & AG HQ approves the AAP of each State Audit Office and sends the consolidated information/data to Strategic Management Unit (SMU) Wing in the prescribed format for inclusion in the Integrated Audit Plan of IA and AD.

5.2 Functions in the Field Offices at AG level

5.2.1 Planning

- Collection and compilation of information for various risk parameters;
- Analysis of risks for auditable units based on risk parameters;
- Selection of auditable units;
- Preparation of AAP; and
- Planning for PA and Thematic issues, as per C & AG HQ's instruction.

5.2.2 Programming

- Drawing up the quarterly audit programme for Compliance Audit as well as for Performance Audit as per Annual Audit Plan (AAP);
- Issue of letters of intimation of conducting audit to the offices of the state; and
- Monitoring the progress of audit as per schedule.

5.2.3 Audit Support

- Providing logistical and technical support to Field Audit Parties;
- Advice from C & AG HQ for technical issues wherever clarity or directions are required;
- Holding of Monthly Meeting, In-House Training, Workshop/Seminar;
- Circulation of C & AG HQ's instruction to Field Audit Parties;
- Compilation and submission of different reports and returns. List of reports and returns to be submitted to the wing of C & AG HQ is as per the calendar of returns maintained in HQ. The respective Field Audit Offices may decide prescription and submission of other returns to Director General /Principal Director /Group Officer /Branch Officer (DG/PD/GO/BO); and

- All communication to C & AG HQ to be made with the approval of Heads of Offices.

5.3 Audit Planning And Programming

5.3.1 Strategic Audit Plan

C & AG's audit planning activity is primarily at two level – strategic level and functional level. At the strategic level, the audit plan states the audit priorities and focus areas in the mid-term based on risk assessments of the macro environment and stated commitments for the Government for the midterm.

It reviews audit methodologies and identifies resource/capacity gaps and states the goals/paths to ensure that these match audit priorities. At the functional level, the audit plans translate the audit priorities into annual/quarterly plans.

The Strategic Audit Plan of the Indian Audit and Accounts Department (IA & AD) sets forth the strategic prospective for conducting its core function of auditing over the next five years.

It identifies the following focus areas of audit and strategic performance goals of audit and concerns of key stakeholders.

- Fiscal Management;
- Human Development;
- Infrastructure Development;
- Rural and Urban Development;
- National security; and
- Environment

The key areas relating to State Government Receipts were included under Fiscal Management performance goals in the Strategic Audit Plan.

~~5.3.2 Integrated Audit Plan~~

~~The Strategic Management Unit (SMU) Wing at C & AG HQ prepares an Integrated Audit Plan for the IA & AD as a whole covering both Union and States, on the basis of proposed Annual Audit Plan (AAP) of functional wings in coordination with the respective field offices. State Receipts Audit Wing at C & AG HQ approves the AAP of each State Audit Office and sends the consolidated information/data to Strategic Management Unit (SMU) Wing in the prescribed format for inclusion in the Integrated Audit Plan of IA and AD.~~

5.3.3 Annual Audit Plan

The Auditee units are categorized on the basis of revenue realised in the previous year as A, B and C respectively and accordingly their periodicity is decided as annual, biennial and triennial. Audit plan is devised for the entire financial year and quarterly audit programmes

are prepared. Audit party consisting of two Assistant Audit Officer and one Sr Auditor/Auditor depending upon the available man-power are formed to conduct the audits.

The audits are usually supervised by Sr Audit officer/ Audit Officer and some biennial and triennial are left as non-supervisory depending upon the manpower.

The Head Quarter of State Receipt Audit at field level prepares the Annual Audit Plan (AAP) for conducting Compliance including Theme Based and Performance Audit to be undertaken during the ensuing financial year based on the available men power in the field.

The AAP duly approved by Heads of Offices of concerned Field Audit Offices is sent to the Comptroller and Auditor General (C & AG) HQ for final approval.

The Head of Office should personally monitor the implementation of Audit Plan monthly and take remedial action. The AAP is split up into quarterly programme for the State Receipt Audit Parties (SRAP).

5.3.4 Time Schedule

Audit Plan for a year is to be sent to the C & AG HQ on or before August of the immediately preceding year or the date as prescribed by C & AG HQ.

The half yearly information in respect of (i) number of units actually audited as against planned units and arrear/excess of units, if any, with reasons, (ii) status of Performance Audit being undertaken; are to be submitted to C&AG in the first week of October and April, respectively.

The information received from all Field Audit Offices is consolidated at State Receipt Audit (SRA) Wing for onward transmission to Strategic Management Unit (SMU) Wing of Comptroller and Auditor General (C & AG) HQ.

5.3.5 Audit Advisory Board

As per the eighth Audit Advisory Board constituted for two years, there are twelve external members and thirteen internal members.

The objective of constitution of the Board is to enhance the effectiveness of Audit by providing a forum for professional discussion between the Sr. management of Field Audit Offices and knowledgeable/experienced professionals from varied fields.

The Board will advise on the coverage, scope and prioritisation of audits together with suggestions regarding appropriate audit approaches and techniques. There shall be at least two meetings held every year, one before finalising audit plan and another when the findings of two quarterly audit plans are available. The meeting shall be attended by one observer of the Comptroller and Auditor General (C & AG) HQ.

5.3.6 Approach of audit

Based on the Department Centric Audit (DCA) approach, the selection of offices of Joint Sub Registrars/Sub Registrars/Joint District Registrars/Deputy Inspector General of Registration for AAP is to be carried out as follows:

- a. First 25 per cent of the auditable units are to be categorised as High Risk Units and to be audited annually;
- b. 25 per cent of balance is to be treated as biennial and to be audited once in two years; All the residuary units may be classified as Low Risk Units.
- c. These units are to be audited triennially, i.e. 33.33 *per cent* of the units are to be selected (without replacement) for audit in a particular year; and
- d. In case of low risk units, they may be audited once in five years, with 20 *per cent* of such units selected in a random manner (without replacement) for audit in one particular year.
- e. If any field office has any difficulty in rationalising the manpower, they may reduce the periodicity of the bottom 75 per cent of the units. Justification in this regard needs to be indicated in the AAP.

Selection of auditable units under it will be done on the basis of risk analysis of all units.

The Party days prescribed for conducting audit of units are allotted by the HQ to all the field parties keeping in mind the AAP.

5.3.7 Risk analysis

Risk analysis is an important tool for audit planning. A risk analysis should be carried out with reference to the various parameters of the entity programme or the subject after a careful study of all relevant documents. A good risk perception of the programme or entity's performance will facilitate determining the audit thrust areas, audit objectives and setting the most appropriate audit criteria. It will also assist in selection of appropriate sampling techniques for the units to be audited.

5.3.8 Planning for Performance Audit/Theme Based Audit

At the planning stage, background paper on the area/topic selected for Performance/Theme Based Audit is prepared by the Field Audit Offices. The practical feasibility of undertaking Performance/Theme Based Audit in the specific area is ascertained through conduct of pilot study by selected Field Audit Offices. The background paper outlines overview of area selected for Performance/Theme Based Audit, rationale for selection of topic, objective of pilot study, thrust areas of Performance/Theme Based Audit, scope of pilot study and suggested course of action for the Field Audit Offices.

The pilot study reports are examined at C & AG HQ to determine the feasibility of conducting Performance/Theme Based Audit and to address constraints, if any, faced during audit.

Planning stage also includes preparation of Draft Guidelines by Field Audit Offices on the topic of Performance/Theme Based Audit and sent for approval to CAG.

The approved guidelines shall cover the following areas:

- a. Objectives;
- b. Organisational set-up;
- c. Legal Provisions;
- d. Audit scope and sample size;
- e. Audit methodology;
- f. Audit Checklists (indicative only);
- g. Follow up action, in case the same topic had been undertaken earlier;
- h. Formats for data collection for compilation; and
- i. Timelines for Field Audit Offices.

The guidelines contain structure of Audit Report for compilation of audit findings at field level which enables uniformity in reporting structure across all Field Audit Offices.

At the time of issue of guidelines to Field Audit Offices, one of the Field Audit Offices is designated as Lead Office if needed for compilation/consolidation of Draft Audit Reports. All Field Audit Offices are instructed to send their draft Audit Reports to the designated Lead Office for onward transmission to C & AG.

5.3.9 Audit Programming

After approval of AAP by C & AG HQ, Field Audit Offices need to prepare the Quarterly Audit programme for field audit for covering planned units in four quarters. Before taking up the Audit, Field Audit Offices may intimate the auditee unit well in advance (at least three weeks before start of the audit) about the expected date of start of audit.

The Group Officers (GO) incharge may convene meeting with Field Audit Parties before commencement of audit for issuing necessary instructions and guidance to them.

5.4 PLANNING AT AUDIT PARTY LEVEL

At the level of audit party about to audit the unit as per programme chalked out by the local hqrs the following methodologies may be adopted:-

- Previous Inspection Reports – These should be reviewed thoroughly and major points jotted down for use during the course of audit. Here care should be taken that the assertions in the previous IR continue to be valid in the current scenario.

- Media Reports – These should be scanned to analyse as to what are the opinions on the functioning of the auditee unit.
- Desk Review – Submit a comprehensive write up on the potential paras that might be floated subject to audit evidence and are the objectives fixed for audit.
- Understanding the auditee entity with its environment and controls - This should be understood in the context of the provisions given in the succeeding paragraphs.
- Understanding the entity means to obtain the necessary level of understanding, auditors must, for example:
 - make inquiries of management and others within the entity (eg stated objectives, organisation, internal audit, key employees);
 - carry out analytical procedures (eg on internal and external generated information);
 - observe (eg activities and operations) and inspect (eg business plans, strategies, internal audit risk assessments, records, procedure manuals);
 - read reports prepared by department (eg periodical statements submitted and those charged with governance (eg reports at ministerial level));
 - carry out other procedures (eg visit premises and facilities, walk through systems relevant to reporting, review external sources of information).

[http://www.cag.gov.in/sites/default/files/manuals/RA_Manual_2015.pdf] & [Local SRA HQ]

Note:- After initial planning as part of further planning, it is necessary to get acquainted with acts, rules and regulations framed by the auditee entity for use during the course of audit.

CHAPTER-6

IMPORTANT PROVISIONS OF THE PRINCIPAL ACTS GOVERNING THE LEVY OF STAMP DUTY AND REGISTRATION FEES

Maharashtra Stamp Act, 1958

Introduction: - The Stamp Act is a purely fiscal measure enacted to secure revenue for the State on certain class of instruments. It is not enacted to assist a litigant with technicality to meet the case of his opponent. It is designed only to secure revenue for the State on certain classes of instruments and all its provisions must be construed as having in view, the protection of revenue and the prevention of evasion of the revenue.

This object is attained by excluding documents which are not stamped or insufficiently stamped, as evidence in a court of law. It is not, however, the purpose of the Act to exclude evidence or to enable parties to avoid their obligations on technical grounds or to alter the terms of the bargain between the parties.

The stringent provisions of the Act are concerned solely with the interest of the revenue, and once that object is secured according to law, the party staking his claim on the instrument will not be defeated in a court of law on the ground of the initial defect in the instrument. In other words the deficient stamp duty could be made good before it is admitted as evidence.

Object and reasons could be looked into to find out as to what mischief is sought to be remedied and how the Government proposed to get over the situation faced by it by seeking to amend the law.

The enactment is therefore prohibitory and it is confined to affording a party, a protection by proper payment of duty which he may avail himself or not as he pleases. Although, the protection of revenue is its primary object, it is neither framed solely for the protection of the revenue to be enforced solely at the instance of the revenue officials nor is the penalty limited in cases where an appropriate penalty is to be imposed.

Rule making power enables the state to make rules to carry out the purpose of the Act but cannot override the statute.

The object of the Act is three fold:

- (a) To raise the revenue by taxing instruments;
- (b) To penalise by rendering an unduly stamped instrument admissible in evidence and
- (c) Also to provide for penalty against evasions of Stamp duty.
 - (i) By impounding of instruments,

- (ii) Imposing penalty and
- (iii) by prosecuting defaulter for evasion.

6.1 Applicability

The Maharashtra Stamp Act, 1958 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 this Act as well as under the Indian Stamp Act).

6.2 Charge of Stamp Duty

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

6.2.2 Section 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.

[**Note:** -In addition to the Basic Stamp Duty, Cess or Surcharge or LBT (Local Body Tax) presently upto 1% to 2.5% (including metro cess @1% in metro regions) by whatever name called is also payable in respect of transactions in other than rural areas.]

6.2.3 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.

6.2.4 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.

[**Note 1:** - In case of a development agreement, sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument known as the principal instrument. On other instruments, nominal stamp duty of Rs 100 is payable; (Section 4).

If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments; (Section 5).

However, it may happen that one instrument covering only one matter can come under more than one description given in Schedule to Stamp Act. In such case, highest rate specified among the different heads will prevail; (Section 6)]

[**Note 2:-** The test laid down by the Supreme Court is that in order to attract the application of Section 5, the whole question is whether the instrument comprises more than one transaction. We will have to determine whether the fact of dissolution of say a partnership and matters

provided for in the instrument as a result or the winding up of the said partnership constitute one transaction or separate transactions, or whether the transaction consists of the dissolution of partnership and the other matters such as those providing for payment of amounts due to outgoing partners on settlement of accounts, transfer of interest of outgoing partners, taking over of liabilities and goodwill, indemnity clause, power of attorney and other agreements contained in the said instrument are separate transactions or are merely matters flowing from, dependent on, or accessory to the main object of the dissolution of partnership and ancillary to that leading object.]

6.2.5 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. Some instruments narrated are however governed by the Indian Stamp Act, 1899.

6.3 Certain Definitions

6.3.1 “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.

[**Note:** - What is not an immovable property shall be deemed to be a movable property. However it is specifically defined in schedule I of the act reproduced in **Appendix 1** at the end of the manual.]

6.3.2 “Conveyance” has been defined to include:

- a. A conveyance on sale,
- b. Every instrument, every decree or Final order of any Civil Court, 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.

[**Note:** - This instrument of Conveyance is linked to another called the 'Agreement to Sell' which is a pre cursor to the conveyance. No difference in stamp duties as per schedule I reproduced in the **Appendix 1** at the end of the manual.]

6.3.3 “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.

~~[Note 1:- If gifted to a family member as defined in schedule I, the rate of duty is 1% with no additional Local Body Tax (LBT). Else as per Conveyance at rates specified in the schedule reproduced in the **Appendix 1** at the end of the manual]~~

[Note 2:- Gifts generally are transfer of property movable or immovable by a person to another person without consideration and gratuitously. It must be voluntary. Further if gifted to husband, wife, brother or sister of donor or legal ascendant or descendent then the amount of stamp duty will be 3% wef 07.09.2017 with additional LBT. If the residential and agricultural property is gifted to husband, wife, son, daughter, grandson, granddaughter, wife of deceased son, the duty shall be Rs 200 and Registration Fees also Rs 200 w.e.f 24.04.2015.]

6.3.4 “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 affecting 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.

6.3.5 “Settlement” means any non-testamentary disposition in writing of movable or immovable property made,—

- (i) in consideration of marriage,
- (ii) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependant on him, or
- (iii) for any religious or charitable purpose, and includes an agreement in writing to smake such a disposition and where any such disposition has not been made in writing, any instrument recording whether by way of declaration of trust or otherwise, the terms of any such disposition

[**Note:** - This 'Instrument of partition' is linked to 'Settlement'. Difference is in the co owners involved in a partition and an owner disposing his property in settlement. Refer to Schedule I of the Act reproduced in **Appendix 1**]

6.3.6 “Mortgage Deed ” includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers or creates to, or in favour of, another, a right over or in respect of specified property ;

[**Note:** - In the schedule I of the act reproduced at the end of the manual, any mortgage with handing over of possession is treated at par with conveyance. In other cases, the rate of duty levied is presently 0.5% as per the said schedule subject to a maximum of Rs 10 lakh.

Also where several mortgagors are involved in the same deed then the limitation of Rs 10 lakh shall apply to each such mortgagor. Refer to Schedule I of the Act reproduced in **Appendix 1]**

6.3.7 “Lease” means a lease of immovable property, or moveable (or both) and includes also,—

(i) a Patta ;

(ii) a Kabulayat, or other undertaking in writing, not being a counterpart of a lease to cultivate, and occupy or pay or deliver rent for immovable property ;

(iii) any instrument by which tolls of any description are let ;

(iv) any writing on an application for a lease intended to signify that the application is granted

(v) a decree or final order of any Civil Court in respect of lease :

Provided that, where subsequently an instrument of lease is executed in pursuance of such decree or order, the stamp duty, if any, already paid and recovered on such decree or order shall be adjusted towards the total duty leviable on such instrument;

[**Note 1:** - Only the Basic Stamp Duty at rates of schedule I in the **Appendix 1** shall be payable depending on the number of years of lease agreed upon. No Local Body Tax (LBT) is however payable. Further, there is an explanation in the said schedule which states that where the recitals clearly extend the period of lease further then that extended period shall be taken as part of that current lease. This instrument is linked to sub lease and transfer of lease (assignment) as defined in the Schedule. Refer to Schedule I of the Act reproduced in **Appendix 1]**

[**Note 2:-** By a circular dated 16.03.2006 the Government of Maharashtra through the Inspector General of Registration had decided that in respect of leases of properties, where the lessor is a Government/Semi Government Institutions/Local Bodies/Corporations of State Government or of similar nature, the market value shall be that indicated in the instrument and agreed upon by the lessor. Further, in the event that there be no such indication, the value shall be taken as Premium + {(Annual Rent + Local Property Taxes) x 20}]

6.3.8 Development Agreement is where the *individual* owner of land *or owners in case of a society* agrees to give his/its land for development to a developer for construction on, development of, sale or transfer of any immovable property in lieu of consideration in the form of both monetary (cash, share of revenue after sale of units) in kind and in the form of construction. This will be the consideration or the market value of the proportion area of land whichever is higher will be considered for levy of stamp duty. The valuation of development agreement is subject to the provisions laid down in rules 32, 33 and 34 of the Annual Statement of Rates (ASR) Guidelines.

[**Note 1:-** As per proviso below article 5(g) (a) (ii) if relating to purchase of one or more units in any scheme or project from a developer and conveyed to a subsequent purchaser within a period of one year from the date of agreement of original purchase the duty paid shall be adjusted in the current transaction.]

[**Note 2 :-** The Development Agreement is linked to the FSI (Floor Space Index) assigned to the land under development by multifarious bodies such as MHADA (Maharashtra Housing Area Development Authority), SRA (Slum Rehabilitation Authority), MMRDA (Mumbai Metropolitan Regulatory and Development Authority) and the Municipal Corporations within the state of Maharashtra. For this purpose, each of the said body has a separate DCR (Development Control Regulations) and a DP (Development Plan) which has to be ascertained during audit from time to time.]

6.4 Payment of Stamp Duty

6.4.1 Section 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.

6.4.2 Instrument executed only out of Maharashtra may be stamped within three months after it is first received in State. [Section 18]

6.4.3 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.

6.4.4 Further, Section 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.

[**Note: -** 14A. Where due to material alterations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument shall require a fresh stamp paper according to its altered character.]

6.4.5 The stamp papers must be in the name of one of the parties to the transaction. They cannot be in the name of the relative, Chartered Accountant or Lawyer of the parties. [Section 30]

6.4.6 The date of issue of the stamp paper must not be more than 6 months older than the date of the transaction. [Section 48]

6.4.7 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. [Section 30]

6.4.8 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 criteria. 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 the state of Maharashtra. 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.~~

[Note 1: - For the purpose of determining the true market value there are separate rules that are framed and discussed in Chapter VI below.]

[Note 2:- ASR gave the rates to be applied for valuation of various immovable properties situated in a particular Survey No, Gut No, Zone etc. The rates are given separately for various categories separately for various categories based on the type of property such as rate of open land, residential units, Commercial/Industrial/Office/Shop etc. The market value should be determined with respect to instructions of ASR applicable to the type of properties.]

6.4.9 Any party to a transaction 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.

Section 31 of the Maharashtra Stamp Act inter alia states "When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector by one of the parties to the instrument and such person applies to have the opinion of that officer as to the duty (if any) with which or the Article of Schedule I under which, it is chargeable and pays a fee of one hundred rupees in case not involving stamp duty on ad valorem basis, and one rupee for every Rs. 1,000 or part thereof, subject to a minimum of five rupees and maximum of twenty-five rupees in cases involving stamp duty on advalorem basis, the Collector shall determine the duty (if any) with which, or the Article of Schedule I under which, in his judgement, the instrument is chargeable"

[Note: - Collector for the purpose of section 31 is referred to the Joint District Registrar or the Collector of Stamps to whom the powers of adjudication is delegated by the Government. However for all purposes the District Collector continues to be the ex officio stamp authority in the district]

It may also be noted that now adjudication is compulsory in all cases where an instrument requires registration as the Sub Registrar (Section 30 of the Registration Act 1908) 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. When Sub Registrar determines proper value, there is no need for adjudication.

6.5 Remission of Stamp Duty

Section 9 - The State Government, if satisfied that it is necessary to do so in the public interest may, by rule or order published in the Official Gazette,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State, the duties with which any instruments or any particular class of instruments or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of bonds or marketable securities other than debentures.

e.g. If the SDEC (Stamp Duty Exemption Certificate) issued by the user departments [such as the DIC (District Industries Centre)] certifying fulfilling of conditions necessary for remission of stamp duty for particular property/transaction to particular person or group of persons then remission in stamp duty is granted to the transaction executed.

Again Government of Maharashtra vide notification dated 19 December 1997 has reduced the stamp duty to Rs 100, as chargeable under Article 25 in the schedule appended to the Maharashtra Stamp Act (MS Act), on the instruments executed for the purpose of rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 in respect of properties situated within the state of Maharashtra.

6.6 Understamped Documents

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

6.6.2 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 suo motu submit an instrument for adjudication by the Collector u/s. 31.

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

6.6.4 Reference may be made to the **Appendix 1** given below for applicable rates of stamp duty in respect of important instruments.

[**Note:** - The bare provisions of the Maharashtra Stamp Act 1958 could also be read at http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/acts/Maharashtra%20Stamp%20Act%2011.9.2014.pdf]

Indian Stamp Act, 1899

6.7.1 Introduction: - The basic purpose of Indian Stamp Act, 1899 is to raise revenue to Government. However, over a period of time, the stamped document has obtained so much value that a 'stamped document' is considered much more authentic and reliable than an unstamped document.

6.7.2 Power of Parliament in respect of Stamp Duty - Parliament can make law in respect of Stamp Duty. It can prescribe rates of stamp duty. The stamp duty rates prescribed by Parliament in respect of bill of exchange, cheques, transfer of shares etc. will prevail all over India. However, other stamp duty rates prescribed by Parliament in Indian Stamp Act, 1899 (e.g. stamp duty on agreements, affidavit, articles of association of a company, partnership

deed, lease deed, mortgage, power of attorney, security bond etc.) are valid only for Union territories. In case of States, the rates prescribed by individual States will prevail in those States.

6.7.3 Powers of State Government in levy of Stamp Duty - State Government has powers to fix stamp duties on all instruments except bill of exchange, cheques etc. Rates prescribed by State Government shall prevail in that State. State Government can make law on other aspects of stamp duty also (i.e. matters other than quantum of duty). However, if there is a conflict between State law and Union law, the Union law prevails [Article 254 of Constitution].

6.7.4 Instruments chargeable to Stamp Duty - Instrument includes every document by which any right or liability is, or purported to be created, transferred, limited, extended, extinguished or recorded [section 2(17) of Indian Stamp Act].

Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in that schedule [section 3]. The list includes all usual instruments like Affidavit, Lease, Memorandum and Articles of company, Bill of Exchange, Bond, Mortgage, Conveyance, Receipt, Debenture, Share, Insurance Policy, Partnership Deed, Proxy, Shares etc. Thus, if an instrument is not listed in the schedule, no stamp duty is payable.

‘Instrument’ does not include mere letters. Therefore an unsigned draft of an agreement is not an ‘Instrument’.

6.7.5 Duty payable when several instruments are used - In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On other instruments, nominal stamp duty of Re. 1 is payable [section 4(1)].

If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments [section 5].

However, it may happen that one instrument covering only one matter can come under more than one descriptions given in Schedule to Stamp Act. In such case, highest rate specified among the different heads will prevail [section 6].

6.7.6 Powers to reduce Stamp Duty - Government can reduce or remit the whole or part of duties payable. Such reduction or remission can be in respect of whole or part of specified territories and also can be for particular class of persons.

Government can also compound or consolidate duties in case of issue of shares or debentures by companies [section 9(1)].

‘Government’ means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and ‘State Government’ in case of stamp duties on other documents [section 9(2)].

6.7.6.1 Mode of payment of stamp duty - The payment of stamp duty can be made by adhesive stamps or impressed stamps. Instrument executed in India must be stamped before or at the time of execution (section 17). Instrument executed out of India can be stamped within three months after it is first received in India [section 18(1)]. However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India [section 19].

6.7.7 Valuation for Stamp Duty - In some cases, stamp duty is payable on ad valorem basis i.e. on basis of value of property etc. In such cases, value is decided as prescribed.

6.7.7.1 Adjudication as to stamp duty payable - Adjudication means determining the duty payable. Normally, the person paying the duty himself may decide the stamp duty payable and pay accordingly. However, in cases of complex documents, the person paying the duty may not be sure of the stamp duty payable. In such case, he can apply for opinion of Collector. He has to apply with draft document and prescribed fees. Collector will determine the stamp duty payable as per his judgment [section 31(1)].

6.7.8 What is meant by ‘Duly Stamped’ - ‘Duly stamped’ means that the instrument bears an adhesive or impressed stamp that is not less than proper amount and that such stamp has been affixed or used in accordance with law in force in India [section 2(11)]. In case of adhesive stamps, the stamps have to be effectively cancelled so that they cannot be used again. Similarly, impressed stamps have to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument. If stamp is not so used, the instrument is treated as ‘un-stamped’. Similarly, when stamp duty paid is not adequate, the document is treated as ‘not duly stamped’.

6.7.8.1 Instrument cannot be accepted as evidence if not duly stamped - An instrument not ‘duly stamped’ cannot be accepted as evidence by civil court, an arbitrator or any other authority authorised to receive evidence. However, the document can be accepted as evidence in criminal court.

6.7.8.2 Case when short payment is by mistake - If non-payment or short payment of stamp duty is by accident, mistake or urgent necessity, the person can himself produce the document to Collector within one year. In such case, Collector may receive the amount and endorse the document that proper duty has been paid [section 41].

6.7.9 Stamp Duty on Receipt - Stamp Duty on receipt is Re. 1 for amount above Rs. 5,000 received. Receipt includes any note, memorandum or writing [whether signed by any person or not] and includes -

(a) where any money, or any bill of exchange or promissory note is acknowledged to have been received or

(b) where any other movable property is acknowledged to have been received in satisfaction of a debt or whereby any debt or demand is acknowledged to have been satisfied or discharged or which signifies or indicates any such acknowledgment [section 2(23)].

6.7.9.1 Stamp duty on transfer of shares in a company or body corporate - It is 50 Paise for every hundred rupees or part thereof of the value of share. [It is 75 Ps as per Article 62 of Schedule I to Stamp Act, reduced to 50 Ps per Rs 100 vide notification No SO 198(E) dated 16.3.1976]. As per section 21, the duty has to be calculated on the basis of market price prevalent on date of instrument and not on the face value of shares.

6.7.10 Stamp Duty on Transfer in Depository Scheme - If the company issues securities to one or more depositories, it will have to pay stamp duty on total amount of security issued by it and such individual securities need not be stamped. [section 8A (a)].

If an investor opts out of depository scheme, the securities surrendered to Depository will be issued to him in form of a certificate. Such share certificate should be stamped as if a 'duplicate certificate' has been issued. [section 8A (1) (b)].

If securities are purchased or sold under depository scheme, no stamp duty is payable.

6.7.11 Reference may be made to the **Appendix 2** given below for applicable rates of stamp duty in respect of important instruments.

[**Note:-** The bare provisions of the Indian Stamp Act 1899 could also be read at http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/acts/Indian_Stamp_Act_1899-index.pdf]

Indian Registration Act, 1908

Introduction: - The purpose of the Registration Act is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may afterwards be of legal importance and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents.

The Act is also used for proper recording of transactions relating to other immovable property such as buildings etc. It also provides for registration of other documents such as deposit of

title deeds etc, which can give them more authenticity. Registering authorities have been provided in all the districts for this purpose.

Note that this registration is entirely different from registration of charge done by Registrar of Companies under Companies Act. If the charge relates to immovable property, registration with Registrar (appointed by State Government) under Registration Act and Registration under Companies Act with ROC both may be required.

6.8.1 Registration is notice to Public:-

Registered document becomes a public document and as such a document can be inspected and certified and a true copy of the same could be obtained from registration office by anybody on payment of necessary fees by observing the prescribed procedure. Thus, a registered document always prevails over an unregistered document.

The documents are usually registered for the purpose of conservation of evidence, assurance of title, publicity of documents and prevention of fraud.

6.8.2 Authority Empowered to Register under the Act (Sections 28, 29 and 30)

Section 28 inter alia provides that, in so far as such document affects immovable property shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situated.

Section 29 states that every document, which does not affect land or immovable property can be registered in the office of the Sub-Registrar/ Joint Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-Registrar/Additional District Sub-Registrar under the state at which, all the persons executing and claiming their rights under the document desire the same to be registered.

Section 30 empowers the Registrar to whom the said Sub-Registrar/Joint Sub-Registrar is subordinate can receive and register any document according to the act.

6.8.3 Registration Fees

Section 78 of the Indian Registration Act, 1908 authorises the state Government to prescribe the fees payable.

- (a) For the registration of documents
- (b) For searching the registers.
- (c) For making or granting copies of reasons, entries or documents before on or after registration
- (d) Any extra or additional fees payable for every registration at the office of the Registrar.
- (e) For the issue of commissions
- (f) For filling translations.

- (g) For attending at private residence.
- (h) For the safe custody and return of documents and.
- (i) For such other matters as appear to the State Government necessary to affect the purpose of the Indian Registration Act, 1908.

Some documents require compulsory registration while registration of some document is optional.

6.8.4 Mandatory Registration of Documents (Section 17)

Some important documents requiring compulsory registration under section 17 and under section 17(a) are as under:-

- a. Any instruments of gift of sale/exchange etc. of immovable property of the market value of Rs 100 or more:
- b. Any non-testamentary instrument (meaning not relating to or bequeathed or appointed through a will) which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.
- c. Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.
- d. 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 operated to create, declare, assign, limit or extinguish, whether present or in future, any right, title or interest, whether vested or contingent of the value of Rs 100/- and upwards, to or in immovable property.
- e. Agreement relating to the depositing title deeds by way of security for the repayment of loan or existing or further debts.
- f. Sale certificate issued by any competent officer or authority under any recovery act.
- g. Irrevocable power of attorney relations to transfer of immovable property in any way, executed on or after the commencement of the registration (Maharashtra amendment Act 2010)
- h. Leave and License agreement for licensing any premises and tenancy agreements which has been entered into after 31-03-2000.
- i. Any authority to adopt a son.
- j. State government may, by order published in the official gazette, specify the document for registration by the office of the Joint Sub-Registrar as established.
- k. The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of the Property Act, 1882 (4 of 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 document is not registered on or after such commencement, then they shall have no effect for the purpose of the said section 53-A.

l. Trust in relation to immovable properties, every mutual fund in a form of Trust.

6.8.5 Documents of which Registration is Optional (Section 18)

Broadly, any of the following documents may be registered under this Act, namely:-

a. Instruments (other than instrument of gift and wills) 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 a value less than one hundred rupees, to or in immovable property;

b. Will

c. Leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

d. 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, or a value less than one hundred rupees, to or in immovable property;

e. Instruments (other than wills) which purport or operate to create declare, assign, limit, or extinguish any right, title or interest to or in movable property;

f. Other documents not requiring compulsory registration as provided in section 17 of Registration Act.

6.8.6 Persons Exempt from appearance at Registration Office (Section 38)

(1) (a) A person who by reason of bodily infirmity is unable, without risk or serious inconvenience, to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) Persons exempt by law from personal appearance in court, and who would, but for the provisions next hereinafter contained, be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person, the registration-officer shall either himself go to the house of such person, or to the hall in which he is confined, and examine him or issue a commission for his examination.

6.8.7 Procedure of Registration

The process of registration mainly involves the following steps and submissions of required documents/papers and payment of registration fees to the Registrar Office:-

6.8.7.1. The party has to first pay the proper stamp duty as per the stamp duty recknor on a blank agreement or on next day of execution of agreement or on same day of execution. The agreement should be typed/printed on one side in black ink on 60 GSM preferably on ledger paper. It is better to pay the proper stamp duty on or before its execution.

6.8.7.2. To execute the agreement, the Sub-Registrar shall be required to put photographs, signature and left hand thumb impressions of all concerned parties to execution.

6.8.7.3. The Sub Registrar Office of that Taluka (according to village) shall determine the registration fees payable and issue the challan/confirmation to accept the pay slip.

6.8.7.4. Pay the registration fees by Challan/Pay Slip of banks as per procedure laid down by the respective Sub Registrar. For certain types of documents like Development Agreement, adjudication is compulsory. For agreements like Resale, Adjudication is optional provided it is registered within stipulated time of 4 months. Registration fees are to be paid on value of such property rounded off nearest to rupees in thousands.

6.8.7.5. The party has to obtain token from the registrar through phone or internet and has to give certain details like area, types of property, CTS No., name of party etc., obtain the appointment date, time and token number.

On the appointed time and day, the parties to the documents have to remain present at Registrar's Office along with necessary requirement to comply with registration formalities. On the day of registration, the token number so obtained is announced calling the party for registration. They will do stamping and numbering of pages of documents and supporting attachments.

6.8.7.6. In case of document of property having value above Rs 5,00,000/- the proof of Permanent Account No. (PAN) of all the parties to the documents is mandatory. If the party does not have PAN, then have to file Form No. 60 along with documents to the sub-registrar.

6.8.7.7. Two witnesses with their photos and identification proof should remain present for identification of parties to the agreement for which two witnesses have to put their photo, signatures and thumb impression before the registering authority. Such witnesses should not be necessarily the same who has signed as witnesses in the agreement. These witnesses should put their photos, thumb impression and sign before registrar as token of identification of the parties to the document. Some registration office takes computerized digital photos, left hand thumb impression of witness and also obtains signature of witness on such document.

6.8.7.8. The property card of land/plot on which the property being registered is situated may be called to be produced in certain case. Property card is required to be produced at the time

of registration. Cadastrel Survey Number (CTS no /Survey No.) as it appears on the property card provides help to determine true market value of property.

6.8.7.9. For payment of registration fees by government challan or pay-order or bank draft of bank is to be produced. Computer charges/scanning charges etc. based on number of pages in documents are to be paid at Rs. 20/- per page for scanning fees in cash at the time of registration of document. The copy of such pay order/demand draft of bank for registration is to be submitted on one day prior to visit or if asked or on the day of registration.

6.8.7.10. Complete filling up of input Registration form as prescribed by the Stamp Duty Department or Registrar or Sub-Registrar.

6.8.7.11. Adjudicated document will help in faster registration. In such adjudicated document, the registrar need not ascertain the discrepancies / deficiencies for stamp duty payment. In other words, registrar presumes that proper stamp duty on such adjudicated document is determined properly by collector of stamps and accordingly paid by the party. Adjudication is the procedure by which collector determines the Stamp Duty payable on application made by party.

6.8.7.12. In respect of old building to avail the benefit of depreciation on market value the attachment of following proofs will help to avail depreciation on age of building.

(1) Municipal tax assessment bill (2) Completion Certificate (3) Occupation Certificate (4) Telephone bill (5) Electricity Bill (6) Society letter (7) IOD/CC etc.

6.8.7.13 For proof of authorized structures, the following documents are required:

1. If the building is completed before March 25, 1991 the property assessment / municipality bill is required to be attached.
2. If the building is constructed / completed on or after March 25, 1991 in additional to above proof out of following is to be attached :-
 - i. IOD (Intimation of Disapproval) /CC (Commencement Certificate) of building or
 - ii. Building Completion Certificate or
 - iii. Building Occupation Certificate

6.8.7.14. Any proof of determination of market value will help to facilitate the calculation of true market value. The detailed letter from society showing the description of property, age of building, (year of construction), property tax bill, built up area of flat, flat no. and floor on which flat is located, details of lift facility available if any, number of floors of building, types of construction, Cadastrel Survey Number or Chain and Triangulation Number (C.T.S. No), Survey No, City Survey Number (CS No.) and Village/Division etc. may help to justify the calculation of proper market value of such property as per Stamp Duty ready reckoner.

6.8.7.15. With effect from 1.5.2001, the deficit stamp duty is payable with penalty @ 2% per month or part of the month, but a maximum of not exceeding four times of such deficit amount is required to be paid before registration and proof of such payment of stamp duty and penalty is to be attached at the time of registration of document.

Prior to 1-5-2001 such penalty was upto 10 times. For proof of purchase of stamps, original receipt for stamp duty the paid/franking receipt, banks receipts stamp vendors bill, e stamping proof etc. are required to be produced at the time of registration.

6.8.7.16. Computerized photographs of parties executing the document are also taken digitally by the Registrar's office. The left thumb impression of all the parties to the document is also taken digitally. Through computer generated programming, the thumb impression and photographs are automatically generated and printed on separate paper which has photos of both the parties, to be further signed by all the executors before the Joint Registrar/Sub-Registrar or Joint Sub-Registrar.

6.8.7.16.1 The details, thumb impressions and photographs of the witnesses are also printed and generated through computer system which also now becomes part of registration. Such two witnesses have to produce their identity proof, put thumb impression and affix their respective photographs and also to sign that sheet before and in presence of sub-registrar.

6.8.7.16.2 From 1.-1-2002, affixing photographs and thumb impression by web camera finger prints scanner are made compulsory for registration of document in regard to property. Registrations of documents are computerized with effect from 1-2-2002. Before final registration, typed papers/sheets describing name of the seller, buyer and address of property etc. is generally given to party for final checking just before registration, for checking as regard to correctness of data comprised thereon. At last the Sub-Registrar/Joint Sub-Registrar will sign and put page no., total page and number block, his stamp etc. on each page of such agreement and on attachment.

6.8.7.17. Sometime, the documents are executed by power of attorney holder for and on behalf of buyer or seller.

6.8.7.17.1 Generally in case of builders, his power of attorney holder executes the documents and also signs as attorney, of such builder. In such case, copy of duly executed power of attorney is to be attached with the agreement which is also to be registered.

6.8.7.17.2 The power of attorney should be adjudicated and should carry the sign, the photographs and left hand thumb impressions of the executor / executors and of power of attorney holder.

6.8.7.17.3 Generally all the parties are supposed to go together for registration; however they can go at different point of time but maximum within four months of execution of such document. Registrar also asks to submit declaration (Ghoshana Patra) in prescribed format that power of attorney, its sum, substance and contents are in force, valid and subsist on the day of registration.

6.8.7.17.4 In case of corporate assessee, trust, firms a proper resolution of Board/Managing Committee/Office bearer as the case may be and such person's photos, should be authorized by proper resolution, seal and sign.

6.8.7.18 The sub-registrar first obtains signature of parties and thereafter of two witnesses in his presence along with identification, sign, photos and left hand thumb impression. Thereafter Registrar puts his official seal and affixes unique numbering block on each page including the additional sheets of the documents and signs on the above mentioned sheets which generally carries photographs, signatures, details of parties and witnesses. Party has to pre-check all typed paper/name/address property details, witnesses' details etc and all other details before registration.

6.8.7.19. The complete documents along with all the above mentioned details are then scanned by registrar office and preserved as a permanent record at registrar's office. Stamp duty paid receipts, receipt for Registration fees and scanning charges issued by Registrar which should be preserved with agreement.

6.8.7.20. The party has to submit the copy of pay order / demand draft /R.B.I. Challan etc for payment of registration fees. The Registrar generally by way of pay slip collects registration fees, computer and other charges at Rs 20 per page of document that has to be paid by cash towards scanning for which he acknowledges by issuing a receipt. This registration fee is however to be paid by challan / pay order / demand draft as per registrar's office procedure and computer processing expenses are to be paid by cash at Registrar office before the Registration. The pay order should be in the name of respective area's Joint Sub-Registrar or the Sub-Registrar authorized by the department.

6.8.7.21. The original agreement after due registration are returned to party by the registrar against sign on delivery of document register by party and also on production of the original registration fees paid receipt on which registrar office puts a mark as 'stamped and delivered'. Registration formalities are completed, after which the documents are returned to party within approximately an hour of completion of registration formalities.

If any loan is taken then an authority letter to collect original documents is taken by banks/financial institution. In such circumstances parties are advised to take index II as well as certified true copies of document from registration office for their future record.

6.8.7.22. The registrar also insists for production and preservation of copies of documents by the parties to the agreement:-

1. Original stamp duty paid receipt. (earlier manual receipts were being issued)
2. Franking machine receipts/Stamp Vendor's bill/Stamp Duty paid receipt issued by bank. For e-payment through GRAS or e-SBTR and RTGS transfer details are with the Registrar.
3. Copy of Challan/Franking receipt of Bank/Bank Slip/Stamp Vendor's bill through which stamp duty and registration charges are paid, if any or copy of Pay Slip / Demand Draft of required registration charges. However, stamp duty could also be paid through Government Receipt Accounting System (GRAS) at government website <https://gras.mahakosh.gov.in> through the mode of e-payment by Net Banking.

6.8.7.23. Particularly, for transfer of land, No Objection Certificate (NOC) under Urban Land Ceiling Act, (if applicable) irrespective of its area is to be obtained and attached.

6.8.7.24. No Objection Certificate (NOC) from Charity Commissioner, Government or Semi-Government body, if such land is held by trust/statutory authority as the case may be. The registration process is computerized and simplified. Sub-registrar after completing the registration formalities and thereafter returns the original documents which is given back as duly registered within approximately one hour time.

6.8.7.25. Now, the builder or developer have to put the approved plan and schedule of Property in the agreement and also to write the area i.e., measurement of flat/shops etc in agreement. Further, the agreement cannot be executed by the builder/developer before approval of plan by competent authority. Builders have to put all necessary details, carpet/built up area etc. in agreement.

6.8.7.26. Entire registration process is computerized and entire documents and its attachments are scanned at Joint Sub-Registrar's office for which scanning charges of Rs 20/- per page is to be paid by party generally in cash at the time of registration. The payment of stamp duty is through Franking/ E-payment of Stamp Duty to curb malpractices during registration of documents.

A person entering into say an agreement of sale for a flat now has to mention the name of the buyer and the seller as well as the office of the sub registrar where she/he intends to register the document. After filling up the details in the form, the bank will carry out the franking for

example. The bank will send this information through SMS and e-mail to the Sub-Registrar's office (where the documents is to be registered) and the Administrative Officer.

An official duly maintains a record of the emails/SMS sent by the bank. Documents will not be registered if there is no evidence of franking being done at the particular bank.

The document should be typed in black ink on one side of 60 GSM paper with proper margin on document.

6.8.8 The Time Limit for Registration of the Document (Sections 23, 25 and 34)

6.8.8.1. The document other than Will is required to be registered within 4 months time from the date of its execution as per section 23 of the said act. If a document is executed out of India, the period of four months will be counted from the date of receipt of that document in India.

6.8.8.2. If the same is not registered within 4 months time from the date of execution, it can still be registered within further period of 4 months from the expiry of first 4 months, on payment of penalty for late presenting the document for registration which can be imposed by the Registrar up to 10 times of registration fees as per section 25 of the said act.

6.8.8.3. Even after expiry of 8 months from the date of execution of document, if the parties want to register it then, a fresh Deed on payment of stamp duty at current market value is to be prepared and signed by both the parties to such document. In such case the document which is subject matter of registration should be attached as Appendix to the deed of confirmation. It is better to pre-check in respect of old document the proper function/procedure, payment of duty and penalty, if any thereon before the registration of such original/fresh document. Many a times, such old document is required to be adjudicated through Collector or the Joint Sub-Registrar registers it. However one has first pre-check the matter with Joint Sub-Registrar or concerned stamp duty or registration office or collector offices in detail.

6.8.8.4. If the vendor dies after signing the document but before registration of such document, in such case it is difficult to complete the formality of registration within 4 months of statutory time limit or during the additional time limit of 4 months. In cases of death of vendor the legal heirs of deceased has to comply with the registration formalities. In such matter two options are available with the purchaser/transferee.

Option – I

Apply to Court for probate and/or suitable order for authorizing one of the legal heirs to represent for and on behalf of deceased vendor before registrar to complete the legal formalities of registration and admit the execution. With the experience one can say that it is

difficult to get the Court authority within 4 months or some time even during further extended 4 months period.

Moreover, many a person desires that when there is peace trust, harmony or matter already settled in the family, people avoid going for probate / letter of succession etc. legal process. In such case following option is available as follows.

Option – II

Prepare Deed of fact stating all the facts of in such deed and happening of unfortunate event of vendor's death. This deed of fact is to be signed by the purchaser and seller or all the legal heirs of the vendor. This deed of along with death certificate and NOC from legal heirs of deceased are rendered. All these documents are sent for registration. This will help the purchaser against claim of any right in property in future by any legal heirs of deceased vendor. These are possibility for which one has to pre-check the matter with respective Joint Sub-Registrar with effect from 31-3-2000.

6.8.9. Registration of leave and license is made compulsory. Even the tenancy agreement u/s. 55 of the Maharashtra Rent Control Act, has got to be compulsorily registered. Such agreement also must be in writing.

6.8.10 The Registration fees payable depends upon the date on which the document is lodged for registration. For charges of registration fees value of property for every Rs 1000/- or part thereof have to be considered. This maximum registration fees is presently at Rs 30,000. As stated above, with effect from 1-4-2003, the maximum registration fees payable is at 1% of market value/ agreement value of property or 30,000/- whichever is lower and further scanning, computer service charges and other charges payable at the rate of 20/- per page with effect from 15-10-2003.

6.8.11 Such registration fee is to be paid by pay slip/bank draft/Reserve Bank of India (R.B.I). Challan, Real Time Gross Settlement (RTGS), E-payment through Government Receipts Accounting System (GRAS) or Secured Bank and Treasury Receipt (e-SBTR). Further computerization charges are required to be paid by cash at registration counter.

6.8.11.1 If one of the signatories is not willing to attend the office of the sub-registrar for completing the registration formalities, the remedies available are as under:-

If one or more of the signatories is not willing to complete the registration formalities then an application has to be made to the Sub-registrar of Assurances under Section 36 of the Indian Registration Act, 1908. Thereafter the Sub-Registrar of Assurances (i.e the competent registering authority) will issue summons and after giving an opportunity to the person who has not remained present can proceed with the registration formalities. He shall make a noting

in the document stating registration refused with regards to the party who has not remained present and can also deliver the document to the party who has applied for registration.

6.8.12. Note- 9A was inserted by GN No. REG. 2008/CR/403/M-1 Dtd. 16-2-2009 whereby in the case of power of attorney given without consideration to father, brother, sister, husband, wife, son, daughter, granddaughter or to near relatives as defined under the Income Tax Act, 1961 (43 of 1961), the amount of registration fee shall be Rs 100/- only.

6.8.13_ Refer to the table of fees in the **Appendix 4** at the end of this manual.

6.8.14 Key Sections of the Act

SECTIONS	CONTENTS
Section 3	Provides that the State Government has been empowered to appoint an officer to be the Inspector General of Registration with a view to perform all the functions as laid down by the Act.
Section 5	Directs the State Governments to form districts and sub-districts to implement the Act.
Section 6	Each State Government is authorized to appoint a Registrar of several districts or a Sub-Registrar of several sub-districts.
Section 7	Makes the State Government responsible for creating the office of the Registrar in every district, and an office of the Sub-Registrar or of the Joint
Section 17	Defines all kinds of documents for which registration is mandatory.
Section 17(1A)	Immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882)
Section 18	Gives details of documents for which registration is optional.
Section 19	Empowers the Registering officer to refuse registering a document which is not in a language understood by the officer unless accompanied by a translated copy.
Section 20	Deals with documents containing interlineations, blanks, erasures or alterations.

Section 21	Deals with provisions relating to the description of the property and maps or plans of the immovable property.
Sections 23, 23A, 24, 25, 26, 27	Deals with time for presentation of documents; reregistration of certain documents; documents executed by several persons; provisions where delay is unavoidable; and documents executed outside India.
Sections 28, 29, 30	Specify the place where the document should be presented for registration.
Section 31	Indicates special reasons wherein the Registering officer may go to the person's house to accept the document.
Section 32	Details of people who are required to present documents for registration.
Section 33	Deals with power of attorney recognizable for purpose of Sec.3.
Section 34	Empowers the Registrar to satisfy himself about the identity of the person before registering the document.
Section 35	Outlines the power of the Registrar to admit and deny execution and the procedure to be followed.
Sections 36 and 38	Deals with situations where appearance of executant or witness is desired and person exempted from appearance at registration office.
Sections 37	Empowers Officer/Court to issue summons for appearance.
Section 47	Gives details of the date from which the document is considered effective.
Section 48	Deals with cases where registered documents relating to property to take effect against oral agreements. Provides details of when registered documents relating to property take effect against
Section 49	Provides the effect of non-registration of documents required to be registered.

Section 50	Certain registered documents relating to land to take effect against unregistered documents.
Sections 51 to 70	Duties and powers of Registering Officers.
Sections 71 to 77	Deals with refusal to register, appeal against the decision of the Registering Authorities, time limit prescribed for filing a suit against the refusal by the
Sections 78 to 80	Empower the State Governments to prescribe fees for registration, searches, obtaining copies of
Sections 81 to 84	Empowers the Registering Officers to levy Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure; for making false statements, delivering false copies or translations; false personation, and abetment etc. Registrar also empowered to initiate criminal

The purpose of this Act is the conservation of evidence, assurances, title and publication of documents and prevention of fraud. It details the formalities for registering an instrument.

[**Note 1:-** The bare provisions of the Indian Registration Act 1908 could also be read at http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/acts/Registration%20Act,%201908.pdf]

[**Note 2:-** For bare provisions on the procedure of registration in the rules refer to - http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/Registration/Maharashtra%20Registration%20Rules,%201961%20V1.pdf]

CHAPTER 7

ALLIED ACTS IN PROPERTY LAWS

Transfer of Property Act, 1882

Introduction

When a movable property is transferred *inter vivos* (between two living persons), Sales of Goods Act, 1930 comes into play. When an immovable property is transferred from a living person to another living person(s) including himself, the Transfer of Property Act, 1882 comes into play. In case, the property is transferred from a dead person to a living person(s), the law applied will be the Law of succession. Should a person die without leaving a will (intestate), the law of intestate succession is applicable and in cases where a person dies leaving a will, the law of testamentary succession is applicable.

The salient features of the Transfer of Property Act, 1882 is to amend or regulate the law relating to transfer of property by the acts of the parties.

- The Act provides a clear, systematic and uniform law for the transfer of immovable property.
- The Act completes the Code of Contract since it is an enacted law for transfers that take place in furtherance of a contract.
- With provision for *inter vivos* transfers, the Transfer of Property Act, 1882 provides a law parallel to the existing laws of testamentary and intestate transfers.
- The Act is not exhaustive and provides scope to apply the principles of Justice, Equity and Good Conscience if a particular case is not governed by any provision of law.

Since the Transfer of Property Act, 1882 is not a complete code of transfer of property; we can say its scope is limited.

The Act does not apply to all the transfers taking place in India in view of -

- a) Applicability only to transfer by the act of parties and not by application of law.
- b) The Act does not incorporate rules for all modes of transfer in existence and is apparent from omission of the term 'consolidate' from its Preamble.
- c) The Act mainly deals with transfer of immovable properties only.
- d) In case of a conflict between the T P Act, 1882 and rules of Muslim Law, the latter will prevail.
- e) Certain incidents of a contract or the essential nature of property are exemption from the operation of the Act by Section 2. The Act also saves certain property rights. For example, the

right to partition of immovable property is an incident of property but this right is not affected by the provisions of the T P Act, 1882.

7.1 With the exception of certain instances, the Act does not govern the transfer of property by operation of law, such as sale by the order of court, auction or forfeiture as well as transmission of title under other laws like Hindu Succession Act. [Section 2]

7.2 As such, transfers by will and inheritance are not governed by the Act.

7.3 Section 5, under Chapter II of the Act, defines transfer of property as “an act by which a living person conveys property, in present or in future, to one or more other living persons, or to self and one or more other living persons; and ‘to transfer property’ is to perform such act”.

7.4 As per Section 5, the living person includes a company or association or body of individuals, whether incorporated or not. The person/s transferring the property is referred to as the transferor while the person/s to whom the property is being transferred, is referred to as the transferee. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of lease in terms of Section 10 of the Act.

7.5 Also, where on a transfer of property, under Section 11 in Chapter II, an interest is created absolutely in favour of any person but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

7.6 The Act covers property which can or cannot be transferred. Parties competent to contract and entitled to transferable property is competent to transfer under the Act.

7.7 Thus, every person -

a. competent to contract and entitled to transferable property, or

b. authorized to dispose of transferable property not his own,

is competent to transfer such property, either wholly or in part, and either, absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by the law for the time being in force.

This means that the parties must:

a. have attained the age of majority i.e., 18 years;

b. be of sound mind; and

c. not be disqualified to enter into a contract by some other law applicable to them.

The Act, the transfer of property passes forthwith to the transferee all the interest which the transferor is capable of passing and the legal incidents thereof. The Act also allows for oral transfer (Section 9) except in cases where writing is expressly required by law.

7.8 Different ways in which property can be transferred

7.8.1 Sale of immovable property: Chapter III of the Act, treats transfer of ownership in exchange for a price paid or promised or part-paid and part-promised as sale of immovable property. A contract for the sale of immovable property is a contract stating that a sale of such property will take place on terms settled between the parties. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

7.8.2 Mortgage of immovable property: Mortgage, defined by Section 58 in Chapter IV, is an instrument to secure a loan. The transferor is called a mortgagor, the transferee a mortgagee. The principal money and interest on which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

[**Note:** - Sections 60A, 63A, 65A and 67A were included following amendment in 1929 and the stand on mortgages was made clearer. A mortgagor now had the power to make leases while a mortgagee's right to compensation for necessary improvements was recognized.]

7.8.3 Leases of immovable property: Chapter V also states that a lease of immovable property is a transfer of a right to enjoy such property for a certain time, in consideration of a price paid or promised, or of money or service or a share of crop or any other thing of value, that is rendered periodically or as specified by the agreement between the transferor and the transferee.

7.8.4 Exchange of property: As per Chapter VI, when two persons mutually transfer the ownership of one thing for the ownership of another, neither things or both things being money only, the transaction is called an "exchange". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

7.8.5 Gift of Immovable Property: Chapter VII of the Act covers the transfer of property by gift. Accordingly, a gift is the transfer of existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by, or on behalf of the donee. The Act states in Section 1 that State Governments, through notification in the official gazette, may exempt operation of the provisions under Section 54, paragraph 2 and 3, 107 and 123, but any district or tract of

country excluded from the operation of the Indian Registration Act, 1908, cannot be covered by this exemption.

7.9 Priority of Rights

The Act in Section 48 specifically deals with priority of rights created by transfers. It lays down that where a person purports to create by transfer at different times, rights in or over the same immovable property, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

7.9.1 Under section 52 of the Act, when the property is in dispute and in which any right to immovable property is in question, the property cannot be transferred during the pendency in any Court, having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

7.9.1.1 For this purposes, the pendency of a suit or proceeding is deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

7.10 Property that can or cannot be transferred

7.10.1 The Transfer of Property Act specifies in Section 6 that no property of any kind may be transferred, except as otherwise provided by the Act or by any other law in force.

Depending on the type of property to be transferred, transfer of property would include:

1. When the property is land:
 - a. The easements annexed thereto;
 - b. The rents and profits thereof accruing after the transfer; and
 - c. All things attached to the earth.
2. Where the property is a house
 - a. The easements annexed thereto;
 - b. The rent thereof accruing after the transfer;
 - c. The locks, keys, bars, doors, windows; and

d. All other things provided for permanent use therewith.

7.10.2 Where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer.

7.10.3 Actionable claim is defined in Chapter VIII as a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

7.10.4 Where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

7.11 Property that cannot be transferred

The Act specifically provides for the properties which cannot be transferred under the provisions of the Act. The same are as follows:

- a. The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.
- b. A mere right of re-entry for breach of a condition subsequent, cannot be transferred to anyone except the owner of the property affected thereby.
- c. An easement cannot be transferred apart from the dominant heritage.
- d. An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- e. A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.
- f. A mere right to sue cannot be transferred.
- g. A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- h. Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.
- i. No transfer can be made
 - (1) in so far as it is opposed to the nature of the interest affected thereby, or
 - (2) for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872 (9 of 1872), or
 - (3) to a person legally disqualified to be transferee.

j. Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such to the tenant, farmer or lessee. According to Section 8 of the Act, the transfer of property passes to the transferee all the interest the transferor is capable of passing. [Section 6]

7.12 Immovable Property

The Act states that “Immovable Property does not include standing timber, growing crops or grass”. The General Clauses Act defines “Immovable Property” as under:

“Immovable property shall include land, benefits to arise out of land, and things attached to earth, or permanently fastened to anything attached to the earth.” An equity of redemption is immovable property, and so is the mortgagee’s interest in the immovable property mortgaged. There are many conflicting decisions as to whether a mortgage debt is immovable property, but since mortgage debt has been excluded from the definition of an actionable claim by Act 2 of 1900, it seems that a mortgage debt is for all intents and purposes, immovable property, though for the purpose of attachment it is treated as movable property. [Section 3]

7.13 Movable Property – There is no definition of movable property in Transfer of Property Act, 1882, Movable property has been defined in the General Clauses Act, 1897 to mean ‘property of every description except immovable property’. The Registration Act, 1908 defines movable property to include property of every description except immovable property, but including standing timber, growing crops and grass.

7.14 Property – The legislature has not attempted to define the word ‘property’, but it is used in the Transfer of Property Act, 1882 in its wider and most generic legal sense.

Section 6 says that property of any kind may be transferred. Thus an actionable claim to any debt subjected to certain exceptions is property and so is a right to re-conveyance of land. Property is anything which is the subject-matter of ownership, but also includes dominum or the right of ownership or partial ownership.

7.15 Interest in Property- As ownership consists of bundle of rights, the various rights and interests may be vested in different persons, eg. A mortgager and a mortgagee, a lessor and a lessee, or tenant for life. An absolute ownership is an aggregate of component rights such as the right of possession, the right of enjoying the usufruct of the land, and so on. The subordinate rights, the aggregate of which make an absolute ownership, are referred in the Transfer of Property Act as interest in property. In section 58, however, the word interest is not distinguished from absolute ownership.

7.16 Transfer- The word 'transfer' is defined with reference to the word 'convey'. This word in English law in its narrower and more usual sense refers to the transfer of an estate in land; but it is sometime used in a much wider sense to include any form of an assurance *inter vivos*. The word 'convey' in section 5 of the Transfer of Property Act is used in the wider sense referred to above.

Transferor must have an interest in the property. A lease comes within the meaning of the word 'transfer'.

A transfer of property does not exclude property situated outside India or the territories where Transfer of Property Act, 1882 does not apply. If the transfer is affected where the Transfer of Property Act, 1882 is in force, the right of the parties are to be determined by the Court under the Transfer of Property Act.

7.17 Charge - a charge is not a transfer of property, for the charge no right is transferred but a personal obligation is created or a right to payment out of property specified can be generated. In the insolvency Acts, a transfer of property, however, is defined as including a charge. The definition is wider because any obligation incurred by a debtor affecting his property may be voidable as a fraudulent preference.

7.18 Compromise - A compromise of doubtful rights is not a transfer, but based on assumption that there was an antecedent title of some kind in the parties which the agreement acknowledged and defined. The position would be different if such a compromise also transferred properties to a person who has neither a pre-existing title, nor a claim to such title.

7.19 Deed of Appointment – A transfer is not necessarily contractual, and included a deed of appointment. Section 5 of the Transfer of Property Act does not require that the 'living person' who conveys should necessarily be the same person as who owns or owned the property conveyed. All that is required is that there should be an act of conveyance by some living person; under the section there may be a transfer by a person exercising powers over the property of another. Thus, where person having power to appoint a beneficial interest in the property, exercises that power, it would amount to a transfer.

7.20 Exchange - An exchange is a mutual transfer of the ownership of one thing for another.

7.21 Entries in revenue records - Entries in the revenue records is neither a proof of title upon the property nor can it be used as a camouflage to defeat the legal right, title or interest of a person, who is the owner of the property in question. Revenue entries neither can confer a title nor can it extinguish the right of title of the owner of the property. Mutation of the property in the revenue record also does not create or extinguish title nor has any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay land

revenue in question. Thus, the correct proof of ownership is a registered sale deed in favour of the person. Revenue entries or revenue receipts have nothing to do with the ownership and they cannot be treated as conclusive evidence of the ownership of the property.

7.22 Release Deed - If the person executing the release deed holds some right, title of interest in the property, release of that interest would amount to conveyance. However, if the transferor is a benamidar releasing the property to real owner, it is not conveyance.

7.23 Surrender - surrender is not a transfer of property as defined under Section 5 of the Transfer of Property Act. It is the falling of a lesser estate into a greater one.

7.24 Will - Will operates from the death of testator. A deed executed by husband and wife jointly providing that on the death of either of them, the survivor would retain all rights over the property including that of alienation and upon the death of the surviving executants the property would go to their children would be a will (and not a settlement of deed) as there is no transfer of a right to the other executants.

7.24.1 Transfer of shares or interest in a co-operative society to the nominee of its member operating on his death would also be executed like transfers by will. Where the beneficiary is not a living person, the expression used is the creation of an interest in an unborn person contemplated under section 13 of the Transfer Property Act, 1882.

7.24.2 A person executed a document styled as 'will'. By virtue of the executed document, he delivered certain properties amongst his daughter and nephew in his life time and gave possession to person named. It was held that it was a conveyance and not a will, even though it described the beneficiaries as heirs. Not being a registered document, it was invalid.

7.25 Person competent to transfer - Every person competent to contract and entitled to transferable property, or authorised to dispose off transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in circumstances, to the extent and in manner, allowed and prescribed by any law for the time being in force.

7.26 Minor as a transferor - The transferor must have attained the age of majority according to the law to which he is subject. The Privy Council has held that a contract by minor is void. Prior to the decision of the Privy Council, it was generally assumed that a minor's contract is voidable and could be ratified. These decisions are now absolute, and as the contract is void there is no question of ratification. The rule of estoppels is not applicable in case of minor as it could have the effect of enlarging powers of the minor to contract. Although a minor is not capable to contract a transfer to minor is valid.

[**Note:** - Section 14 Rule against Perpetuity - No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.]

7.27 Lunatic as a transferor - In terms of the provisions of the Indian Contract Act, 1872, a person is of sound mind for the purpose of making a contract if he is capable of undertaking it, and of forming a rational judgement as to its effect upon his interest.

7.27.1 A contract made by lunatic person is void under section 11 of the Indian Contract Act 1872, and so also, a transfer by him of his property is void. A lunatic is competent to contract during his lucid interval, and a transfer by a lunatic during a lucid interval would be valid. However, a person adjudged a lunatic would be incapable of making a transfer even during a lucid interval. The unsoundness of mind may be established by proving such conduct as was not in keeping with the character of the person concerned, but such that it could not be explained on any reasonable basis.

7.27.2 Burden to prove or establish, at least on balance of probability, the transferor's action in executing transfer deed in favour of the transferee, was outcome of an unsound mind, is on the person who alleges it.

7.28 Disqualified to transfer - A statutory disqualification to contract, as in the case of a minor, means an inability to transfer. Such a disqualification ensures when the owner's property is under the management of the Court of wards, or of an officer appointed under Encumbered Estates Act.

7.29 Authority to dispose of property - If the transferor has no title to the property, he must have authority to transfer it. As instance of authority to transfer the property of another, the following may be cited:-

‘An agent acting under power of attorney, the donee of power of appointment, the guardian of a minor duly authorised by the Court in that behalf, the manager of a Hindu family in case of necessity or for the benefit of the family, the committee of manager of lunatic, a receiver when empowered by the Court, an executor or administrator having authority to dispose off the property of the deceased regulated by section 307 of the Indian Succession Act, 1925.

7.30 Person not authorised to dispose of minor's property - Where the de facto guardian of the minor's property sells it, the sale is invalid, and will be hit by section 11 of the Hindu Minority and Guardianship Act, 1956. Even subsequent ratification by the natural guardian does not validate it.

7.31 Construction of Deed - A document has to be construed as a whole. Real intention of the parties has to be gathered, not merely from what is stated in the description of the property in the schedule to the document, and could not be given any overriding importance over the actual area specified in the document as the extent of the land determined upon measurement.

7.31.1 The construction of a document as regards the legal effects will only arise where the document is an instrument of title or is a contract, or is the direct foundation of the legal rights. Where the nature and character of the document is clear, and only question or dispute is whether the real contract is between the parties is something different from that contained in the document, no question of construction of the document is involved.

[**Note:** - As laid down by the Apex Court in *Associated Hotels of India Vs RN Kapoor* at <https://indiankanoon.org/doc/1719430/>]

7.32 Partition - A right to partition is an incident of joint ownership of property. The Bombay High court has held that such an agreement is inconsistent with the Hindu Law, and will not bind even the parties themselves, and the Allahabad High court has held that even an immediate party is not bound by agreement not to partition for an indefinite time.

An arbitrator made an award between two sisters giving each a half share of an estate and appointing the husband of one sister as the manager, but directed that neither sister would have a right to claim partition. One sister dies and her son sued for partition. The Privy Council held that the clause in restraining of partition afforded no defence to the son's suit for partition.

On the other hand, an estate may be impartitionable by customs/convention, or by the terms of the grant, for the Crown has power to grant or transfer land and by its grant or transfer, to limit in any way it pleases the descent of such lands. [Section 44]

7.33 Conditional transfer - Under section 25 of the Act, an interest created on a transfer of property and dependent upon condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

[**Note 1:-** If transfer is conditional, the condition must not be illegal, impossible, immoral or opposed to public policies]

[**Note 2:-** <http://dolr.nic.in/Acts&Rules%5CTransferOfPropertyAct%281882%29.htm>]

Indian Contract Act, 1872

Introduction :-

The Draft Law was enacted as The Act 9 of 1872 on 25th April 1872 and the Indian Contract Act, 1872 came into force with effect from September 1, 1872.

Before the enactment of the Indian Contract Act, 1872, there was no codified law for contract in India. In the Presidency Towns of Madras, Bombay and Calcutta law relating to contract was dealt with the Charter granted in 1726 by King George I to the East India Company.

Thereafter in 1781, in the Presidency Towns, Act of Settlement passed by the British Government came into force. Act of Settlement required the Supreme Court of India that questions of inheritance and succession and all matters of contract and dealing between party and party should be determined in case of Hindu as per Hindu law and in case of Muslim as per Muslim law and when parties to a suit belonged to different persuasions, then the law of the defendant was to apply.

In outside Presidency Towns, matters with regard to contract was mainly dealt with English Contract Laws; the principle of justice, equity and good conscience was followed.

7.34 This legislation specifies when a party can be said to have the capacity to contract. A contract pertaining to realty can be entered into, among others, by an individual (who is not a minor or of an unsound mind), partners of a firm, a corporate body, a trust, a sole corporation, the manager of an undivided family, and a foreigner. All the requirements of a valid contract i.e., consideration, intention to contract and validity under the law of the land must be satisfied.

7.35 The law relating to contracts in India is contained in Indian Contract Act, 1872. The Act was passed by British India and is based on the principles of English Common Law. It is applicable to the all over India except the State of Jammu and Kashmir. It determines the circumstances in which promise made by the parties to a contract which is legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties. Indian contract deals with the enforcement of these rights and duties upon the parties in India.

7.36 Indian Contract Act embodied the simple and elementary rules relating to Sale of goods and partnership. The developments of modern business world found the provisions contained in the Indian Contract Act inadequate to deal with the new regulations or give effect to the new principles. Subsequently the provisions relating to the sale of goods and partnership contained in the Indian Contract Act were repealed respectively in the year 1930 and 1932

and new enactments namely Sale of Goods and Movables Act 1930 and Indian Partnership act 1932 were re-enacted.

7.37 Definition:- Act defines the term contract as “any agreement enforceable by law”. There are two essentials of this Act, agreement and enforceability. The Act also defines agreement as “every promise and every set of promises, forming the consideration for each other.”

The Act defines promise in these words: “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise.” [Section 2]

7.38 Essential Elements of a Valid Contract- According to the provisions of the Act “All agreements are contracts, if they are made by the free consent of the parties competent to contract, for a lawful consideration with a lawful object, and not hereby expressly provided to be void.”

1. Proper offer and proper acceptance - There must be an agreement based on a lawful offer made by person to another and lawful acceptance of that offer made by the latter. Act lay down the rules for making valid acceptance.

2. Lawful consideration - An agreement to form a valid contract should be supported by consideration. Consideration means “something in return” (*quid pro quo*). It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration should be real and lawful.

3. Competent to contract or capacity- In order to make a valid contract the parties to it must be competent to contract. According to section 11 of the Contract Act, a person is considered to be competent to contract if he satisfies the following criterion:-

- a. The person has reached the age of maturity.
- b. The person is of sound mind.
- c. The person is not disqualified from contracting by any law.

4. Free Consent: To constitute a valid contract there must be free and genuine consent of the parties to the contract. It should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake.

5. Lawful Object and Agreement: The object of the agreement must not be illegal or unlawful.

6. Agreement not declared void or illegal: - Agreements which have been expressly declared void or illegal by law are not enforceable at law; hence they do not constitute a valid contract.

7. Intention to create legal relationships: - when the two parties enter in to an agreement, there must be intention to create a legal relationship between them if there is no such intention on

the part of the parties there is no contract between them; agreements of a social or domestic nature do not contemplate legal relationship; as such they are not contracts. [Chapter II]

7.39 Types of contracts

7.39.1 On the basis of validity:

- a. **Valid contract:** An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.
- b. **Void contract-** A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.
- c. **Voidable contract-** An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.
- d. **Illegal contract:** A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-abinitio.
- e. **Unenforceable contract:** Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

7.39.2 On the basis of formation:

- i **Express contract:** Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.
- ii **Implied contract:** An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.
- iii **Quasi contract:** A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

7.39.3 On the basis of performance:

- i. **Executed contract:** An executed contract is one in which both the parties have performed their respective obligation.

ii. Executory contract: An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

iii. Unilateral contract: A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

iv. Bilateral contract: A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

v. Contingent Contract :- A “contingent contract is a contract enforceable by law to do or not to do something, only if some event, collateral to such contract, does or does not happen which is not impossible or dependent on the future conduct of a person.

vi. Indemnity Contract: - A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person.

vii. A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.

viii. A “bailment” is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called, the “bailee”. A bailment for debt is a pledge and he is called pawnor and the bailee is pawnee. [Chapter IX]

[Note: - “Agent” and “principal” defined - An “agent” is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal” (Section 182)]

7.40 Proposal is defined under Section 2 of The Indian Contract Act, 1872 as “when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer,” Thus, for a valid offer, the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer. An offer should be made to obtain the assent of the other. The offer should be communicated to

the offeree and it should not contain a term, the non compliance of which, would amount to acceptance.

Classification of Offer:-

- a. General Offer: Which is made to public in general.
- b. Special Offer: Which is made to a definite person.
- c. Cross Offer: Exchange of identical offer in ignorance of each other.
- d. Counter Offer: Modification and Variation of Original offer.
- e. Standing, Open or Continuing Offer: Which is open for a specific period of time.

The offer must be distinguished from an invitation to offer. Invitation to offer is only a circulation of an invitation to make an offer; it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in formation of a contract and only an offer emerges in the process of negotiation. A statement made by a person who does not intend to bound by it but, intends to further act, is an invitation to offer.

7.41 Acceptance - According to Section 2(b), “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.”

- a. Acceptance must be absolute and unqualified.
- b. Communicated to offeror.
- c. Acceptance must be in the mode prescribed.
- d. Acceptance must be given within a reasonable time before the offer lapses.
- e. Acceptance by the way of conduct.
- f. Mere silence is no acceptance. Silence does not per-se amounts to communication. Mere silence cannot amount to any assent. It does not even amount to any representation on which any plea of estoppel may be founded, unless there is a duty to make some statement or to do some act.
- g. Offeree and offerer must have mutual consent.

7.42 Proposal and acceptance both must be communicated - Mutual assent, a common consent, that is, a consensus ad idem is sine qua non of every contract. Two parties should become of the same mind upon the subject matter of the contract. This can only be when there is a proposal by one party and its acceptance by the other. Unless the acceptor knows of the proposal, he cannot accept it. Until there is an acceptance of proposal, and the acceptance is communicated to the other side. The general rule is that it is in the acceptance of offer by the offered and intimation of that acceptance to the offer which results in a contract. But in case where the intimation of offer does not reach, it could not, although posted or dispatched be said to have been put in a course of transmission to him.

7.43 Lawful consideration

7.43.1 Consideration is defined as: “When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain something, such an act or abstinence or promise is called consideration for the promise. “Consideration” means to do something in return. In short, Consideration means quid pro quo i.e. something in return.

7.43.2 An agreement must be supported by a lawful consideration on both sides. The consideration or object of an agreement is lawful, unless and until it is forbidden by law, or is of such nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral, or opposed to public policy.

7.43.3 Consideration may take in any form - money, goods, services, a promise to marry, a promise to forbear etc.

7.44.4 Contract Opposed to Public Policy can be repudiated by the Court of Law even if that contract is beneficial for all of the parties to the contract. Agreement of which object or consideration was opposed to public policy, is unlawful and void.

7.45 Free Consent

According to Section 14, “two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem). Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

7.46 Elements Vitiating free Consent

a. Coercion (Section 15): “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

b. Undue influence (Section 16): “Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other.”

c. Fraud (Section 17): “Fraud” means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

d. Misrepresentation (Section 18): “causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement”.

e. Mistake of fact (Section 20): “Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void”.

7.47 Fraud - Fraud, misrepresentation, collusion and mistake are different concepts in law. They have been defined in Section 17 to 20 of the Contract Act. They do not overlap except that their effect may be common. Presence of any one of them may render the agreement void. When applied to judicial proceedings it may make the order unenforceable or liable to be ignored. But uniformity in result does not render them one and the same. Each of them arises in different set of circumstances and in order to record a finding that any one of them is established there has to be different facts.

In terms of definition as explained under section 5 of the Act, misrepresentation or false representation and suppression of material fact or document amount to fraud.

7.48 Fraud and Misrepresentation - It is well settled by authorities that the word ‘fraudulent’ does not qualify misrepresentation. In *Niaz Ahmed v. Parasatam Chandra*, their Lordship held that in case of an active misrepresentation knowing that fact to be false, as distinct from mere silence or concealment, it is not incumbent upon the party defrauded to establish that he had no means discovering the truth with ordinary diligence.

The fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable. Fraud may become important either for the purpose of giving the defrauded person a right to sue the fraudulent person for damages in an action of deceit, or its equivalent, or to enable to the defrauded person to rescind the transactions.

The requirements of the law for those two purposes are not always identical. It is undoubtedly true that whenever the circumstances are such as to warrant an action for deceit for inducing a person to enter into a contract they will certainly warrant avoidance or rescission of the bargain. In terms of the provisions of the Section 17 of the Act a mere false statement is not fraud. Ingredients of void and voidable contracts - Voidable transfer remains valid until avoided and, therefore, it is necessary to avoid it by seeking the relief of setting it aside.

But a transaction, which is void ab initio, must be deemed to have never taken place. It is not to be regarded as an alienation which is perfect till it is set aside. There is a clear distinction between a fraudulent misrepresentation as to the character of a document and as to its contents. Where the misrepresentation is both as to contents as well as character of document, the transaction is wholly void.

7.49 Relief: No relief can be granted when the fraudulent or illegal object has been carried out and both parties are in pari delicto.

Where a contract is not tainted by coercion, undue influence, fraud, misrepresentation or mistake, the contract has to be upheld in its entirety, unless there is any other law under which a relief can be granted to either party. For instance, where the contract amounts to a penalty, section 74 of the Contract Act provides for a relief at the discretion of the court. Again, it is open to the court to modify the contract. But apart from the special rules of law, there is nothing to authorise the Court to interfere with the sanctity of the contracts.

Where in a suit for recovery of certain amount of money on an alleged contract, there is no alternative relief on the footing of a quantum meruit and the contract has been proved, the Court has no jurisdiction to grant relief.

[**Note:** - In Chapter VI under sections 73 to 75, the consequences of breach of contract is discussed regarding compensation for any loss or damage arising due to the breach including penalty if any or injury due to rightful rescinding of the contract if so made]

7.50 Practice and Procedure (Section 23) - When it is apparent on the face of a contract that it is unlawful, it is the duty of the Judge himself to take an objection, and that too, whether the parties take or waive the objection, it is, therefore, open to High Court even without a pleading to consider the question whether the agreement relied in the case is immoral.

7.51 Sale of immovable property (Sec.37):- In a contract of sale of immovable property, time would not be regarded as of essence unless it is shown that the parties intended that their right should depend upon the observance of time as the essence of the contract by calling upon the other party who had been guilty of unreasonable delay, to perform the contract within a stated time by giving him a reasonable notice. It is settled law that without giving a reasonable notice to the other party to complete the contract within a specified time, the contract cannot be cancelled at the sweet will of the party.

7.52 Co-mortgages- The suit by one of the mortgagees only for a part of the share in the mortgaged property is not maintainable under Order XXXIV, Rule 1 of the Code of Civil procedure (CPC) and also Section 45 of the Indian Contract Act.

7.53 Agreement of repurchase - An agreement to reconvey property after the vendor has transferred it by sale to the vendee is essentially in the nature of concession. It is stated that in the case of agreement of re-purchase, the condition of repurchase must be construed strictly against the original vendor and the stipulation with regard to time of performance of the

agreement must be strictly complied with, as time must be treated as being of the essence of the contract, the right to re-purchase is lost and cannot be specifically enforced.

7.54 Modification of contract (Section 62) - A loan is granted in terms of contract, and the grant of one time settlement or rescheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide section 62 of the Act. The Court cannot alter the terms of contract.

7.55 Interpretation of contracts - It is well accepted principle that if the contract is wholly in writing, the parties are re-confined within the four corners of the document in which they have chosen to enshrine their agreements and neither of them can adduce evidence to say, that his intention has been mis-stated in the document or that some essential feature of the transaction has been omitted. But, at the same time in cases where it is considered that the language of the contract is susceptible of two interpretations, it is not known that the Courts do resort to the surrounding circumstances to find out the intention of the parties.

7.56 Surety's right to indemnity (Section 145) – A surety who has been compelled to pay the debt of the principal debtor may charge him with an implied debt or promise to pay. He is entitled to seek the assistance of the Court in compelling the principal debtor to pay what is due to him provided an ascertained debt is actually due, and this relief is not limited, as once supposed, to cases where the creditor has refused to sue the principal debtor. Under this section, there is an implied promise by a debtor to indemnify the sureties who are entitled to recover from him any sums paid by them as sureties. Where, the creditor had obtained a decree which was Joint; both against the principal debtor and the sureties. Before the ex parte decree against the principal was set aside, it was held that the sureties were bound to make payment. The decree against the sureties had not been set aside and they were entitled to recover the payment from principal debtor.

[**Note:** - The Bare Provisions of the Act could also be read at <http://lawmin.nic.in/ld/P-ACT/1872/A1872-9.pdf>]

CHAPTER-8

MISCELLANEOUS PROVISIONS IN THE RULES MADE THEREUNDER

The Maharashtra Stamp Rules, 1939.

8.1 Chapter I is titled 'Preliminary' and contains the nomenclature of the rules as 'Bombay Stamp Rules' and the act as 'Indian Stamp Act 1899' and the various definitions. Also that the duties pertaining to the instruments shall only be paid either through impressed or adhesive stamps.

8.2 Chapter II inter alia contains the instruments on which impressed stamps are allowed such as Hundis, Promissory Notes and Bills of Exchange and also included all other instruments on a plain paper with engraved or embossed stamps but without bearing the word 'Hundi'.

The proper officer defined who is empowered to affix and impress labels by a stamping machine with the date of impressing put hand written or sometimes even by metallic eyelets to secure the document further is discussed in this chapter.

8.3 Chapter III is regarding the use of adhesive stamps on instruments such as bills of exchange; transfer of debentures and on certain other instruments chargeable to duty under other sections and articles of the act.

Further where the impressed stamps are not in circulation, the adhesive stamps could be used instead. Where, in the transfer of shares, a deficit stamp had arisen due to enhancement of the value of the shares in between, more adhesive stamps could be used to make up for that amount. Special adhesive stamps could be used in certain other cases as discussed therein.

8.4 Chapter IV inter alia discusses the miscellaneous provisions on certification by the collector as to whether proper stamp duty has been paid or not.

Further the procedure of claim of refund of the duty under certain circumstances has been laid down and also the payment of allowances in respect of spoiled or misused stamp or on the renewal of debentures after deducting rupees ten for each stamp or printed form on stamped paper so spoiled etc or an amount equal to (ten per cent) of the value of the such stamp or such printed form, whichever is more.

Also the mode of cancelling the original debenture by writing the word 'Cancelled' with signature is discussed. Moreover the rewards for recovery of duty evaded and provision for document recording transactions for the purchase or sale of certain securities, etc., not to be destroyed for two years are also laid down.

[Bare Provisions could also be read at -

http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/STAMPS/2.The%20Bmbay%20Stamp%20Rules%201939.pdf]

The Maharashtra e-Registration and e-Filing Rules , 2013

An overview of the rules is as under:-

Rule 1 names the rules as “the Maharashtra e-Registration and e-Filing Rules, 2013” and that it comes into force from 01.04.2013.

Rule 2 defines the terms such as e filing and e filing module etc. Further regarding the meaning of the words and expressions not defined in the rules the same shall be as assigned to them in the act (Indian Stamp Act) and the Information Technology Act 2000

Rule 3 is regarding certain specified documents that are allowed to be registered or filed using the e registration and e filing module

Rule 4 debars the concerned parties to attach any external file in the body of the document after submission.

Rule 5 is regarding appending of the electronic signature or biometric thumb print and capturing of digital photo through the software module for all the executants and also the attesting witnesses which shall be mandatory. PAN card identification of each executing party shall be mandatory to establish their identity and also obtaining their e mails and mobile numbers for future correspondences.

Rule 6 and Rule 7 is about the pausing of the registration process unless all mandatory information are filled in while registering and that the time for registering shall be during the office working hours only

Rule 8 is regarding submission of documents within 30 days and also that the stamp duty etc already paid shall be adjusted upto six months from the date of payment and not beyond

Rule 9 discusses about the cross verification of the identity of other parties and their authority and right to sign the document

Rule 10 is regarding online payment of stamp duty and registration fees through virtual treasury (GRAS)

Rule 11 is about scrutiny of the documents for registration by the Joint Sub Registrar to ascertain that conditions framed under acts and rules are fulfilled and the duties and fees are properly paid

Rule 12 is regarding endorsement of copy over e mails provided by the concerned parties

Rule 13 and 14 is regarding conveying of objections if any noticed on the e mails provided to be satisfactorily complied within 30 days else application for registration is rejected

Rule 15 is about the mandatory provisions to be followed already discussed in Rule 5

Rule 16 is affixing the responsibility to prove the correctness of the contents of any notice files and for online payment of stamp duty or filing fees

Rule 17 is e search of copies of registration or w filing on payment of online fees

Rule 18 is for creation of abstract of the document registered by the sub registrar putting his e signature in token of acknowledgement.

Rule 19 Discrepancies, if any, regarding payment of fees, stamp duty or other charges shall always be subject to recovery by the appropriate authority.

Rule 20 All the provisions of the Act and of the Maharashtra Stamp Act shall apply to the documents registered under these Rules also.

Rule 21 The Stamp Duty or Registration Fees for e-registration or e-filing shall be the same as, provided under the Maharashtra Stamp Act and the fee table as prescribed under section 78 of the Act, respectively.

[The bare provisions could also be read at -

http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/Registration/Maharashtra%20%20e-Registration%20&e-Filing%20Rules,%202013%20.pdf]

Maharashtra Registration Rules, 1961

An overview of the rules is as under:-

Rule 1 is regarding the nomenclature of the rules as 'Maharashtra Registration Rules 1961' and that it shall come into force on 01.01.1962

Rule 2 is definitions inter alia of Form, Headquarter- Sub Registrar, Index, Register Books etc

Rule 3 is about allowing the sub registrar to hold his office outstation or in the headquarters

Rule 4 is in regard to languages recognized in the state

Rule 5 is regarding territorial divisions for the purposes of sub section 3 of section 21

Rule 6 is about the office hours of the registration offices

Rule 7 is about the holidays to be observed in the registration offices

Rules 8 to 18 is in regard to the register books numbers 1 to 5 to be kept in forms A, B, C, D and E and the manner of making of volumes of register books. Further about minute book and its use to record deviation in procedure and also the maintenance of records such as cash book, day book, power of attorney etc. Further about certifying and verifying pages of new register books and its simultaneous use.

Rules 19 and 20 is for safe custody books, papers and documents

Rules 21 to 24 is for re-copying of register books in danger of being destroyed or repair of damaged books by use of butter paper

Rules 25 to 27 is in regard to imposition of fines including inter alia refund of excess paid fine and the scale of fines based on delay period

Rules 28 to 37 is about indexes to be prepared in Marathi and alphabetically in a prescribed form and the manner of indexing the documents e.g in the names of both in respect of principal and attorney both (power of attorney), in the name of the company or corporation or the judgment debtor (certificate of sale) etc

Rules 38 to 64 is regarding the procedure of registration including inter alia hours of accepting documents in ordinary course and during emergency in the registration office, the form of presentation endorsement as "Presented at the office of the Registrar/Sub-Registrar of between the hours ofand on the 19..' in every document and the manner of calculating copying fees.

Also inter alia it is about the forms of receipt to be passed and fee endorsement as well as the requirements to be verified before accepting the document for registration. Further, allowing withdrawal of the document on the request of the party presenting the document.

Rule 46 is about following the procedure when a document presented for registration is not properly stamped and included inter alia impounding the document and forwarding the same to collector for certificate of proper stamping after taking the appearance of the concerned parties for enquiry or a period of four months whichever is earlier.

Rule 47 is in regard to the mode of writing endorsement and certificate when blank space is insufficient and

Rule 48 is about the procedure for admission of document for registration.

Rule 49 is regarding sending copies of the documents by the sub registrar Bombay

Rule 50 is to recognise the optional registration of a document in the register books by appending the word 'B' and also that the stamping indicates the value of interest affected

Rule 51 speaks about transcribing the value of stamp and stamp vendor's endorsement in a document admitted for registration

Rule 52 is about copying in certain columns of the register books

Rule 53 is the manner of noting interlineations, etc., and writing marginal notes in the document presented for registration

Rule 54 is manner of copying endorsements in case of documents running on more than one page and the same inter alia shall be copied once only, with the exception of the serial number, which shall be repeated on every page

Rule 55 is regarding comparing and attestation of entries in the records such as register books, attestation of the copies of documents etc

Rule 56 deals with the re-registration of documents by allotting the next serial number available and making a note in red ink in the register book of the first document noting the cross reference

Rule 57 is about setting right the registration in a wrong office by directing the person who presented it to again present it in the proper office

Rule 58 is in regard to procedure of presentation of documents in duplicate in terms of sections 64 to 67

Rule 59 is about signed and dated endorsements by the registering officer on copies of documents with attestation by the executant

Rule 60 is the submission of copies of documents in English or Hindi where it is presented in any other language as the property is situated beyond the state of Maharashtra

Rule 61 is about the return of documents to parties in person and by post after the registration is complete

Rule 62 deals with the issue of unclaimed documents after registration has been either completed or refused and a list of such documents pending for more than a month shall be hung up for public view. Show cause shall be issued to the presenter or nominee that if not claimed for further period of one month, an extra fee shall be chargeable as per table of fees

Rule 63 is about the contents of copy of reasons relating to a document that has been refused

Rules 64 to 68 is regarding returns and accounts and states that the fees collected shall be remitted into treasury/bank on the next day, shall close their (Headquarter sub registrars and sub registrar Bombay) accounts on the last day of the month and monthly work statement on the last day of the month

Rules 69 to 71 is about authentication and attestation of power of attorney by the registering officer, issuing commissions, maintaining the register of refunds and recovery of fee not paid or insufficiently paid by issuing notice asking him to pay within a month from the date of notice. Otherwise the same shall be reported to higher authorities for recovery as arrears of land revenue.

Rule 72 is about the procedure for withdrawal of sealed cover after taking back the receipt issued when that cover was deposited with the registering officer

Rule 73 states that all applications to be in writing and to comply with the Bombay Court-tees Act, 1959 the Indian Stamp Act, 1899 and the Bombay Stamp Act, 1958 and to be numbered and filed

Rule 74 is about destruction of documents unclaimed for a period of more than two years from the date of registration or refusal to register after noting the fact of destruction in the records

Rules 75 to 77 are regarding inspection of the offices of sub registrars by the registrar at least once in every two years and report to the IGR besides an examination of registers and their authentication every year. Report to the registrar the records which are in the danger of being destroyed or have become illegible. Also on the memorandum of errors, negligence and doubtful practices with a copy to IGR for approval who shall issue orders with copies to all the concerned

Rules 78 to 79 is about submission of annual and triennial (every third year) reports on the registration work by the registrar to the IGR after taking inputs from the sub registrars

Rules 80 to 91 is regarding documents that has to be sent to the Manager, Government Photo Registry Office for photo copying of documents presented for registration by registered post with identification marks on the pages of the documents and serial numbering for preparation of books of 100 pages each. Inter alia about certificate to be prefixed on the books by the registrar, manner of preservation and storage of negatives and serial numbering of each length of negative with certification at the end.

[http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/Registration/Maharashtra%20Registration%20Rules,%201961%20V1.pdf]

The Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995

The brief overview is as under:-

Rule 1 is regarding the short title of the rules as above

Rule 2 is about definitions such as authorised valuer, valuation officer (stamp duty) etc

Rule 3 sets out the particulars to be given in the instrument such as in case of agricultural land the land revenue payable by the owner and class of soil, for land other than agricultural land, the area of the plot, type and built up area of construction and year of construction

Rule 4 is about the functioning of the Joint Director of Town Planning and Valuation and the Chief Controlling Revenue Authority (IGR) together with the Registering Officers and the Town Planning and Valuation Officers. Also that of the Special Land Acquisition Officers appointed under the Land Acquisition Act

Proviso to rule 4(6) is about a property that is sold or allotted or acquired for a public purpose by Government or Semi Government body or a Government Undertaking or a Local Authority on the basis of the predetermined price, then value determined by said bodies, shall be the true market value of the subject matter property provided further that recourse to local

enquiry or extraneous evidence is made where such a determination appears doubtful to the registering officer.

Rule 5 is about the information to be filled in Forms II, III and IV of the property by the presenter of the document to the registering officer

Rule 6 delineates the procedure to be followed by the collector of the district

Rule 7 is about allowing the advocates or authorised agents in an inquiry conducted by the Collector

Rule 8 is regarding the manner of serving of notices and orders to the parties

[[http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/Valuation%20of%20property/Mah%20Stamp%20\(Determination%20of%20true%20market%20value%20of%20property\)%20Rules%201995.pdf](http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/Valuation%20of%20property/Mah%20Stamp%20(Determination%20of%20true%20market%20value%20of%20property)%20Rules%201995.pdf)]

Maharashtra e-Payment of Stamp Duty and Refund Rules, 2013

An overview of the rules is as under:-

Rule 1 names the rules as above

Rule 2 is the definitions from (a) to (q) such as Government Reference Number (GRN), Challan Identification Number (CIN), Government Receipts Accounting System (GRAS), Electronic - Secured Bank and Treasury Receipt (e - SBTR), Virtual Treasury as defined in Maharashtra Treasury Rules etc

Rule 3 is about online payment of stamp duty, registration fees and other charges into the virtual treasury through GRAS

Rule 4 inter alia is regarding the mode of obtaining and using a simple receipt with CIN and GRN either online with printout signed by him for authentication or at the participating bank with the printout being counter signed by the officers of bank. The date of generation of CIN or GRN whichever is later shall be the date of purchase of stamps. This receipt or e challan shall have to be defaced by the registering officer or the collector as the case may be within six months from the date of purchase of stamps for validity of payment.

Rule 5 defines e SBTR as that issued by the authorized participating bank and can be used as an impressed stamp under the said Act, for instruments which are compulsory or optional to be registered under the Registration Act, 1908.

Rule 6 deals with the mode of obtaining and using the eSBTR and inter alia states that anyone requiring an e-SBTR, may directly through the authorized participating bank through online facility or through the authorized participating bank counter pay the stamp duty to the Government Virtual Treasury. The Registering Officer or, as the case may be, the Collector on coming across the instrument where the stamp duty has been paid by means of e-SBTR

shall deface the e-SBTR and if possible the defacement voucher shall be affixed on the backside of the e-SBTR.

Rule 7 states that there are situations where the e challan is not to be treated as a simple receipt i.e as a receipt for e payment of stamp duty discharged on an instrument. Such situations are when made for purchase of physical stamps, franking codes and stamp duty collected against issue of e stamps.

Rule 8 is in regard to authorization of banks for issue of e SBTR

Rule 9 is about printing of simple receipt issued by the Authorized Bank or e-SBTR by the Bank on secured stationery provided by the Additional Controller of Stamps, Mumbai. The e SBTR shall not be reprinted unless permitted by the next higher authority to the issuing authority after endorsing the reprint as 'REPRINT' in red ink

Rule 10 is about the agency commission payable by RBI to the authorized participating banks and the handling charges

Rule 11 is about appointment of sub agents (any Nationalised bank, Scheduled bank, Co-operative bank or post offices or the existing licensed stamp vendors) by the authorized participating banks after approval of the Chief Controlling Authority.

Rule 12 is regarding supply of e SBTR stationery by the Controller of Stamps, India Security Press Nashik on an indent from the Additional Controller of Stamps in such form as prescribed by the Chief Controlling Revenue Authority (The IGR) and to be lifted by the authorized participating banks at their own cost.

Rule 13 is about the functions of registering officers and collectors which included inter alia verification of the details of stamp duty paid with that available with the virtual treasury and on being satisfied of the genuineness of the payment shall deface the e challan and annex or affix to the instrument and also report mischief in verification of the receipts.

Rule 14 is regarding refund of stamp duty which states that the procedure shall be as applicable as is to impressed stamps with a deduction of one percent of the amount of refund.

Rule 15 is the General Conditions that the revenue authorities shall inspect the accounts of e payments and stationery of the authorized participating banks. To discontinue such services the banks shall intimate the Chief Controlling Revenue Authority along with the no demand and no dues certificates of the Additional Controller of Stamps at least 30 days in advance of the discontinuance. The balance stationery shall be immediately surrendered to the Additional Controller of Stamps, Mumbai.

[http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/rules/STAMPS/4_e-Payment_Rules.pdf]

CHAPTER 9

GUIDELINES ISSUED BY THE INSPECTOR GENERAL OF REGISTRATION ON THE ANNUAL STATEMENT OF RATES 2015

For Mumbai and Suburban District

9.1 Guideline No 1

Valuation in case of Conveyance/Sale Deed of a tenanted old building:-

It is necessary to take into consideration the following factors while valuing tenanted properties.

- (a) To ascertain the extent of construction on all floors of the property i.e. the permissible construction area as per rules.
- (b) To calculate the total area in the possession of tenants.
- (c) To calculate the total monthly rent payable by the tenants.
- (d) To ascertain the nature, area, age etc. of the construction in the possession of the landlord, apart from the tenant occupied construction area.

Suppose: - 1] Total Area of Plot = X Sq.mtrs.

2] Permissible Floor Space Index (FSI) = Y

3] Total permissible construction area on the property = X x Y Sq.mtrs.

4] Total area of the property occupied by the tenants = N Sq.mtrs.

5] Built-up area of the property in the possession of the landlord = H

6] Total monthly rent payable by the tenants = B Rs/-

Example 1:- If the total area occupied by the tenants exceeds the total permissible construction area on that property as per the rules, that is to say, if 'N' area is more than the X x Y area, then the value of the property should be calculated as follows:-

Valuation in Municipal Corporation Area= $16 \times 7 \times B = \text{Rs.}112 \times B$

Example 2:- If the total area occupied by the tenants is less than the total permissible construction area on that property as per the rules, that is to say, if 'N' area is less than X x Y area, then the value of the property should be calculated as follows:-

= $112B + \{(X \times Y) - N - H\} \times (\text{Rate of land as per the Annual Statement of Rates}) + (H \times \text{Rate of Sale for the concerned user after deduction of depreciation.})$

Note:- 1] While determining the value of the old tenanted buildings in Mumbai City and suburbs as well as the cessed properties in Mumbai City, it will be mandatory to obtain the Certificate of the concerned Competent Authority e.g. Municipal Corporation/Special

Planning Authority etc. or the Certificate of their registered Architect/Engineer regarding the permissible Floor space area. If such certificate is presented, the permissible Floor Space Index in terms thereof should be taken into consideration. If the certificate is not presented, for a cessed building minimum 3.00 FSI as per Rule 33(7) and for a tenanted building in suburbs minimum 1.40 FSI should be taken into consideration.

9.2 Guideline No 2

9.2.1 If a tenanted old building is redeveloped under a Development Agreement, detailed valuation should be done in the Adjudication as per section 31 of the Maharashtra Stamp Act, 1958.

9.2.2 Valuation to be done where tenant from the old building is allotted accommodation in the new building:-

(a) where tenants are allotted accommodation in the new building, of a minimum 37.665 Sq.m (405 Sq.ft) carpet area inclusive of 35% fungible FSI after considering the residential area occupied by the tenants in the old building, stamp duty should be charged for the new accommodation on the basis of the amount which is 112 times the rent simplicitor as applicable to the tenants.

(b) where tenant is allotted accommodation in the new building on the same plot after considering the residential area occupied by him in the old building, which is equal to the area earlier occupied by him, but exceeds 37.665 sq.m (405 sq.ft) carpet area, subject to the ceiling of 94.50 sq.mt (1017.19 sq.ft) carpet area, in such case the remaining area other than the carpet area of 37.665 sq.mt (405 sq.ft) in terms of clause 2(a) should be valued after taking into consideration the new rate of construction as per the applicable classification and such value should be added to the amount equal to 112 times the rent arrived at as per the valuation done under Sr.No 2(a) above.

(c) where a tenant who is being allotted accommodation in the new building on the same plot after considering the residential area occupied by him in the old building, subject to the aforesaid norm of 37.665 sq.m (405 sq.ft) and maximum 94.50 sq.m (1017.19 sq.ft) carpet area, desires to buy additional area apart from the area due to him, or if he is being allotted such area, then the valuation of the permissible area given to the tenant should be carried out as per Rule no. 2(a) and (b) above and the surplus area valued as per the rates of the Annual Statement of Rates (residential) should be added thereto.

(d) where tenant is allotted accommodation in the new building, of a minimum 33.48 sq.m (360 sq.ft) carpet area inclusive of 20% fungible FSI, after considering the commercial area occupied by him in the old building, stamp duty should be charged for the new premises on

the basis of the amount which is equal to 112 times the rent simplicitor as applicable to the tenants.

(e) where a tenant is allotted premises in the new building on the same plot after taking into account the commercial area occupied by him in the old building, which exceeds 33.48 sq.m (360 sq.ft) carpet area, but is equal to area earlier occupied by him, subject to the ceiling of 84.00 sq.m (903 sq.ft) carpet area, in such case the remaining area other than the carpet area of 33.48 sq.m (360 sq.ft) in terms of 2(d) should be valued after taking into consideration the new rate of construction as per the applicable classification and such value should be added to the amount which is equal to 112 times the rent arrived at as per the valuation done under Sr.No 2(d) above.

(f) where a tenant who is being allotted premises in the new building on the same plot after taking into consideration the commercial area occupied by him in the old building subject to the aforesaid norm of 33.48 sq.m (360 sq.ft) carpet area and maximum 84 sq.m (903 sq.ft) carpet area, desires to buy additional area apart from the area due to him or if he is being allotted such area, then the valuation of the permissible area to be given to the tenant should be carried out as per Rule No. 2(d) and (e) above and the surplus area valued as per the applicable flat/shop/office/industrial rate as given in the Annual Statement of Rates, should be added thereto.

9.2.3 If a tenant is buying a tenant occupied property, then in such case 40% valuation of the occupied area as per the market rate should be taken into consideration. If the tenant is buying additional area of the landlord other than such occupied area, then such area should be valued as per the permissible Floor Space Index and on the amount so worked out stamp duty should be levied. If a Deed of Tenancy Transfer subsequent to the year 2005 is registered, the stamp duty should be levied on the amount of difference between the value which was formerly taken into consideration and today's valuation.

Notes for Guideline Nos. 1 and 2:-

(a) The above referred Guideline Nos. 1 and 2 apply only to a tenant and the area occupied by him, who is treated as a tenant within the meaning of the repealed Bombay Rent Control Act, 1947 and section 7(15)(c) of the Maharashtra Rent Control Act, 1999. While seeking the above referred exemption, the concerned parties must furnish proofs regarding the occupation of such tenant in the building since March 30, 2000 or about the occupation of a person for the last 5 years in tenanted capacity, where he has acquired such tenanted rights under a duly registered Deed thereafter. e.g. Property Tax extract of the Municipal Corporation regarding the name of the tenant, Electricity Bill in the name of the tenant, Telephone Bill, Rent

Receipts, Ration Card, Trade Licence issued by the Municipal Corporation, entry in the Voter's List for the year 1995. Such exemption can be granted only if minimum three such proofs or any three proofs as mentioned in the G.R No. Loka.Aa.2007/Pra.kra.120 (a)/Du.va.pu-1, dt. 16/08/2010 issued by the Housing Department of the Government is furnished. When the instrument is presented for registration, the detailed particulars about the area in the occupation of the tenants and the rent to be charged should be mentioned in the instrument and such instrument along with proofs should be lodged in the office of the Sub-Registrar, minimum eight days in advance. All the above referred proofs shall form a part of the documents accompanying the original instrument. Sub-Registrars should register such instruments only when they verify a person as a tenant from the documents furnished as proof. The rights flowing from the instrument of Leave and Licence shall not be eligible for such exemption.

(b) While determining the permissible construction area on such property, it is also necessary to take into consideration the Incentive FSI permissible under the Development Control Regulations.

9.3 Guideline No 3

Valuation of the plot having capacity for TDR consumption:-

While valuing a plot situated in a Mumbai suburb having capacity for the consumption of Transferrable Development Rights (TDR), the rate of land as mentioned in the Annual Statement of Rates (as per 1.00 Floor Space Index) should be increased by 40% and the rate so worked out should be taken into consideration for the valuation. After carrying out the addition as aforesaid, it will not be necessary to consider the TDR consumption capacity separately again. Those instruments which are elaborately valued after taking into consideration the incentive/additional floor space area (permissible floor space area contemplates the total TDR capacity of that plot) available for the property as mentioned in the instrument, the question of making 40% addition as stated in this guideline would not arise.

9.4 Guideline No 4

Depreciation: - The valuation of old building after deduction of depreciation as per their age shall be considered as stated in the table below:-

Age of building (in years)	Percentage of value inclusive of the depreciation	
	RCC/other pucca construction	Half pucca and Kuchcha
0 to 2 years	100%	95%
More than 2 years and upto 5 years	95%	95%
More than 5 years and upto 10 years	90%	85%
More than 10 years and upto 20 years	80%	75%
More than 20 years and upto 30 years	70%	60%
More than 30 years and upto 40 years	60%	45%
More than 40 years and upto 50 years	50%	30%
More than 50 years and upto 60 years	40%	20%
More than 60 years	30%	15%

Note:- 1] If, the determination of valuation of the old property yields a value which is less than the rate of land, such property should be valued as per Guideline No. 7. After carrying out valuation as per both these guidelines, the higher valuation should be taken into consideration.

2] Where Occupation Certificate from the Municipal Corporation is not available for determining the depreciation, other proofs e.g. Acknowledgment copy of the application for issue of municipal occupation certificate, certificate about payment of municipal taxes or other proof about completion/possession of building such as Electricity Bill, Telephone Bill and society certificate, of these one proof should be taken into consideration.

9.5 Guideline No 5

Carpet Area/Built-up Area:-

The rates stated in the Annual Statement of Rates pertain to the built-up area. If the instrument mentions carpet area, it should be valued after calculating the built-up area as follows. However, if the instrument contains any other reference about the built-up area other than carpet area, valuation should be carried out on the basis of the area mentioned in the instrument. However, for Open Parking and Terrace, only the stated area should be taken into consideration.

Built-up Area= 1.2 x Carpet Area

OR

Carpet Area= Built-up Area/1.2

9.6 Guideline No 6

Row-House/Penthouse/Duplex/Bungalow/Flat under a Cluster Housing Project:-

(a) (i) only a residential Flat under Cluster Housing Project should be valued on the basis of the rate of value assigned to a residential flat in the concerned valuation zone of the Annual Statement of Rates.

(ii) while valuing a Row-House/Penthouse/Duplex/Bungalow constructed on a plot in Mumbai City and Suburban District area under a Cluster Housing Project with the construction area thereof exceeding 120 sq.mt, 25% additional rate over the rate assigned to a residential flat in the concerned Zone should be taken into consideration. However, if the said Row-House/Penthouse/Duplex/Bungalow do not have any RCC slab and if the construction is of any other pucca or half-pucca type, the said property should be valued by taking into consideration only 10% additional rate over the rate of a residential flat.

(iii) a Row-House/Penthouse/Duplex/Bungalow with area less than 120 sq.mt constructed in Mumbai City and Suburban District area under a Cluster Housing Project should be valued at the rate of a residential flat in the concerned Zone.

(iv) in case of a Row-House/Bungalow/Building constructed by any co-operative housing society otherwise than under a Cluster Housing Project on a plot having independent sanctioned Layout, if no separate valuation Zone or rate is prescribed, such property should be valued as per Guideline No. 7(1)(a).

(b) In case of a larger residential project comprising 2 to 10 hectares area in Mumbai City and Suburban District area, if no separate valuation zone is prescribed for such housing project in the Annual Statement of Rates, 105% rate of the flat/shop/office situated in the valuation zone where such project is located, should be taken into consideration and in case of a project exceeding 10 hectares area, 110% rate of the flat/shop/office of such valuation zone should be taken into consideration. While valuing a Row-House/Penthouse/Duplex/Bungalow in the said project with an area exceeding 120 Sq.mt, 20% and 15% additional rates over the rates of flats as enhanced hereinbefore should be adopted respectively.

For the valuation of a Row-House/Penthouse/Duplex/Bungalow in the said project with an area less than 120 Sq.mt., 105% and 110% of the rates prescribed for the flats in the concerned valuation zone, subject to the area limits of the project stated above should be adopted.

(c) An extra-special bungalow/building, comprising helipad, gymnasium, swimming pool, double height for some floors and any other state-of-the art amenities, should be valued at double the rate prescribed for a bungalow in the concerned valuation zone or if no such rate is prescribed, double the rate as worked out under Guideline No. 7 or double the rate prescribed

for the sale of a flat in the concerned valuation zone, whichever being higher should be adopted as the basis of valuation.

9.7 Guideline No 7

Valuation of properties for various users, where Statement of Rates does not prescribe separate rates or where the valuation carried out as per Guideline No.4 above is less than the value of land:-

Residential property, office on the upper floor/occupational units and shops on the ground floor/occupational and industrial user properties should be valued on the basis of land rates and construction classification rates as follows.

(i) Residential Property:-

(a) Residential building/bungalow on an independent plot= value of land + value of construction as per depreciation

(b) Residential Flat = (Rate of land+ Rate of construction as per depreciation) x 1.15 x Area of Flat

Guideline at Sr.No.5 above shall apply to the area of a flat. In the context of the floor where a flat is situated, the following Guidelines at Sr. Nos. 18 and 19 shall apply.

(ii) Commercial Property:-

(a) Commercial building on a separate plot= (Area of land x Rate of land) + Construction Area x Rate of construction as per depreciation) x 1.5

(b) Shop Premises/occupational/commercial premises/offices on the ground floor = Rate of land + Rate of construction as per depreciation) x 1.50 x Area of the premises

(c) Occupational units/offices etc. on the upper floors other than ground floor = (Rate of land + Rate of construction as per depreciation) x 1.25 x Area of the premises.

(iii) Industrial Property:-

(a) Industrial building on a separate plot = value of land + value of construction as per depreciation.

(b) Industrial premises = (Rate of land + Rate of construction as per depreciation) x 1.20 x Area of the premises.

(iv) Valuation of any user property situated in a No-Development Zone:-

Value of Property = Total area of land x Rate of land [as per Guideline No. 17(c)] + Value of construction as per depreciation.

9.8 Guideline No 8

Valuation of dispensary, Bank, Warehouse, registered Information Technology (IT)/Information Technology Enabled Services (ITES) Units in the Information Technology Park, School and religious building:-

- (a) Valuation of a warehouse, private dispensaries and banks on the ground floor facing a road should be done at the rate assigned to shops in the concerned valuation zone of the Annual Statement of Rates and if they are not facing any road, the valuation should be done at 80% the rate assigned to shops.
- (b) A dispensary/hospital/bank situated on the upper floors should be valued as per clauses (c) and (d) of Guideline No.9.
- (c) Registered Information Technology/Information Technology Enabled Services Units in an Information Technology Park should be valued at industrial rates instead of commercial rates as assigned in the Annual Statement of Rates. If industrial rate is not assigned, such unit should be valued at 110% the rate applicable to a residential building/flat.
- (d) A school and religious building should be valued at the rate assigned to a residential flat in the concerned valuation zone of the Annual Statement of Rates.

9.9 Guideline No 9

Valuation of Shop Premises:-

- (a) Shops facing roads: - To be valued at the rate assigned to shops in the Annual Statement of Rates.
- (b) Shops not facing roads: - To be valued at 80% the rate assigned to shops in the Annual Statement of Rates.

However, the rate so worked out shall not be less than the rates applicable to offices/occupational premises on the upper floors. This exemption shall be permissible only in regard to the shop premises on the ground floor/lower ground floor/upper ground floor not facing roads. The concerned Sub-Registrar shall inspect the building plan of the building mentioned in the instrument to ascertain whether the shop premises face road or not and a copy of the sanctioned plan should be annexed to the instrument as a part thereof.

- (c) Shops/offices with built-up area exceeding 450 sq.mt:- While valuing shops/offices with the built-up area exceeding 450 Sq.mt., deduction over the rates assigned to shops/offices in the concerned valuation zone of the Annual Statement of Rates should be granted as set out herein below.

Built-up Area of the Shops/Offices	Deduction to be granted over the Rate of
More than 450 Sq.mt. and upto 700 Sq.mt.	5%

More than 700 Sq.mt. and upto 900 Sq.mt.	10%
More than 900 Sq.mt. and upto 2300 Sq.mt.	15%
More than 2300 Sq.mt.	20%

Note:- 1] For shops with larger area not facing the roads, this deduction shall be permissible over the rate worked out after taking into consideration Guideline No. 9(b). However, this deduction shall not be permissible for an office of larger area not facing road.

2] While carrying out valuation as above, instead of slab-wise valuation, the contextual deduction as applicable to that area should be taken into consideration.

(d) Valuation of shops in the buildings comprising larger shopping complex other than Malls:-

Sr No	Floor comprising a shop	% of the rate assigned to shops in the concerned valuation zone of the Annual Statement of Rates to be taken into consideration
1	Basement	70%
2	Lower Ground Floor	90%
3	Ground Floor/Upper Ground Floor	100%
4	First Floor (above ground floor or above stilt floor)	90%
5	Second Floor and Floors above	80%

Note:- 1] If the rate so worked out is less than the rate applicable to an office/commercial premises on the upper floor, the rate of office/commercial premises should be taken into consideration.

2] For a shop in the aforesaid complex not facing road, the said deduction should be permissible after taking into consideration the rate as per Guideline No. 9(b).

9.10. Guideline No 10

Malls/Departmental Stores:-

If no separate valuation zone/rate is prescribed for such building, the valuation of the shopping area premises/shops shall be determined as follows:-

Sr No	Floor comprising a shop	% of the rate assigned to shops in the concerned valuation zone of the Annual Statement of Rates to be taken into consideration
1	Basement	80%
2	Lower Ground Floor	100%
3	Ground Floor/Upper Ground Floor	120%
4	First Floor	100%

5	Second Floor and Floors above	80%
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Note:-This Guideline should not be taken into consideration, if a separate valuation one is prescribed in the Annual Statement of Rates for Malls/Departmental Stores. In order to verify whether the premises/shops mentioned in the Instrument are situated in a mall/Departmental Store, it shall be necessary to enclose a copy of the building plan sanctioned by the Municipal Corporation with the instrument.

If the rate so worked out is less than the rate applicable to an office/commercial premises on the upper floors in the concerned valuation zone of the Annual Statement of Rates, the rate applicable to an office/commercial premises should be taken into consideration. The rate so worked out shall not be eligible for deduction as per the aforesaid Guideline No. 9(b).

9.11 Guideline No 11

Shops on the lower ground floor in a building comprising mixed users like commercial/ Residential, Public-Semi-Public/ Commercial/ Residential and industrial/Commercial (except a larger Shopping Complex/Mall):-

A shop on the lower ground floor should be valued at 80% the rate applicable to a shop in the concerned zone. A shop on the upper ground floor should be valued like a ground floor shop by taking into consideration the 100% rate applicable to a shop in the concerned valuation zone of the Annual Statement of Rates.

9.12. Guideline No 12

Basement:-

If the basement is used for a shop/warehouse/storage apart from parking, it should be valued parking at 70% the rate applicable to a shop in the concerned valuation zone.

9.13. Guideline No 13

Mezzanine Floor:-

A mezzanine floor should be valued at 70% the rate applicable to the respective floor for the concerned user as specified in the Annual Statement of Rates. However, the area of a loft should not be taken into consideration for valuation.

9.14. Guideline No 14

The space surrounding the ground floor of a building:-

If the rights of land abutting a flat/office/shop shown in the sanctioned building plan are assigned for parking or otherwise, such land should be valued at 40% the rate applicable to the land in the concerned valuation zone of the Annual Statement of Rates.

9.15. Guideline No 15

Terrace:-

Terrace attached to a built-up property (flat/office/shop/industrial) excluding a bungalow on the independent plot, should be valued by taking into consideration the 40% rate applicable to the concerned user in the Annual Statement of Rates. If the terrace on the upper floor of a flat is sold along with the flat, such terrace should be valued at 25% the rate applicable to the flat as per the Annual Statement of Rates. However, a terrace on the upper floor of an office/shop should be valued at 40% the rate applicable to an office/shop as per the Annual Statement of Rates.

9.16. Guideline No 16

Parking:-

If any built-up property (flat/office/shop/industrial) other than a bungalow on the independent plot is provided with covered parking amenity e.g. Parking, Garage, Stilt-Parking and Multi-storeyed Parking, the built-up area of such covered parking should be valued at 25% the rate after making the permissible deduction/addition to the rate of concerned user (flat/office/shop/industrial) as per the Annual Statement of Rates. However, the parking area on the open land should be valued at 40% the rate of land in the concerned valuation zone. If the instrument does not mention any parking area, a Deed of Guarantee containing an assurance that no covered or open parking area for the flat/office/shop/industrial user has been provided, should be taken and it should form a part of the instrument.

9.17. Guideline No 17

Valuation of the Bare Land:-

- (a) If the plot area is limited upto 2125 Sq.mt, it should be valued at the full rate.
- (b) If the plot area exceeds 2125 sq.mt and is less than 2500 sq.mt, valuation should be done on the maximum 2125 sq.mt at full rate of land. If the area exceeds 2500 sq.mt, instead of slab-wise valuation, valuation should be done after making a straight-away deduction of 15%.
- (c) If no separate valuation zone/rates are prescribed for the lands in No-Development Zone, such land should be valued at 40% the rate of land in the concerned valuation zone where the land in question is included after following the guidelines in clause (b) above concerning the area of land. Before this rate is invoked, it will be necessary to obtain the latest D.P Remarks and Plans of Mumbai Municipal Corporation regarding the inclusion of said land in No-Development Zone and to annex the same to the instrument.

9.18 Guideline No 18

Building not having Lift facility:-

While valuing the flats in a building not equipped with lift facility, the following percentage of the Rates should be taken into consideration.

Sr No	Floor of the Flat	% of the concerned Rates to be taken into consideration
1	Ground Floor/Stilt Floor	100%
2	First	100%
3	Second	95%
4	Third	90%
5	Fourth and all Floors above	80%

9.19 Guideline No 19

Multi-storeyed Buildings having Lift facility:-

While valuing residential/occupational/office premises in a multi-storeyed building, the following increase over the rates as applicable to the concerned valuation zone should be taken into consideration.

Sr No	Floor of the concerned Residential/Occupational Premises	Increase to be made over the Annual Rates
1	Stilt Floor or Ground Floor upto 4th Floor	As per the Annual Rates
2	5th Floor upto 10th Floor	5%
3	11th Floor upto 20th Floor	10%
4	21st Floor upto 30th Floor	15%
5	31st Floor and floors above	20%

While calculating the number of floors, all the floors above and excluding stilt and ground floor should be counted consecutively. For a shop premises or IT user in a Multi-storeyed building such increase should not be made.

9.20. Guideline No 20

Valuation of the multi-storeyed industrial premises:-

Multi-storeyed industrial premises should be valued by allowing a deduction of 5% for the first floor or every floor thereon. The benefit of these guidelines will not be permissible in the case of premises in an Information and Technology Park.

9.21 Guideline No 21

Redevelopment Proposals of Co-operative Housing Societies:-

In case of redevelopment proposals of co-operative housing societies, if the valuation of properties included therein under the Annual Statement of Rates is not acceptable to the concerned parties, the instrument shall be elaborately valued by Adjudication under section 31 of the Maharashtra Stamp Act, 1958.

9.22 Guideline No 22

Sanctioned Development Scheme and the valuation of lands reserved for public purpose:-

Of the area mentioned in the instrument pertaining to the sanctioned development scheme, only the reserved/affected area should be valued at 80% the rate mentioned in the Annual Statement of Rates and those reservations in the CRZ area in which TDR is not permissible, should be valued by taking into consideration Guideline No.17.

9.23 Guideline No 23

Development Agreement-Valuation in case of sharing of the construction area:-

(a) The value of share awarded to the owner of land

(i) The value of area comprised in the share of land owner as per the rate of construction.

+

(ii) The value worked out after taking into consideration the monetary compensation awarded to the land owner apart from the area of construction, interest on deposit, development charges and such other factors as mentioned in the instrument (if instrument mentions interest on Deposit exceeding 10%, such rate of interest or where the rate of interest is not so mentioned 10% simple interest should be taken into consideration.

(b) Value of the share awarded to the Developer:-

Area of the land comprised in the share of Developer x Rate of Land

Of clauses (a) and (b) above, the higher value should be taken into consideration as the market value.

9.24 Guideline No 24.

In case of revenue sharing under a Development agreement, the valuation shall be done as follows:-

(a) Value of the share awarded to the land owner:-

(i) Current Value of the land owner's share in terms of the rate of sale having regard to the permissible user thereof x 0.85

+

(ii) The value worked out after taking into account the compensation awarded to the land owner apart from the above, interest on deposit and such other factors as mentioned in the instrument (If the instrument mentions interest on deposit exceeding 10%, such rate of interest or 10% simple rate of interest should be taken into consideration.

(b) Valuation of the whole land at the rate of land mentioned in the Annual Statement of Rates:-

Of clauses (a) and (b) above, the higher value should be taken into consideration.

9.25 Guideline No 25.

Development Agreement- Factors to be taken into consideration for the valuation in case of registration of instrument regarding sharing of the construction area/Adjudication:-

(a) Value of the Fungible Floor Space Index:- Since Development Control Regulation No. 35(4) permits Fungible Floor Space Index, it should be included in the value of construction area awarded to the land owner under a Development agreement. As the developer too gets the Fungible Floor Space Index, the value of such Fungible Floor Space Index should be included in the value of Floor Space awarded to him. However, since the developer is permitted Fungible Floor Space Index only on the payment of premium, the amount of such premium should be deducted from the value of Floor Space.

(b) Value of Development charges:- Since the development charges payable to the Municipal Corporation in respect of the built-up area awarded to the land owner is paid by the Developer and such amount is comprised in the benefit accruing to the land owner, the said amount should be included in the value of construction area worked out as per the new rates of construction.

9.26 Guideline No 26.

Factors to be taken into consideration in case of valuation for the registration of Development Agreement for Slum Development Project/Adjudication:-

(a) Total value comprising the value of the built-up area awarded to the land owner as per the new rates of construction specified in the Annual Statement of Rates + Monetary and any other compensation awarded in some other form.

(b) The value of built-up/floor space area accruing to the Developer at the applicable rate of land after deducting therefrom the cost of slum rehabilitation construction or 50% value of the entire land at the applicable rate of land, of these the higher amount should be taken into consideration.

Of the amounts worked out as per clauses (a) and (b) above, the higher amount should be taken into consideration as the Market value for the levy of Stamp Duty.

9.27 Guideline No 27

Factors to be taken into consideration in the case of valuation for the registration of Development Agreement pertaining to the redevelopment project comprising cessed buildings/Adjudication:-

(a) Total value comprising the value of built-up area awarded to the land owner as per the rates of new construction under the Annual Statement of Rates + monetary and any other compensation in other form.

(b) The value of built-up/floor space area awarded to the Developer at the applicable rate of land after deducting therefrom the cost of tenant rehabilitation construction or 50% value of the entire land at the applicable rate of land, of these the higher amount should be taken into consideration.

Of the amounts worked out as per clauses (a) and (b) above, the higher amount should be taken into consideration as the Market Value for the levy of Stamp Duty.

9.28 Guideline No 28.

Valuation of the instruments concerning the flats/shops/offices etc. retained by the Developer in the context of a Development Agreement for self-purchase:-

Instrument concerning the flats/shops/offices etc. retained by the Developer for self-purchase in the context of Development Agreement should be valued at the rates assigned to flats/shops/offices etc under the Annual Statement of Rates after deducting therefrom the rates of new construction as per the applicable construction classification and stamp duty should be charged on the amount so calculated.

9.29 Guideline No 29.

It shall be essential to enclose true copies of the necessary documents/plans with the instrument in question, before the appropriate deduction/decrease/exemption under the aforesaid Guidelines can be granted. If the same survey number is found in two valuation zones, valuation should be done at the higher of those rates. If the said rate is not acceptable, necessary papers in support thereof should be presented to the concerned Divisional Deputy Director, Town Planning (Valuation) to have the valuation zone determined.

9.30 Guideline No 30.

If any Government or Semi-Government institution or Government Corporation/Undertaking or Local Authority (Municipal Corporation/Council) is selling or allotting any property on the basis of pre-determined price under the proviso to Rule No. 4(6) of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, the price so determined by such bodies should be treated as the true Market Value thereof and stamp duty should be charged accordingly. In respect of the property mortgaged with banks, the price fetched in the auction conducted by the Government Appointed Officer should be treated as the Market Value of the property and stamp duty should be charged accordingly. Except the above matters, in no other case shall the determined/agreed/compounded value be taken into consideration.

9.31 Guideline No 31.

Guidance for determination of valuation zone and Rate of value:-

If a property is included in the wrong valuation zone vis-à-vis its location/description or if there is any typographical error or if such property is not included in the valuation zone or if the value rates thereof are not available, the Joint District Registrar and Stamp Collector should contact the office of the concerned Deputy Director, Town Planning (Valuation) and make available to them such documents as 7/12 Extract or Property Card of the Property, Sectional Plan indicating land use under the Development Plan, Village Plan, City Survey Office Sheet, Survey Plan and have the valuation zone and Rate of Value determined.

For the Rest of Maharashtra

9.32 Guideline No 1

Valuation in case of Conveyance (Sale Deed) of a tenanted old building:-

It is necessary to take into consideration the following factors while valuing tenanted properties.

- (a) To ascertain the extent of construction on all floors of the property i.e. the permissible construction area as per rules.
- (b) To calculate the total area in the possession of tenants.
- (c) To calculate the total monthly rent payable by the tenants.
- (d) To ascertain the nature, area, age etc. of the construction in the possession of the landlord, apart from the tenant occupied construction area.

Suppose:-

- 1] Total Area of Plot = X Sq.mtrs.
- 2] Permissible Floor Space Index (FSI) = Y
- 3] Total permissible construction area on the property = X x Y Sq.mtrs.
- 4] Total area of the property occupied by the tenants = N Sq.mtrs.
- 5] Built-up area of the property in the possession of the landlord = H
- 6] Total monthly rent payable by the tenants = B Rs/-

Example 1:- If the total area occupied by the tenants exceeds the total permissible construction area on that property as per the rules, that is to say, if 'N' area is more than the X x Y area, then the value of the property should be calculated as follows:-

Valuation in Municipal Corporation Area= $16 \times 7 \times B = Rs.112 \times B$

Valuation in Areas other than Municipal Corporation Areas= $16 \times 9 \times B = Rs.144 \times B$

Example 2:- If the total area occupied by the tenants is less than the total permissible construction area on that property as per the rules, that is to say, if 'N' area is less than X x Y area, then the value of the property should be calculated as follows:-

= 112B or 144B + {[X x Y)-N-H] x (Rate of land as per the Annual Statement of Rates)} + (H x Rate of Sale for the concerned user after deduction of depreciation.)

Note:- 1] While determining the value of the old tenanted buildings which are sold in the prevailing condition of the property (including tenancy rights) or where only the rights of the land owners are transferred, it will be mandatory to obtain the Certificate of the concerned competent Authority e.g. Municipal Corporations/Municipal Councils/Nagar panchayats/New Town Development Authority /Special Planning Authority etc. or the Certificate of their registered Architects/Engineers regarding the permissible Floor space area.

If such certificate of the Competent Authority/registered Architect/Engineer is presented, the permissible Floor Space Index in terms thereof should be taken into consideration.

If the certificate is not presented, 3.00 Floor Space Index should be taken into consideration for the Gaothan/similar densely populated areas indicated under the Development Plans of Thane, Kalyan-Dombivali, Bhivandi-Nizampur and Mira-Bhayander Municipal Corporations and 2.00 FSI should be taken into consideration for the areas outside such Gaothan/similar densely populated areas.

2.25 Floor Space Index should be taken into consideration for the Gaothan/similar densely populated areas indicated under the Development Plans of Solapur and Kolhapur Municipal Corporations and 1.25 FSI should be taken into consideration for the areas outside such Gaothan/similar densely populated areas.

2.00 Floor Space Index should be taken into consideration for the Gaothan/similar densely populated areas indicated under the Development Plans of all the remaining Municipal Corporations and 1.00 FSI should be taken into consideration for the areas outside such Gaothan/similar densely populated areas.

2.15 Floor Space Index should be taken into consideration for the Gaothan/similar densely populated areas indicated under the Development Plans of all Municipal Councils and 1.15 FSI should be taken into consideration for the areas outside such Gaothan/similar densely populated areas.

2] If a tenanted old building is redeveloped under a Development Agreement, detailed valuation should be done in the Adjudication as per section 31 of the Maharashtra Stamp Act, 1958.

2. 2.1 Valuation to be done where tenant from the old building is allotted premises in the new building:-

(a) where tenant is allotted premises in the new building on the same plot which is equal to the construction area occupied by him in the old building, such premises should be valued by adding up to the aforesaid sum of $112 \times B$ or $144 \times B$, the amount calculated as per the new rate of construction vis-à-vis the area allotted to the tenant in accordance with the classification of construction prescribed under Appendix B.

(b) where area of the premises allotted to the tenant in the new building exceeds the area in the old building, the construction area equal to the area in the old building should be valued as per clause (a) above and the additional construction area valued as per the rates of residence/shops/offices under the Annual Statement of Rates should be added thereto.

2.2] If a tenant is buying a tenant occupied property, then in such case 40% valuation of the occupied area as per the market rate should be taken into consideration. If the tenant is buying additional area of the landlord apart from such occupied area, then such area should be valued as per the permissible FSI and on the amount so worked out stamp duty should be levied. If a Deed of Tenancy Transfer subsequent to the year 2005 is registered, the stamp duty should be levied on the amount of difference between the value which was formerly taken into consideration and today's valuation.

9.32.1 Notes for Guideline Nos. 1 and 2:-

(a) The above referred Guideline Nos. 1 and 2 apply only to such tenant and the area occupied by him, who is treated as a tenant within the meaning of the repealed Bombay Rent Control Act, 1947 and section 7(15)(c) of the Maharashtra Rent Control Act, 1999. While seeking the above referred exemption, the concerned parties must furnish proofs regarding the occupation of such tenant in the building since March 30, 2000 or about the occupation of a person for the last 5 years in tenanted capacity, where he has acquired such tenanted rights under a duly registered Deed thereafter. e.g. Property Tax extract of the Municipal Corporation regarding the name of the tenant, Electricity Bill in the name of the tenant, Telephone Bill, Rent Receipts, Ration Card, Trade Licence issued by the Municipal Corporation, entry in the Voter's List for the year 1995.

Such exemption can be granted only if minimum three such proofs or any three proofs as mentioned in the G.R No. Loka.Aa.2007/Pra.kra.120 (a)/Du.va.pu-1, dated 16/08/2010 issued by the Housing Department of the Government is furnished.

When the instrument is presented for registration, the detailed particulars about the area in the occupation of the tenants and the rent to be charged should be mentioned in the instrument

and such instrument along with proofs should be lodged in the office of the Sub-Registrar, minimum eight days in advance.

All the above referred proofs shall form a part of the documents accompanying the original instrument. Sub-Registrars should register such instruments only when they verify a person as a tenant from the documents furnished as proof. The rights flowing from the instrument of Leave and Licence shall not be eligible for such exemption.

(b) While determining the permissible construction area on such property, it is also necessary to take into consideration the Incentive FSI permissible under the Development Control Regulations.

9.33. Guideline No 3

Depreciation:- The valuation of old building after deduction of depreciation as per their age shall be considered as stated in the table below:-

Age of building (in years)	Percentage of value after deduction of the depreciation	
	RCC/other pucca construction	Half-pucca and Kuchcha
0 to 2	100%	100%
More than 2 years and upto 5 years	95%	95%
More than 5 years and upto 10 years	90%	85%
More than 10 years and upto 20 years	80%	75%
More than 20 years and upto 30 years	70%	60%
More than 30 years and upto 40 years	60%	45%
More than 40 years and upto 50 years	50%	30%
More than 50 years and upto 60 years	40%	20%
More than 60 years	30%	15%

Note:-

1] If, the determination of valuation of the old property yields a value which is less than the rate of land, such property should be valued as per Guideline No. 6. After carrying out valuation as per both these guidelines, the higher value should be taken into consideration.

2] Where Occupation Certificate is not available for determining the depreciation, other proofs e.g. Acknowledgment copy of the application made to the Municipal Corporation/Municipal Council for issue of occupation certificate, certificate about payment

of Municipal Corporation/Municipal Council/Gram Panchayat taxes or other proof about completion/possession of building such as Electricity Bill, Telephone Bill and society certificate, of these one proof should be taken into consideration.

9.34 Guideline No 4

Carpet Area/Built-up Area:-

The rates stated in the Annual Statement of Rates pertain to the built-up area. If the instrument mentions carpet area, it should be valued after calculating the built-up area as follows. However, if the instrument contains any other reference about the built-up area other than carpet area, valuation should be carried out on the basis of the area mentioned in the instrument. However, for Open Parking and Terrace, only the stated area should be taken into consideration.

Built-up Area = 1.2 x Carpet Area

OR

Carpet Area = Built-up Area/1.2

9.35 Guideline No 5

Row-House/Penthouse/Duplex/Bungalow/Flat under a Cluster Housing Project:-

(a) (i) only a residential Flat under Cluster Housing Project should be valued on the basis of the rate of value assigned to a residential flat in the concerned valuation zone of the Annual Statement of Rates.

(ii) while valuing a Row-House/Penthouse/Duplex/Bungalow constructed on a plot within the limits of Thane/Kalyan-Dombivali/Mira-Bhayandar/UlhasNagar/Bhivandi-Nizampur/New Mumbai/Nashik/Pune/Pimpri Chinchawad/Aurangabad/Nagpur Municipal Corporations under a Cluster Housing Project with the construction area thereof exceeding 120 sq.mt, 25% additional rate over the rate assigned to a residential flat in the concerned Zone should be taken into consideration. However, if the said Row-House/Penthouse/Duplex/Bungalow do not have any RCC slab and if the construction is of any other pucca or half-pucca type, the said property should be valued by taking into consideration only 10% additional rate over the rate of a residential flat.

(iii) while valuing a Row-House/Penthouse/Duplex/Bungalow constructed within the limits of all the remaining Municipal Corporations/Municipal Councils/Nagar Panchayats/Influence Areas other than the aforesaid Municipal areas under a Cluster Housing Project with the construction area thereof exceeding 120 sq.mt, the property should be valued by taking into account 10% additional rate over the rate assigned to a residential flat in the concerned Zone.

However, if the buildings of the said type do not have any RCC slab and if the construction is of other pucca or half-pucca type, the said property should be valued at the rate of a flat.

(iv) a Row-House/Penthouse/Duplex/Bungalow with area less than 120 sq.mt. constructed within the limits of all Municipal Corporations/Municipal Councils/Nagar Panchayats/Influence areas under a Cluster Housing Project should be valued at the rate of a residential flat in the concerned Zone.

(v) in case of a Row-House/Bungalow/Building constructed by any co-operative housing society otherwise than under a Cluster Housing Project on a plot having independent sanctioned Layout, if no separate valuation Zone or rate is prescribed, such property should be valued as per Guideline No. 6(1) (a).

(b) In case of a larger residential project comprising 2 to 10 hectares area within the limits of Thane/ Kalyan-Dombivali/ Mira-Bhayandar/ Ulhas-Nagar/ Bhivandi-Nizampur/ Navi Mumbai/Nashik/ Pune/ Pimpri-Chinchwad/Aurangabad/Nagpur-Municipal Corporations, if no separate valuation zone is prescribed for such housing project in the Annual Statement of Rates, 105% rate of the flat/shop/office situated in the valuation zone where such project is located, should be taken into consideration and in case of a project exceeding 10 hectares area, 110% rate of the flat/shop/office of such valuation zone should be taken into consideration.

In the areas of all other Municipal Corporations/Municipal Councils, if no separate valuation zone is prescribed in the Annual Statement of Rates for a larger residential housing project comprising 1.0 hectare to 2.0 hectare area, 105% rate of the flat/shop/office situated in the valuation zone where such project is located, should be taken into consideration and in case of a project located on a larger area 110% rate of the flat/shop/office should be taken into consideration. While valuing a Row-House/Penthouse/Duplex/Bungalow in the said project with an area exceeding 120 Sq.mt, 20% and 15% additional rates over the rates of flats as enhanced hereinbefore should be adopted respectively.

For the valuation of a Row-House/Penthouse/Duplex/Bungalow in the said project with an area less than 120 Sq.mt., 105% and 110% of the rates prescribed for the flats in the concerned valuation zone, subject to the area limits of the project in the aforesaid concerned Municipalities should be adopted.

9.36 Guideline No 6

Valuation of properties for various users, where Statement of Rates does not prescribe separate rates or where the valuation carried out as per Guideline No.3 is less than the value of land:-

Residential property, office on the upper floor/occupational units and shops on the ground floor/occupational and industrial user properties should be valued on the basis of relevant land rates and construction classification rates as follows.

(i) Residential Property:-

(a) Residential building/bungalow on an independent plot= value of land + value of construction as per depreciation

(b) Residential Flat= (Rate of land+ Rate of construction as per depreciation) x 1.15 x Area of Flat
Guideline at Sr.No.5 above shall apply to the area of a flat. In the context of the floor where a flat is situated, the following Guidelines at Sr. Nos. 18 and 19 shall apply.

(ii) Commercial Property:-

(a) Commercial building on a separate plot= (Area of land x Rate of land) + (Construction Area x Rate of construction as per depreciation) x 1.5

(b) Shop Premises/occupational/commercial premises/offices on the ground floor= (Rate of land + Rate of construction as per depreciation) x 1.50 x Area of the premises.

(c) Occupational units/offices etc. on the upper floors other than ground floor = (Rate of land + Rate of construction as per depreciation) x 1.25 x Area of the premises.

(iii) Industrial Property:-

(a) Industrial building on a separate plot = value of land + value of construction as per depreciation.

(b) Industrial premises = (Rate of land + Rate of construction as per depreciation) x 1.20 x Area of the premises.

(iv) Valuation of any user property situated in a No-Development Zone:-

Value of Property = Total area of land x Rate of land [as per Guideline No. 16(a)] + Value of construction as per depreciation.

9.37 Guideline No 7

Valuation of dispensary, Bank, Warehouse, registered Information Technology (IT)/Information Technology Enabled Services (ITES) Units in the Information Technology Park, School and religious building:-

(a) Valuation of a warehouse, private dispensaries and banks on the ground floor facing a road should be done at the rate assigned to shops in the concerned valuation zone of the Annual Statement of Rates and if they are not facing any road, the valuation should be done at 70% the rate assigned to shops.

(b) A dispensary/hospital/bank situated on the upper floors should be valued as per clauses (c) and (d) of Guideline No.8.

(c) Registered Information Technology/Information Technology Enabled Services Units in an Information Technology Park should be valued at industrial rates instead of commercial rates as assigned in the Annual Statement of Rates. If industrial rate is not assigned, such unit should be valued at 110% the rate applicable to a residential building/flat.

(d) A school and religious building should be valued at the rate assigned to a residential flat in the concerned valuation zone of the Annual Statement of Rates.

9.38 Guideline No 8

Valuation of Shop Premises:-

(a) Shops facing roads: - To be valued at the rate assigned to shops in the Annual Statement of Rates.

(b) Shops not facing roads: - To be valued at 80% the rate assigned to shops in the Annual Statement of Rates.

However, the rate so worked out shall not be less than the rates applicable to offices/occupational premises on the upper floors. This exemption shall be permissible only in regard to the shop premises on the ground floor/lower ground floor/upper ground floor not facing roads. The concerned Sub-Registrar shall inspect the building plan of the building mentioned in the instrument to ascertain whether the shop premises face road or not and a copy of the sanctioned plan should be annexed to the instrument as a part thereof.

(c) Shops/offices with construction area exceeding 450 sq.mt:- While valuing shops/offices with the construction area exceeding 450 Sq.mt, deduction over the rates assigned to shops/offices in the concerned valuation zone of the Annual Statement of Rates should be granted as set out herein below.

Construction Area of the Shops/Offices	Deduction to be granted over the Rate of
More than 450 Sq.mt. and upto 700 Sq.mt.	5%
More than 700 Sq.mt. and upto 900 Sq.mt.	10%
More than 900 Sq.mt. and upto 2300 Sq.mt.	15%
More than 2300 Sq.mt.	20%

Note:- 1] For shops with larger area not facing the roads, this deduction shall be permissible over the rate worked out after taking into consideration Guideline No. 8(b). However, this deduction shall not be permissible for an office of larger area not facing road.

2] While carrying out valuation as above, instead of slab-wise valuation, the contextual direct deduction as applicable to that area should be taken into consideration.

(d) Valuation of shops in the buildings comprising larger shopping complex other than Malls:-

Sr.No.	Floor Comprising a shop	% of the rate of shop as assigned in the Annual Statement of Rates to be taken into consideration.
1	Basement	70%
2	Lower Ground Floor	90%
3	Ground Floor/Upper Ground Floor	100%
4	First Floor (above ground floor or above stilt floor)	90%
5	Second Floor and Floors above	80%

Note:- 1] If the rate so worked out is less than the rate applicable to an office/occupational premises on the upper floor, the rate of office/occupational premises should be taken into consideration.

2] For a shop in the aforesaid complex not facing road, the said deduction shall be permissible after taking into consideration the rate as per Guideline No. 8(b).

9.39 Guideline No 9

Malls/Departmental Stores:-

If no separate valuation zone/rate is prescribed for such building, the valuation of the shopping area premises/shops shall be determined as follows:-

Sr.No.	Floor Comprising a shop	% of the rate of shop as assigned in the Annual Statement of Rates to be taken into consideration.
1	Basement	80%
2	Lower Ground Floor	100%
3	Ground Floor/Upper Ground Floor	120%
4	First Floor (above ground floor or above stilt floor)	100%
5	Second Floor and Floors above	80%

Note:-This Guideline should not be taken into consideration, if a separate valuation zone is prescribed in the Annual Statement of Rates for Malls/Departmental Stores. In order to verify whether the premises/shops mentioned in the Instrument are situated in a Mall/Departmental Store, it shall be necessary to enclose a copy of the building plan sanctioned by the Municipal Corporation/Municipal Council with the instrument. If the rate so worked out is less than the rate applicable to an office/occupational premises on the upper floors in the concerned valuation zone of the Annual Statement of Rates, the rate applicable to an office/occupational

premises should be taken into consideration. The rate so worked out shall not be eligible for deduction as per the aforesaid Guideline No 8(b).

9.40 Guideline No 10

Shops on the lower ground floor in a building comprising mixed users like commercial/ Residential, Public-Semi-Public/Commercial/Residential and Industrial/Commercial (except a larger Shopping Complex/Mall):-

Shop on the lower ground floor should be valued at 80% the rate applicable to a shop in the concerned zone. A shop on the upper ground floor should be valued like a ground floor shop by taking into consideration the 100% rate applicable to a shop in the concerned valuation zone of the Annual Statement of Rates.

9.41 Guideline No 11

Basement:-

If the basement is used for a shop/warehouse/storage apart from parking, it should be valued at 70% the rate applicable to a shop in the concerned valuation zone.

9.42. Guideline No 12

Mezzanine Floor:-

A mezzanine floor should be valued at 70% the rate applicable to the respective floor for the concerned user as specified in the Annual Statement of Rates. However, the area of a loft should not be taken into consideration for valuation.

9.43 Guideline No 13

The space surrounding the ground floor of a building:-

If the rights of land abutting a flat/office/shop shown in the sanctioned building plan are assigned for parking or otherwise, such land should be valued at 40% the rate applicable to the land in the concerned valuation zone of the Annual Statement of Rates.

9.44 Guideline No 14

Terrace:-

Terrace attached to a built-up property (flat/office/shop/industrial) excluding a bungalow on the independent plot, should be valued by taking into consideration 40% the rate applicable to the concerned user in the Annual Statement of Rates. If the terrace on the upper floor of a flat is sold along with the flat, such terrace should be valued at 25% the rate applicable to the flat under the Annual Statement of Rates. However, a terrace on the upper floor of an office/shop should be valued at 40% the rate applicable to an office/shop as per the Annual Statement of Rates (Ready Reckoner).

9.45 Guideline No 15

Parking:-

If any built-up property (flat/office/shop/industrial) other than a bungalow on the independent plot is provided with covered parking amenity e.g. Parking Garage, Stilt-Parking and Multi-storeyed Parking, the built-up area of such covered parking should be valued at 25% the rate after making the permissible deduction/addition to the rate of concerned user (flat/office/shop/industrial) as per the Annual Statement of Rates. However, the parking area on the open land should be valued at 40% the rate of land in the concerned valuation zone. If the instrument does not mention any parking area, a Deed of Guarantee containing an assurance that no covered or open parking area for the flat/office/shop/industrial user has been provided, should be taken and it should form a part of the instrument.

9.46 Guideline No 16

Valuation of the Bare Land:-

Bare land should be valued as per the Table given below. If parcels of land from the same Gut No/Survey No sold under a Sale Deed by one or different owners can be contiguously consolidated or if the parcels of land from different survey numbers belonging to one owner can be contiguously consolidated, such consolidated areas shall be eligible for deduction as per the Tables set out in clauses (a) and (b) below under the category of bare land.

However, even if the different lands/parcels of land from different survey numbers belonging to different land owners can be contiguously consolidated, such consolidated area shall not be permitted the said deduction.

Moreover, the lands situated at different sites/parcels of land from different survey numbers belonging to the same land owner cannot be contiguously consolidated; such consolidation shall not be permitted the said deduction. To verify this aspect, a true copy of the Survey Plan/Village Plan should be obtained and the same should be registered as a part of the instrument.

(a) Valuation of the area situated in the Agriculture/No-Development Zone under the Regional Plan/Development Plan, areas included in the "Agricultural land" valuation zone, which are not governed by a Regional Plan or Development Plan and the valuation of areas, where sq.mt. and per hectare rates of land are prescribed.

Sr No	Area	Class I	Class II
		Where only per sq.mt. rate is prescribed, the percentage of per sq.mt. rate to be taken into consideration	Valuation of the area which is included in the valuation zone, wherein the same land attracts per sq.mt. and per hectare rates under the Annual Statement of Rates (Ready Reckoner)
1	Upto 2000 sq.mt.	100%	Valuation of the area upto 2000 sq.mt. at per sq.mt. Rate (+) valuation of the remaining area at per hectare rate of the remaining area at per hectare rate
2	2001 sq.mt. to 4000 sq.mt.	80%	
3	4001 sq.mt. to 10,000 sq.mt.	60%	
4	Exceeding 10,000 sq.mt.	40%	

Note: - 1] While using the above Table, valuation shall be fixed by adding up valuations for all the slabs as are mentioned in the Guideline No. 16(a).

2] Before the said Table is made applicable to the agricultural lands in the Urban and Influence areas, it shall be incumbent to verify the permissible land user from the latest land user certificate under the Development Plan/Regional Plan i.e. the certificate not older than three months and to enclose the same with the instrument.

(b) The area included in the remaining valuation zones other than Agriculture and No-Development Zone i.e. Residential/Commercial/Industrial and other valuation zones of developable user under the Development Plan of Urban Areas as well as the area included in the probable Non-Agricultural valuation zones of the Influence Areas, which have/do not have any Regional Plan.

Sr No	Area	% of the per sq.mt. valuation rate to be taken into consideration	
		As applicable to Thane/Kalyan-Dombivali/Bhivandi-Nizampur/Ulhas Nagar/Mira-Bhayander/New Mumbai/Vasai-Virar/Pune/Pimpri-Chinchavad/Nashik/Aurangabad/Nagpur	As applicable to all other Municipal Corporations, Municipal Councils, Influence Areas and Rural Areas
1	Upto 500 sq.mt.	100%	100%
2	500 sq.mt. to 2000	90%	90%
3	2001 sq.mt. to 4000	80%	80%

4	4001 sq.mt. to 10,000	70%	60%
5	Exceeding 10,000	60%	50%

Note: - While using the above Table, valuation shall be fixed by adding up valuations for all the slabs as are mentioned in Guideline No. 16(b).

(c) Valuation of land/plot assessed as Non-Agricultural:-

Where the entire area under a sanctioned Layout converted to non-agricultural user such as Residential/Commercial/Industrial user etc. (inclusive of roads, open spaces, amenity area etc.) is sold, 80% of the rate as applicable to the concerned non-agricultural user under the Annual Statement of Rates should be taken into consideration for the purpose of valuation. Where only one or more plots under the sanctioned layout, excluding the roads, open spaces, amenity area etc. are sold, the direct Non-Agricultural Rate should be taken into consideration for the valuation of such areas/consolidated areas.

9.47 Guideline No 17.

Regarding the rate of plot situated in the interior of a road in an urban and Influence area for which a separate valuation zone is provided:-

Plots situated further than 50 mt distance from the road provided with a separate valuation zone/bare land comprised in a larger Survey number/Gut number situated in the interior area further than 50 mt., should be valued by taking into consideration 70% the rate applicable to the road. It shall be necessary to enclose the Sectional Plan under the Development Plan/Regional Plan, Survey Plan of the site with the instrument in question so that it can be ascertained that the said plot is not situated within 50 mt. distance. It shall be incumbent to enclose a copy of the sanctioned Layout with the instrument before this exemption can be extended to the road facing plots in the sanctioned Layout provided with a separate valuation zone. This guideline is applicable to the lands/plots only if the road thereof is provided with separate valuation zone. This guideline shall not be applicable to the lands/plots situated in other general valuation zones as well as rural areas.

9.48 Guideline No 18.

Building not equipped with Lift facility:-

While valuing the flats in a building not equipped with lift facility, the following percentage of the Rates should be taken into consideration.

Sr No	Floor of the Flat	% of the concerned Rates to be taken into consideration
1	Ground Floor/Stilt Floor	100%
2	First	100%
3	Second	95%
4	Third	90%
5	Fourth and all Floors above	80%

9.49 Guideline No 19.

Multi-storeyed Buildings equipped with Lift facility:-

While valuing residential/occupational/office premises in a multi-storeyed building, the following increase vis-à-vis the rates applicable to the concerned valuation zone should be taken into consideration.

Sr.No	Floor of the concerned Residential/Occupational Premises	Increase to be made over the Annual Rates
1	Stilt Floor or Ground Floor upto 4th	As per the Annual Rates
2	5th Floor upto 10th Floor	5%
3	11th Floor upto 20th Floor	10%
4	21st Floor and the Floors above	15%

While calculating the number of floors, except the stilt and ground floor, all the floors above should be counted consecutively. For the shop premises or IT user in a Multi-storeyed building such increase should not be made.

9.50 Guideline No 20.

Valuation of agricultural land/land in No-Development Zone:-

(a) To check 7/12 Extract:- While valuing an agricultural land in the rural areas, 7/12 Extracts of the said land for the last 3 years should be examined and the type of land (uncultivated, unirrigated, Tari paddy, seasonally irrigated, perennially irrigated etc.) should be decided on the basis of entries therein regarding crops, water supply. If more than 50% area of the whole land grows sugarcane/orchard/flower fields by means of well/canal/drawal irrigation, the whole area should be valued as perennially irrigated area and if less than 50% area grows sugarcane/orchard/flower fields by the above available means, the area should be valued as seasonally irrigated area.

(b) Where no rate of value is prescribed for any type of agricultural land: – Where no separate rate is prescribed for any agricultural land of unirrigated, seasonally irrigated or perennially irrigated types, the land should be valued by applying the following quantities.

Unirrigated / Dry land Dhan cultivation	Seasonally irrigated / Tari Paddy / irrigated Dhan cultivation	Perennially irrigated sugarcane Plantation / orchard / flower field plantation
1.00	1.50	2.00

Note:- This guideline shall not apply to those rural areas, where separate rates are prescribed for unirrigated, seasonally irrigated or perennially irrigated lands.

(c) Valuation of agricultural lands in the No-Development Zone within the limits of “C” class Municipal Councils:- The per hectare rates in the No-Development Zone within the limits of ‘C’ class Municipal Councils apply to unirrigated land. On the basis of 7/12 extracts, action should be taken for the seasonally irrigated land, Dhan cultivation, Tari paddy and perennially irrigated lands as per Guideline No. 20(b).

(d) The area declared as Mining Belt by the Government/Collector as well as wind energy/solar energy project:-

The land in rural areas purchased/sold for such project for the first time should be valued by taking into consideration double the rate mentioned in Annual Statement of Rates (Ready Reckoner) as per the classification of agricultural revenue applicable to the land.

As regards the land in Influence and Urban areas, if the same is situated in unirrigated/agricultural No-Development Zone, it should be valued by taking into consideration double the rate in terms of per hectare rate applicable to a land in the concerned valuation zone under the Annual Statement of Rates. If per sq.mt or per hectare and per sq.mt. rates are prescribed for the said land, instead of doubling the rate worked out after applying the Table given under Guideline No. 16(a) in respect of bare lands, the direct value should be taken into consideration. If the said land is situated in probable Non-Agricultural/Residential/Developable Zone, instead of doubling the rate worked out after applying the Table given under Guideline No. 16(b) for the bare land as applicable to the land in the concerned valuation zone, direct rate should be taken into consideration.

(e) Where the land purchased for the first time for solar energy and windmill project is sold/transferred to any other person/company after developing it with the necessary amenities, should be valued as follows after taking into account the Development charges incurred for the land:-

(i) For rural areas: - [(Per hectare rate applicable to the concerned land as per the classification of its agricultural revenue under the Annual Statement of Rates) x 2 + Rs. 15,00,000] x Area of land (Hectare).

(ii) For Influence and Urban Areas: - If only per hectare rates are prescribed for the land in unirrigated/agricultural/No-Development Zone, it should be valued as above. If per sq.mt or per sq.mt. and per hectare rates are prescribed for the said land, the total value should be determined after applying the table given under Guideline No. 16(a) vis-à-vis the bare land and including in such value the expense @ Rs.15,00,000/- per hectare.

If the said lands are situated in the probable Non-Agricultural/Residential/Developable Zone, the total value should be determined applying the table given under Guideline No. 16(b) vis-à-vis the bare land to the rate of value applicable to the land in the concerned valuation zone and including in such value the expenses @ Rs. 15,00,000/-per hectare.

(f) The land transferred to the Forest Department for compensatory afforestation should be valued at the rate mentioned in the Annual Statement of Rates (Ready Reckoner).

(g) If no separate valuation zone/rates are prescribed for the land situated in the No-Development Zone covered by the Development Plan as applicable to a Municipal Corporation/Municipal Council/Nagar Panchayat, the said land should be valued at 40% the rate applicable to the valuation zone where the land is included and applying to such value the Table given under Guideline No.16 (a) vis-à-vis the bare land.

9.51 Guideline No 21.

Valuation of an agricultural land having area less than 10 Are (1 Are = 100 Sq Metres) :-

(a) Where uncultivated or agricultural land situated in the influence or rural areas admeasuring less than 10 Are is sold and if for such land only per hectare rates are prescribed, the land should be valued at one and half times the rate, which is worked out on the basis of entries relating to crops and water supply on the concerned land.

However, where separate rates are prescribed for Tari paddy (rice cultivation) under the Annual Statement of Rates, in such case if any survey number/gut number in its entirety admeasures less than 10 Are and if the entire area thereof is being sold and the land in question does not face any road, one and half times the rate shall not be made applicable to such land.

(d) Where water supply is not available for any land despite it being situated in the benefit zone and if the party encloses a certificate of the concerned Authority regarding the non-availability of water of Irrigation Department for the area to be sold, the land should be valued as per Guideline No.20.

9.52 Guideline No 22.

Division of hamlets:-

Where separate revenue villages have come into existence as a result of division of hamlets and if no separate rates are prescribed for such villages under the Annual Statement of Rates, the property should be valued at the rates applicable to a C.S.No./Survey No. prior to such division.

9.53 Guideline No 23

Valuation of the actual non-agricultural/probable land in the Rural and Influence Areas:-

(a) Where any agricultural land in the rural areas is being sold and if such land is converted to non-agricultural user, the said land/the plot comprised in such land should be valued on the basis of non-agricultural rate applicable to the village and Guideline No. 16(c) vis-à-vis the bare land.

(b) Where an agricultural land in the unirrigated/agricultural valuation zone within the limits of Influence Area is sold and if such land is converted to non-agricultural user, the said land/plot comprised in such land should be valued on the basis of rate prevailing in the adjacent Non-Agricultural valuation zone of the said village with similar merits and demerits as well as Guideline No. 16(c) vis-à-vis the bare land.

(c) The rates prescribed for the non-agricultural land valuation zone in rural areas pertain to residential class of non-agricultural assessment and the lands assessed to commercial/industrial N.A user should be charged with stamp duty at 110% the rate as stated aforesaid.

(d) Where a land which is not assessed to non-agricultural user is comprised in the non-agricultural valuation zone under the Statement of Rates of Influence Areas and if on such land Residential/Commercial/Industrial users are permitted as per the provisions of Regional Plan and Zonal Certificate, it should be treated as a probable nonagricultural land.

Such land should be valued on the basis of rate prevailing in the adjacent probable nonagricultural valuation zone of the said village with similar merits and demerits as well as Guideline No. 16(b) pertaining to the bare land for residential user. If residential/commercial/industrial user is not so permitted, such land should be valued by applying the Table given under Guideline No. 16(a) pertaining to bare land.

Furthermore, where the land in probable non-agricultural valuation zone is/has been converted to non-agricultural user and if non-agricultural rate is not prescribed for such land, the said land should be valued on the basis of rate prevailing in the adjacent non-agricultural

valuation zone of the said village with similar merits and demerits as well as Guideline No. 16(c) pertaining to bare land.

9.54 Guideline No 24

Valuation of a Farm house/Forest house:-

Where any agricultural land in the rural areas and Influence areas is purchased for the Farm house/Forest house, the said user should be treated as the probable non-agricultural user and the said land should be valued on the basis of the probable non-agricultural rate worked out in accordance with the Table of bare land prescribed under Guideline No. 16(a) vis-à-vis a No-Development Zone. If the statement of Rates does not prescribe probable nonagricultural rate for the said land, it should be valued on the basis of the highest rate prevailing in that Influence area for the probable non-agricultural user. As the probable non-agricultural rates are not prescribed in the rural areas, the land should be valued on the basis of 50% the rate of non-agricultural user and the Table of bare land prescribed under Guideline No. 16(a) for a No-Development Zone.

9.55 Guideline No 25.

Valuation of uncultivated lands/lands unfit for cultivation/uncultivated hilly lands:-

(i) uncultivated/unfit for cultivation/uncultivated hilly lands in the Urban and Influence areas should be valued at 100% the rate prevailing in the concerned valuation zone.

(ii) Rural Areas:-

(a) Valuation of lands unfit for cultivation (Potkharab lands):- For the computation of per hectare rate, the entire assessment value on the 7/12 Extract should be divided by the entire area (not excluding uncultivated/Potkharab areas) i.e. (Value of Assessment/Area). In accordance with the rate of assessment per hectare so worked out and as per the type of land (unirrigated/irrigated/orchard) the entire area inclusive of potkharab lands should be taken into account for valuation.

(b) Valuation of uncultivated hilly lands (Dongarpad):- Valuation of Dongarpad lands in the rural areas should be done on the basis of type of unirrigated land and 75% the rate of value as per agricultural revenue. If some areas of the Dongarpad lands are classified as unirrigated/seasonally irrigated/perennially irrigated as per the 7/12 Extract, the said area should be valued as per the type of land and on the basis of rate of agricultural revenue.

9.56 Guideline No 26.

Valuation of the instruments concerning lands acquired for the benefit of companies for agriculture/vegetable farming/floriculture/rubber plantation/teak plantation/orchard farming etc. on commercial basis:-

(a) Purchase for the users complementing agriculture:-

(i) on the basis of the per hectare rate, an unirrigated land should be valued at double (200%) the rate, seasonally irrigated land should be valued at triple the rate (300%) and perennially irrigated land should be valued at 400% the rate.

(ii) Where separate rates are prescribed for the irrigated users e.g. flower fields, orchards, sugarcane farming etc.

Those rates or the rates worked out as per sub-clause (i) above, whichever being the higher rate shall form the basis of valuation.

(iii) A land purchased by a company contemplates storage/processing/research related construction/internal roads. For this generally 20% area should be taken into consideration and this 20% area should be valued at 50% the rate applicable to non-agricultural user for the said village on the basis of probable non-agricultural object.

(b) As regards any company/society other than a company/society with Agro-complementary business as its sole object, the user should be treated as probable non-agricultural user and the land should be valued at 50% the nonagricultural rate prescribed for the concerned village.

(c) If the land purchased by a company/society for the aforesaid objects is situated in the Non-Agricultural/Probable Non-Agricultural/Residential/Developable Zone within the limits of Urban and Influence Areas, it should be valued at the rate applicable to the concerned valuation zone.

Where the said land is situated in a Non-Developable Agricultural/No-Development/Unirrigated valuation zone, it should be valued at one and half time (150%) the rate applicable to the said valuation zone.

9.57 Guideline No 27.

Saline Lands:-

As regards the saline lands (sprouting salt), necessary enquiry should be made and such lands should be valued at 60% the rate applicable to an irrigated land. This Guideline will not apply to the lands in Urban and Influence Areas.

9.58 Guideline No 28.

Redevelopment Proposals of Co-operative Housing Societies:-

In case of redevelopment proposals of co-operative housing societies, if the valuation of properties included therein vis-à-vis the Annual Statement of Rates is not acceptable to the concerned parties, the instrument shall be elaborately valued by Adjudication under section 31 of the Maharashtra Stamp Act, 1958.

9.59 Guideline No 29.

Valuation of agricultural lands of the probable non-agricultural user:-

(a) Where private agricultural lands other than the lands in Non-Agricultural/probable Non-Agricultural valuation zones in the Urban Areas or Influence Areas are sold/transferred for the first time for Special Townships, Special Economic Zones, private Hill Stations etc, where societies/companies other than the farmers purchase agricultural land for other probable residential/industrial/commercial objects of non-agricultural nature and where government lands in the rural areas are converted to non-agricultural objects, such lands in the rural areas should be valued at 50% of the per sq.mt non-agricultural rate and on the basis of the Table of bare land given under Guideline No. 16(a) for the concerned zone, after taking into account the expenses incurred for such probable non-agricultural user/development. Where the government land in rural areas is converted for agricultural user, the rate applicable to Area Slab No.4 [5.01 to 7.50] for the valuation zone of the concerned village under the Annual Statement of Rates should be taken into consideration. Valuation of the land in Influence Areas should be carried out on the basis of the rate prevailing in the adjacent probable non-agricultural valuation zone with similar

merits and demerits as well as the Table of bare land prescribed for No-Development Zone under Guideline No. 16(a).

(b) Of the lands facing Highways in rural areas (National Highway/State Highway) the area upto 4000 sq.mt should be valued as per the Table below in view of its non-agricultural probability. Rest of the land should be valued at the per hectare rates applicable to the said village as per the classification of agricultural assessment of the land in question.

Sr.No.	Area	% of the Rate of value per sq.mt. to be taken into consideration
1	Upto 500 sq.mt.	100%
2	500 sq.mt. to 1500 sq.mt.	70%
3	1500 sq.mt. to 2500	40%
4	2500 sq.mt. to 4000	30%

While using the above Table, valuation shall be fixed by adding up valuations under all the slabs mentioned therein.

(c) The rates prescribed for the lands along highways in rural areas pertain to any user of probable non-agricultural land and the lands along highways which are assessed to non-agricultural user should be valued at 120% the rate applicable to such land and on the basis of the Table of bare lands given under Guideline No. 16(c).

(d) As regards a Census Town in rural areas with population exceeding 5000, the land within the circumference of 200 mt. from the outskirts of a Gaathan, in view of its non-agricultural probability, should be valued at 50% the rate of non-agricultural rate applicable to that village and on the basis of the Table of bare land given under Guideline No. 16(b).

9.60 Guideline No 30.

Valuation of lands reserved for public purpose under a sanctioned Development Plan:-

Of the area mentioned in the instrument, only the area reserved/affected by a sanctioned Development Plan should be valued at 80% the rate mentioned in the Annual Statement of Rates.

9.61 Guideline No 31.

Valuation of plots where TDR is to be used:-

Where instruments pertaining to Development Agreement/sharing of built-up area/sharing of revenue within the limits of Thane, Kalyan-Dombivali, Mira-Bhayander, Bhivandi-Nizampur, Pune, Pimpri-Chinchawad, Nashik, Aurangabad and Nagpur Municipal Corporations mention that built-up area/revenue inclusive of the TDR area is to be shared or that TDR is to be utilised therein, the rate assigned for such land under the Annual Statement of Rates with 25% increase therein should be taken into account for the valuation.

9.62 Guideline No 32.

Development Agreement-Valuation in case of sharing of the construction area:-

(a) The value of share awarded to the owner of land

(i) The value of area comprised in the share of land owner as per the rate of construction.

+

(ii) The value worked out after taking into consideration the monetary compensation awarded to the land owner

apart from the area of construction, interest on deposit, development charges and such other factors as mentioned in the instrument (if instrument mentions interest on Deposit exceeding 10%, such rate of interest or where the rate of interest is not so mentioned, 10% simple interest should be taken into consideration.

(b) Value of the share awarded to the Developer:-

Area of the land comprised in the share of Developer x Rate of Land

Of clauses (a) and (b) above, the higher value should be taken into consideration as the market value.

9.63 Guideline No 33.

Development agreement- Valuation in case of revenue sharing shall be done as follows:-

(a) Value of the share awarded to the land owner:-

(i) Current Value of the land owner's share in terms of the rate of sale having regard to the permissible user thereof x 0.85.

+ (ii) The value worked out after taking into account the compensation awarded to the land owner apart from the above, interest on deposit and such other factors as mentioned in the instrument (If the instrument mentions interest on deposit exceeding 10%, such rate of interest or 10% simple rate of interest should be taken into consideration.

(b) Valuation of the whole land at the rate of land mentioned in the Annual Statement of Rates:-

Of clauses (a) and (b) above, the higher value should be taken into consideration.

9.64 Guideline No 34.

Valuation of the instruments concerning the flats/shops/offices etc. retained by the Developer in the context of a Development Agreement for self-purchase:-

Instrument concerning the flats/shops/offices etc. retained by the Developer for self-purchase in the context of Development Agreement should be valued at the rates assigned to flats/shops/offices etc under the Annual Statement of Rates after deducting therefrom the new rates of construction as per the applicable construction classification and stamp duty should be charged on the amount so calculated.

9.65 Guideline No 35.

If any Government or Semi-Government institution or Government Corporation/Undertaking or Local Authority (Municipal Corporation/Council) is selling or allotting any property on the basis of pre-determined price under the proviso to Rule No. 4(6) of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, the price so determined by such bodies should be treated as the true Market Value thereof and stamp duty should be charged accordingly. In respect of the property mortgaged with banks, the price fetched in the auction conducted by the Government Appointed Officer should be treated as the Market Value of the property and stamp duty should be charged accordingly. Except the above matters, in no other case shall the determined/agreed/compounded value be taken into consideration.

9.66 Guideline No 36

Where the same C.S.N /S.N./G.N./I.S.N. is situated in two valuation zones under the Annual Statement of Rates (e.g. a portion faces roads and the remaining portion is situated in the interior areas, some portion is lying in the Agricultural zone and the remaining portions in

other zones etc.), the factors to be taken into consideration for the valuation/Documents which are essential as a part of the instrument:-

The above ambiguity should be cleared by verifying the submitted documents/plans such as the certified Survey Plan of the Department of Land Records/certified copy of the Sectional Plan under the Regional plan of the Town Planning Department/certified copy of the Sectional Plan under a Development Plan of a Municipal Council or Municipal Corporation or such factors as the description of property with the four boundaries thereof as mentioned in the instrument. However, if the instrument does not mention the factors having a bearing on the valuation or if the necessary proof in that regard does not form a part of the instrument, the said property should be valued inter-alia on the basis of the highest rate applicable to the valuation zone, where such C.S.N./S.N./G.N/I.S.N is included.

9.67 Guideline No 37.

It shall be essential to enclose true copies of the necessary documents/plans with the instrument in question, before the appropriate deduction/decrease/exemption under the aforesaid Guidelines can be granted. If the same survey number is found in two valuation zones, valuation should be done at the higher of those rates. If the said rate is not acceptable, necessary papers in support thereof should be presented to the concerned Deputy Director, Town Planning/Assistant Director, Town Planning (Valuation) to have the valuation zone determined.

9.68 Guideline No 38.

Guidance for determination of valuation zone and Rate of value:-

If a property is included in the wrong valuation zone vis-à-vis its location/description or if there is any typographical error or if such property is not included in any valuation zone or if the value rates thereof are not available, the Joint District Registrar and Stamp Collector should contact the office of the concerned Assistant Director, Town Planning (Valuation) and make available to them such documents as 7/12 Extract or Property Card of the Property, Sectional Plan indicating the land use under the Development Plan, Village Plan, City Survey Office Sheet, Survey Plan and have the valuation zone and Rate of Value determined.

Note:- The Guidelines of Annual Statement of Rates for valuation of property are issued every year by IGR, and valuation of property is subject to revision/changes/additions in ASR if any.

[<http://maharashtrahousingandbuildinglaws.com/asr-ready-reckoner-guidelines-for-mumbai-and-suburban-district-2015/>]

[<http://maharashtrahousingandbuildinglaws.com/asr-ready-reckoner-guidelines-rest-of-maharashtra-2015/>]

CHAPTER 10

CONDUCT OF AUDIT

Conduct of Audit

10.1 Audit of stamps and registration fees involves thorough application and interpretation of the Maharashtra Stamp Act and other allied statutes as well as up-to-date knowledge of relevant judicial pronouncements.

The State Receipt Audit Party (SRAP) of Stamp receipts is headed by one Sr. Audit Officer/Audit Officer supported by two Assistant Audit Officer /Supervisor and one Senior Auditor/Auditor subject to availability of suitable manpower in a different combination.

10.2 The main items of work undertaken during the Compliance Audit are:

- a. Entry meeting with the head of office;
- b. Getting the day book and token register and preparation of list of selected documents there from as per sampling instructions in the foregoing paragraphs;
- c. Collection of registered documents and scrutiny thereof;
- d. Issue of audit objections;
- f. Follow up of pending audit objections in part III of the new Inspection Report format
- g. Preparation of draft LAR; and
- h. Exit meeting.

10.3 The main items of work undertaken during the Performance Audit/Theme Based Audit (Thematic Audit) are:

- a. Conducting of pilot study/preparation of guidelines;
- b. Identification and selection of cases,
- c. Entry conference,
- d. Collection of statistical data,
- e. Examination of cases,
- f. Preparation of mid-term draft Audit Report;
- g. Follow up of C & AG HQ's observations etc.
- h. Preparation of draft report; and
- i. Exit conference

10.4 Prior to Commencement of Audit and on the First Day

On the first day of local audit, following works are to be completed:

a. In case of a compliance audit, an Entry conference is to be conducted by the State Receipt Audit Party (SRAP) with the head of auditee unit and minutes of meeting is to be recorded for keeping in the LAR folder;

b. In case of Performance Audit, entry conference is to be held between the Officers of the Comptroller and Auditor General (C & AG) and the Department of Revenue (Stamps and Registration). The purpose of such a conference is to inform the department about areas to be audited along with audit objectives, audit criteria, the audit approach and the time-frame within which audit is expected to be carried out.

During entry conference, protocol for conduct of audit is to be set up including nomination of liaison officers, production of records and other logistic arrangements. Minutes of the proceedings have to be prepared and shared with the department.

The department shall be requested to intimate their field formations about the Performance Audit and issue necessary instructions for giving full co-operation to audit. Likewise, at field level, the AG/GO concerned should hold an entry conference with the jurisdictional representative of the department informing them about the Performance Audit to be undertaken and other significant details. Minutes of the Conference have to be prepared and shared with the department;

c. Audit requisition calling for the records and statistical information required for conducting audit and preparation of the LAR are to be issued. Other information/ data required to be called for/collected during audit must also be called for;

d. The norms for selection of registered and stamped documents for audit are as per foregoing paragraphs.

Besides, prior to commencement of audit, all members of audit team, including the Inspecting Officer/Supervising Officer, are required to give individual undertaking stating inter alia that he/she will uphold and abide by the Code of Ethics and that he/she does not have any personal or professional interest in the audited entity etc.

The format of the undertaking is given in **Appendix 5**. A copy of the declaration is required to be given to the head of the auditee entity as soon as audit commences.

10.5 Work Distribution

The Supervising Officer shall allocate the works to the members of audit team. A detailed scrutiny of documents should then be undertaken by the team members viz. Senior Audit Officer (SAO) /Audit Officer (AO), Assistant Audit Officer (AAO) and Sr. Auditor/Auditor according to the allocation of work. It should, however, be ensured that all high value documents say above 5 crores are necessarily checked by SAO/AO and AAO; five per cent of

cases checked by the AAO should be reviewed by the SAO/AO. Some documents may also be entrusted to the Sr. Auditor/Auditor, if needed. However, all such cases need to be reviewed by the SAO/AO and AAO.

Details of work distribution are given in **Appendix 7**.

10.6 Audit Scrutiny

Checklist of Records to be checked are as under:-

- 1) Questionnaire (May be sent at the time of intimation of audit by State Receipt Audit (SRA) HQ so that it may be available on the first day of audit).
- 2) Cash book
- 3) Day book/token register
- 4) Year-wise/month-wise, Article-wise (Schedule-I of Bombay stamp Act 1958) of abstract of documents registered say Bazar Nihaya etc as called at local level.
- 5) Administrative report.
- 6) Statement of high value documents submitted to Income tax department.
- 7) List of adjudicated documents.
- 8) Internal audit wing Inspection reports.
- 9) List of Stamp Vendors.
- 10) Receipt book of selected months.
- 11) Any other record relevant for audit planning.

After obtaining the preliminary records, the audit party would be in a position to ascertain the scope of audit.

10.6.1 A list of preliminary records to be obtained from the audited entity is given in **Appendix 6**. Further a list of commonly applied checks are also given in **Appendix 8**.

10.6.2 Issue of Audit Memo

When any irregularity or mistake is noticed, the same should be immediately brought to the notice of the departmental official by issuing 'Audit Memo'. Audit Memo (AM) should indicate details viz. Names of both the parties involved, document No, date and year of the document, extent of evasion of stamp duty, nature of audit objection in brief.

The Audit Party should also observe the following instructions in regard to audit:

- a.** Audit Memo preferably computer typed may be issued to the concerned officials with the instruction to furnish reply within a reasonable time from the receipt of the Audit Memo but not extending in any case beyond one day before the last day of audit;
- b.** In cases where the objection relates to facts and figures available in the records but omitted to be considered or wrongly considered, such as, omission of dimensions of a particular

property mentioned in the document, arithmetical mistake in the computation of stamp duty or of depreciation to be allowed on an old property or in the calculation of duty per se, it may have to be ensured that the departmental official replies to the 'Audit Memos' promptly accepting the mistakes/omissions. It may, therefore, have to be invariably mentioned in the 'Audit Memos' that if no specific reply is forthcoming, it shall be presumed that the facts stated by Audit are correct;

c. In cases where objection involves interpretation of the provisions of the Act and the department does not agree with the audit view, the state government official may give his/her final views later but in reply to the audit memos, he/she should confirm or deny the facts and figures referred to by Audit on which the audit view is based. Where he/she finds that he/she should call for the source records, he/she should say specifically in reply to the audit memos;

d. Where the departmental authorities refuse to show any files claiming to be confidential, Audit should politely draw their attention to:

i. Section 18 of C & AG's (DPC) Act, 1971 under which Audit has a right to call for any record or document to which its duty extends;

ii. Para 185 (Chapter 13) of Audit and Accounts Regulations 2007 provides that the Officer in charge of the auditee unit shall comply with requests of Audit for information and records as complete as possible and within the specified time; and

iii. State Receipt Audit Parties (SRAPs) should also draw the attention to the Para 3.24 of the Code of Ethics whereby Audit Members have to give declaration before commencement of audit to maintain strict confidentiality of the information gathered during the course of audit.

e. In order to prevent the departmental officials from setting up a plea, that the mistake pointed out by Audit has already come to his notice, a certificate may be taken from him along with records of each case 'that all the records and folders or files relating to the case have been sent to Audit and none is withheld,' and that wherever any record is withheld its description and reasons for the withholding should be obtained;

f. Issue of 'Audit Memo' on the last two days of the local audit is to be avoided as far as possible. But, where issue of 'Audit Memo' on the concluding day cannot altogether be avoided, the Inspecting Officer/AAO may contact the head of office and get his reply before the last day of the local audit;

g. The details of the 'Audit Memos' ('Name of executants', 'date and year', 'Nature of audit objection in brief and duty effect') are to be noted in a index before issuing them to the departmental head of office and the replies to all 'Audit Memos' is to be watched properly; and

h. If any file/documents called for is not supplied sufficiently in time, the reasons for the same should be enquired into and mentioned in the audit notebook of the LAR so that next State Receipt Audit Party (SRAP) may scrutinize such files.

10.6.3 Structure of Audit Memo

The Inspecting Officer or the supervisory officer may go through the memos proposed by individual members of the party and sign them in due course before issue.

The Audit Memo should also bring out the following essential particulars:

- a.** Subject: The short levy or non levy of the stamp duty and registration fee of specified amount;
- b.** Preamble: Indicating the exact provisions of the Act and Rules made thereunder, which have not been properly applied, the circulars and notifications issued in this regard and the judicial decisions, if any, on the law;
- c.** Objection: Full particulars of the audit objection pointing out the exact mistake that led to short levy or non levy of stamp duty attributable thereto;
- d.** Audit Memo number and date: Each Audit Memo should contain Audit Memo number with date of issue, date of acknowledgement; and number of the audit party with the name of the Inspecting Officer conducting the audit; and
- e.** Pages of each audit memo are also to be separately numbered.

Copies of all supporting documents which form the Key Documents (KDs) may be kept on record which might include the copy of the document brought into question and the position of act and rules thereto, which will facilitate the examination of the merit of the objection in the right perspective.

10.7 Functions of Audit

10.7.1 Compliance Audit

10.7.1.1 It basically focuses on whether a particular subject matter is in compliance with the criteria (set standards). Compliance auditing is performed by assessing whether activities, financial transactions and information are, in all material aspects, in compliance with the applicable authorities which include the Constitution, Acts, Laws, Rules and Regulations, Budgetary Resolutions, Policy, Contracts, Agreements, Established codes, Sanctions, Supply Orders, Agreed Terms or the General Principles governing sound public sector financial management and the conduct of public officials.

10.7.1.2 In the department of Stamps and Registration, all the transaction audits in the offices of the Joint Sub Registrars, Joint District Registrars/Collector of Stamps, Deputy Inspector General of Registration etc are conducted periodically on the basis of testcheck of the

registered and stamped documents and as per the guidelines issued by the C and AG in this regard. The material objections arising out of such audit are sent to the Hqrs office through the report section of the concerned local AG office to be ultimately printed in the audit report and discussed in PAC for appropriate action.

10.7.1.3 The testcheck shall be in accordance with the Auditing Standards 2017 which states that “The audit shall be planned to reduce audit risk to an acceptably low level. Professional judgement shall be exercised to decide on a suitable sampling methodology depending upon the subject matters, audit objectives being pursued and the envisaged scope of audit and therefore it could be said suggestively that 100% of all documents valued at more than five crores, 50% of that valued at more than one crore and less than five crores and 10% of the other documents which are less than one crore shall be sufficient to keep the audit risks at a low level.

Whatever sampling that may be adopted, the same shall be readily disclosed in the inspection report in the new format as is mandated by Hqrs office vide the latest compliance audit guidelines.

10.7.1.4 ~~It shall constitute the following parts of the report:-~~

~~Part I—Introduction—~~

~~This part may commence with an overview of the audit unit and may provide its functional/geographical jurisdiction, budget, financial performance and a perspective of the relative significance of the unit in the overall hierarchy of the department in pursuit of organisational goals. This may be followed by a brief explanation of the scope of audit, the sampling procedure followed and the audit sample — including the implementing units, the subject matter(s) selected and the sources of criteria that have been adopted to evaluate the selected subject matter(s). It may indicate that the audit has been conducted in accordance with the applicable Auditing Standards of CAG.~~

~~Part II—Audit findings—~~

~~This part shall contain all findings — both positive and negative findings that pertain to the audit unit and may be arranged in two distinct parts — Part IIA and II B — the first part comprising significant audit findings relating to evaluation of the regularity related subject matter(s)/ specific subject matter(s) and propriety related subject matters and the second part — II B comprising other incidental findings relating to both regularity and propriety aspects. The audit findings should be organised in decreasing order of materiality and significance, if possible. Presentation of audit findings shall conform to the Auditing Standards and other reporting principles enunciated in this chapter and clearly bring out the applied criteria, the~~

~~results of evaluation of the subject matter against the criteria highlighting the cause and effect relationship. Audit findings may also appropriately indicate the extent of non-compliance and whether they involve systemic issues or represent isolated cases of non-compliance, where considered necessary. Even though compliance audits conducted in accordance with these guidelines are not in the nature of an inspection, the existing terminology of Inspection Report is continued because of its historical import.~~

~~Part III— Follow up on findings outstanding from previous reports—~~

~~This part may indicate the progress of settlement of audit findings outstanding from previous Inspection Reports and list out the findings that continue to be outstanding.~~

~~Part IV— Best practices—~~

~~Any good practices or innovations, if noticed, during the course of audit may be mentioned.~~

~~Part V— Acknowledgement—~~

~~This part may contain the acknowledgement of the extent of audit units' cooperation in all matters including production of records called for in Audit. It may also contain details of persons holding the leadership positions in the audit units.~~

~~**10.7.1.5** Theme Based Audit (TBA) or alternatively called Thematic Audit (TA) is also undertaken on a selected theme as part of the compliance audit. It is the horizontal study across similar entities/units or sub-set of activities/ projects/entity within the department. It is a long Draft Paragraph covering all issues relating to a theme in audit.~~

~~Lastly, a departmental appreciation may be issued to draw attention of the executive towards system weaknesses etc. A consolidation of audit findings presented through the Departmental Appreciation Note would enable appreciation of both the audit findings that form the basis for Auditor's conclusion on compliance by departments as well as the audit findings that would feature as standalone findings.~~

10.7.1.6 4 Entry and Exit Meeting

The Inspecting Officer being the audit team leader should hold an exit meeting with the officer-in-charge of audited entity at the close of audit to seek his comments on audit observations. Any point of disagreement may be brought out and discussed by him during the meeting with a view to resolve the same. The officer-in-charge shall also offer his comments, if not already done in response to the audit memos, and the Inspecting Officer shall reflect such observations in the draft LAR. Wherever necessary and appropriate, the draft LAR may make recommendations for remedying systemic deficiencies and improving control.

Similarly at the close of audit, the audit team leader or the Group officer in charge should also hold an exit meeting with the officer in charge of the audit unit to discuss the audit findings

and request responses. The minutes of the exit meeting should be prepared and shared with the audit unit and acknowledgement requested.

10.7.1.7 5 An overview may of the Compliance Audit Guidelines 2017 issued by the C&AG of India is given in the **Appendix 10** and the same needs to be followed.

10.7.2 Performance Audit

10.7.2.1 ~~It primarily focuses on whether interventions, programmes and institutions are performing in accordance with the principles of economy (minimum input to obtain a maximum output), efficiency (optimum utilisation of the available input) and effectiveness (maximum output) and whether there is any room for further improvement. Performance is examined against suitable criteria (set standards) and the causes of deviations from those criteria or other problems are analysed. The aim is to answer key audit questions and to provide recommendations for improvement.~~

10.7.2.2.1.6 The performance audit is conducted by the local field AG offices on the pre determined topics that are approved by the Hqrs office as part of the strategic and annual audit plans.

10.7.2.3 ~~The structure of the performance report as per performance audit guidelines 2014 shall be as under:-~~

Title: the subject of the performance audit;

- ~~Executive summary: It provides the précis of the main report. The summary should not be very long and should contain only essential information. The major audit findings should be placed in the same sequence as the audit objectives and sub-objectives along with recommendations in brief;~~
- ~~Introduction: It consists of a brief description of the subject of study, information on programme, activity, or institution, its objectives, inputs, implementation structure, expected outputs and outcome, etc. The introduction should be brief, yet sufficient to enable the reader understand the context of the programme;~~
- ~~Audit objectives: They are the pivots of the performance audit, which set out the reason for undertaking the audit. The entire exercise of performance audit is built around the audit objectives. These should, therefore, be stated in simple and clear terms. It is useful to set out the audit objectives and sub-objectives within each audit objective in the form of complete statement/question;~~
- ~~Scope of audit: It is defined in terms of the period of the programme covered in audit and segments of the programme audited should be set out precisely;~~

- ~~Audit Methodology: It describes methodology used for data collection/evidence gathering and testing may be stated in brief. This adds to the acceptability of the audit findings and forms a statement for transparency of the audit procedure;~~
- ~~Audit criteria: to arrive at the audit findings and conclusions with reference to each audit objective and sub-objective which should be stated with appropriate explanations;~~
- ~~Audit findings and conclusions made during an audit with reference to each objective should be stated;~~
- ~~Recommendations: They should be presented along with the conclusions wherever applicable in a box or highlighted print;~~
- ~~Acknowledgement: it may be useful to indicate or acknowledge in brief the co-operation, acceptance of the criteria/findings and recommendations by the entity. In case the co-operation or response was not forthcoming at any stage it may be indicated if it has resulted in any limitation along with its implication and the special efforts made by the Accountant General to seek cooperation or response;~~
- ~~Glossary of terms: It is helpful to the reader if explanations are provided in a glossary or easy to find footnotes. Glossary should be comprehensive, explaining all technical and uncommon terms used in the report.~~

~~10.7.3 Entry Conference and Exit Conference~~

~~The Audit Officer introduces the audit plan consisting of the audit objectives, approach and time frame besides apprising the Administrative Department regarding data, information and documents that will be required by the audit team. The working procedures for audit may also be established in this meeting. The audit officer may also utilise this occasion to request the Administrative Department to provide assistance to the team for conduct of audit.~~

~~In audit of all units, the audit team should conclude the audits with an exit conference/meeting with the Administrative Department. The minutes of exit conference should be recorded and endorsed to the entity.~~

~~**10.7.2.4 10.7.1.7** An overview of the Performance Audit Guidelines 2014 issued by the C&AG of India is given in the **Appendix 9** and the same needs to be followed.~~

~~10.7.3 Functions while auditing~~

~~**10.7.3.1** While compliance auditing, the following are required to be accomplished:-~~

- ~~a. Entry meeting with jurisdictional departmental heads of auditee units;~~
- ~~b. Obtaining the list of number of documents registered with the office as classified according to type of document to plan a sample;~~

- ~~c. Getting day book and the Token Register and preparation of list of selected documents there from;~~
- ~~d. Collection of the requisitioned records and scrutiny thereof;~~
- ~~e. Collection of statistical information;~~
- ~~f. Issue of audit objections;~~
- ~~g. Follow up of pending audit objections~~
- ~~h. Preparation of draft LAR in accordance with the compliance audit guidelines; and~~
- ~~i. Exit meeting.~~

~~10.7.3.2 The main items of work to be undertaken during the Performance Audit/Theme Based Audit are:~~

- ~~a. Conducting of pilot study/preparation of guidelines;~~
- ~~b. Identification and selection of cases;~~
- ~~c. Entry conference;~~
- ~~d. Collection of statistical data;~~
- ~~e. Examination of cases;~~
- ~~f. Preparation of mid term draft Audit Report;~~
- ~~g. Follow up of C & AG HQ's observations etc.;~~
- ~~h. Preparation of draft report; and~~
- ~~i. Exit conference~~

10.7.1.8 Points to remember -

- **Approved Draft Paras are issued to the Departments of the State Government for their views/comments. These are incorporated in Chapter III of Compliance Audit Report. Information for Chapter I (General) is called for from the IGR and its attached offices and Chapter III (Audit Impact) from FAOs. On receipt of information, the Wing finalises Chapter I and III. A separate Chapter on selected theme is also being incorporated in the Compliance Audit Report;**
- **Bond copy of the Compliance Audit (CA) Report is submitted for approval of C & AG after consolidation;**
- **The CA and each PA Report (both English and Hindi versions) are got printed through the selected printer empanelled by the Report wing of Comptroller and Auditor General (C & AG) HQ. Printed copies of Audit Reports duly countersigned by the C & AG are placed in the Parliament;**

- Hindi translation of the PA's and CA's done by Rajbhasha Anubhag is checked and corrected;

- Entry Conference and Exit Conference

The Audit Officer introduces the audit plan consisting of the audit objectives, approach and time frame besides apprising the Administrative Department regarding data, information and documents that will be required by the audit team. The working procedures for audit may also be established in this meeting. The audit officer may also utilise this occasion to request the Administrative Department to provide assistance to the team for conduct of audit.

In audit of all units, the audit team should conclude the audits with an exit conference/ meeting with the Administrative Department. The minutes of exit conference should be recorded and endorsed to the entity.

CHAPTER- 11

APPLICATION IN AUDIT

Applied Rules and Regulations in Audit as per previous Audit Reports

Compliance Audits

The following provisions are invoked during audit to extract major paras and printed in the audit reports:-

11.1 Article 36 (iv) of the MS Act, 1958, provides levy of stamp duty at the rates of three per cent on 90 per cent of the market value of the property in cases of leases exceeding 29 years. Further, Explanation-I of the Article stipulates ‘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’.

Event- Two lease Agreements were executed (July 2014) for two pieces of land admeasuring 4,68,367.63 sqm in Office of the Joint Sub Registrar-III, Kalyan, District Thane (SR), valued at ₹ 51.10 crore. The Department levied the stamp duty at the rate of five per cent at ₹ 2.56 crore. Scrutiny of instruments revealed (August 2015) that consideration of the instruments was ₹ 821.10 crore. The SR had excluded consideration received in the form of license fees, cost of infrastructure, security deposits valued at ₹ 770 crore. The instruments were liable to a stamp duty of ₹ 22.17 crore instead of ₹ 2.56 crore levied by the SR. This resulted in short levy of stamp duty of ₹ 19.61 crore.

11.2 As per Section 2(n) (a) of MS Act, 1958, market value in relation to any property which is the subject matter of an 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. Further, as per Section 25 (b), a charge or encumbrance upon the property, shall be deemed to be the consideration and is chargeable with stamp duty. Accordingly, unearned income or any debt paid by the purchaser is part of consideration.

Event- An Agreement to Sale was executed (December 2014) between ‘Vendor’ and ‘Purchaser’ for a ‘Sanad Land’ admeasuring 2,55,643.97 sqm along with structures situated at villages Dhokali, Kolshet and Balkam of Tahsil and District Thane.

The Department worked out market value/consideration of property at ₹ 386.57 crore and stamp duty at the rate of six per cent amounting to ₹ 23.19 crore was levied. The ‘Indenture of Conveyance’ was executed in March 2015.

As per 'Indenture of Conveyance', the 'Purchaser' had deposited one cheque and three post-dated cheques (December 2014) aggregating to ₹ 193.27 crore on account of unearned income.

The unearned income was not treated as consideration and stamp duty of ₹ 11.60 crore was not levied. This resulted in short levy of stamp duty to that extent.

11.3 As per provision contained in Article 5 (g-a) (i) of MS Act, if immovable property is given to a Developer for development, construction, sale or transfer then stamp duty is leviable on conveyance under Article 25 (b) under the said Act. Also, for the purpose of determining consideration that is passed on by the developer to the owner, in the form of revenue share after selling of the constructed unit, the rate of residential unit as per ready reckoner would be considered (i.e. unit rate).

Event- The Development Agreements were executed between 'Owners' and 'Developers' for development of land. As per recital of the agreement the owners and developers had agreed to develop the properties on the basis of revenue sharing on certain percentage. The Department levied stamp duty of ₹ 5.32 crore on market value/consideration of ₹ 93.74 crore. Audit observed that the Department did not consider the revenue sharing aspect while calculating the market value/consideration of the property. Hence stamp duty is short levied.

11.4 As per Article 34 of Schedule-I of MS Act, 1958, for property gifted to a family member or any lineal ascendant or descendant of the donor, the amount of stamp duty chargeable on Gift Deed was three per cent (which includes one per cent additional Municipal Cess) of the market value of the property; otherwise the stamp duty was same as that leviable at the rate of six per cent on a Conveyance Deed which was of the market value of property.

Event- Two Gift Deeds were executed (May 2013, August 2013) between 'Donors' and 'Donees' for a land admeasuring 1,83,511.80 sqm and 8,450 sqm bearing various Survey Nos. 9,10,11,12 and 19 at village Lohgaon, Tahsil and District Pune and new survey no. 166 at village Bhayandar within the limits of Mira Bhayandar Municipal Corporation, Thane, respectively. Further, audit observed that the Donees and donors were not covered under Article 34 of MS Act, as family member or lineal ascendant or descendant of the Donor. Hence stamp duty is short levied.

11.5 As per Article 25 of MS Act, 1958, stamp duty is leviable on true market value of property, which is the subject matter of Conveyance. As per the Section 2 (na) of MS Act, "market value" 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 the date of

execution of such instrument or the consideration stated in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR.

Event- A Deed of Conveyance was executed (December 2013) between the Owner and Purchaser for land admeasuring 4,444.75 sqm bearing Survey No. 82 at village Navghar within the limits of Mira-Bhayandar Municipal Corporation for the consideration of ₹ 2.79 crore. The Department determined the market value of the land at ₹ 2.78 crore and levied stamp duty of ₹ 16.74 lakh. It was observed that as per ASR-2013, rate of ₹ 20,300 per sqm was applicable to the property and accordingly the market value worked out to ₹ 7.8117 crore involving stamp duty of ₹ 46.89 lakh. Thus, incorrect application of rate of the land resulted in short levy of stamp duty.

11.6 As per Government Notification, Revenue Department No. STP 1364 dated 29 October 1954, stamp duty is exempted for certain instruments (Deeds of Settlements, Gift Deeds and Trust Deeds) executed for any educational purpose by or in favor of any Educational Institutions recognized by State Government.

Further, as per Article 36 (iv) of MS Act, 1958, on Lease Deed, stamp duty is leviable on a conveyance under clause (a), (b), (c), or (d) as the case may be, of Article 25, on 90 per cent of the market value of the property, where such lease purports to be for a period exceeding twenty-nine years.

Event- A Lease Deed was executed in July 2013 between Lessor and Lessee for a period of thirty years. The Department granted exemption of stamp duty in terms of notification *ibid*. As the exemption of stamp duty under the notification stated above was not available for the Lease Deed, the exemption given by the Department was incorrect. Hence there is a non levy of stamp duty.

11.7 According to Article 36 (iii) of the MS Act 1958, stamp duty leviable on Lease Deed was on 25 per cent of the market value of the property if period of lease is up to 10 years and on 50 per cent of the market value of the property if period of lease is exceeding 10 years but not exceeding 29 years, with a renewal clause contingent or otherwise. Further, as per Explanation-II under Article 36, the renewal, if specifically mentioned, shall be treated as part of present lease.

Event- The recital of the instrument revealed that the lessee was given option of renewal for a further period of 10 years after 31st December 2019 on mutually acceptable terms and conditions. Thus, by considering the further lease renewal period as part of lease there is a short levy of stamp duty.

11.8 Article 52 (a) of Schedule-I of MS Act, 1958 provides that if the Release Deed is in respect of ancestral property or part thereof and is executed by or in favour of blood relations of the renouncer or the legal heirs of the blood relations then stamp duty of ₹ 200/- is levied. Further, Article 52 (b) provides that in any other case stamp duty is levied as per Article 25 of MS Act.

Event- A Release Deed was executed in May 2009 for a non-agricultural land admeasuring 9,960 sqm situated at Mouza Bolinj, Taluka Vasai, District Thane. The instrument was classified under Article 52 (a) and stamp duty of ₹ 200 was recovered at the time of registration. From the recital of the instrument it was observed that the releaser had purchased the property and was the sole owner of the property. Thus, the property in question was not ancestral.

Audit Report of C and AG 2017

11.9 Government of Maharashtra, in Revenue and Forests Department, vide its Notification (June 2007), remits 75 per cent of the Stamp Duty on the instrument of Conveyance, executed by the Information Technology unit or the Bio-tech Unit for starting a new unit in the Information Technological (IT) Park under the package scheme of Incentives, 2007.

Event- Exemption from payment of stamp duty of ₹ 24.26 lakh was allowed in favour of Meena Khetan on the sale of office premises bearing No. 502 and 602. The two LOIs annexed with the documents were found to have been issued in favour of Meena Khetan. We cross verified the two LOIs issued by the Jt. Director of Industries with those annexed with the documents. It was found that in the LOIs annexed with the documents the name was changed i.e. M/s Meena Khetan was changed to Meena Khetan. Hence exemption should have been disallowed resulting in short levy of stamp duty.

11.10 As per provision contained in Article 5 (g-a) (i) of Maharashtra Stamp Act, if immovable property is given to a Developer or Builder for development, construction, sale or transfer then stamp duty is as leviable as per conveyance under Article 25 (b) under the said Act. Also, for the purpose of determining consideration that passed on by the developer to the owner, in the form of revenue share after selling of the constructed unit, then the rate of residential unit as per ready reckoner would be considered (i.e. unit rate).

Event- The Development Agreements were executed between “Owners” and “Developers” for development of land. The Department levied stamp duty of ₹ 6.42 crore on market value/consideration of ₹ 138.67 crore in these 31 cases. Recitals of the documents revealed that the owner and developers had agreed to develop the properties on the basis of revenue sharing . The revenue sharing between owner and the developers ranged between 20:80 and

55:45 per cent. Based on the revenue sharing, the market value in the form of consideration passed on by the developer to the owner worked out to ₹ 548.73 crore against ₹ 138.67 crore mentioned in the document. This resulted in undervaluation of ₹ 410.06 crore involving stamp duty of ₹ 24.10 crore and short levy of stamp duty of ₹ 17.68 crore. After we pointed this out (August 2013 to January 2015), the Department accepted the audit observations in 13 cases involving revenue of ₹ 8.26 crore.

11.11 As per instruction 18 of ASR, 30 per cent concession in rates prescribed in ASR for zones pertaining to main road (as per the sanctioned layout) is admissible to those properties which are situated beyond 50 meters from the main road of that zone.

Event- Though a property was located within 50 meters from main road the executants claimed and were allowed benefit of 30 per cent concession of the ASR value during 2011-2012. This was detected from a cross verification of survey maps.

11.12 As per instruction No. 1 contained in the Annual Statement of Rates (ASR) in case of tenant occupied old building at the time of redevelopment of the property the valuation should be done in accordance with the formula viz. $(XY - Z) \times (\text{Land rate as per ASR}) + (112 \times B20)$

Event- A Deed of Assignment was executed between Owner and Purchaser for joint development of a land admeasuring 19,542.565 sqm of Byculla Division of Mumbai for a consideration amount of ₹ 12.00 crore. The instrument was adjudicated (September 2006) by Collector of Stamps (CoS), Mumbai and market value was worked to ₹ 12.20 crore involving stamp duty of ₹ 61.02 lakh. We noticed mistakes in working out the areas occupied by the tenant thus affecting the Z component in the formula $(XY-Z) \times (\text{Land Rate as per ASR}) + 112 \times B$. Hence the short levy of stamp duty.

11.13 As per Article-25(b) (i) of Schedule-I of Maharashtra Stamp Act, stamp duty at the rate of five per cent is leviable. Government of Maharashtra vide notification dated 19 December 1997 reduced the stamp duty to Rs 100, chargeable under Article 25 in the schedule appended to the Maharashtra Stamp Act (MS Act), on the instruments executed for the purpose of rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 in respect of properties situated within the city of Mumbai District and Mumbai Suburban District.

Event - CST No. 252 and 252/1 to 29 situated in village Gundewali, Andheri which was declared as slum area. The Department considering the slum area, levied stamp duty of ₹ 100 on consideration of ₹ 25 lakh.

Recital of the instrument did not indicate that either any transfer took place in pursuance of Slum Rehabilitation Scheme or was there any mention of rehabilitation of slum dwellers. As

such the instrument did not fall under the notification of December 1997, *ibid* and stamp duty at the rate five per cent is leviable. Hence short levy of stamp duty.

11.14 As per Government Resolution (GR) of 9th July, 2002 issued by Revenue and Forest Department, on granting permission to sell government land, the occupant of land shall pay unearned income at 50 per cent of market value of land as on date of order granting such permission or price realized by way of sale whichever is higher.

Event- Agreement to Sale of land admeasuring 14,800 sqm situated at village Vihitgaon, Taluka & District Nashik bearing survey no. 4/2, 5/4 & 5/23 was executed (December 2011) between Owner and Purchaser. The SR levied stamp duty of ₹ 26.70 lakh on market value of ₹ 5.34 crore. The recital of a document executed in December 2011 indicated that Purchaser has agreed to pay the unearned income amount of ₹ 2.87 crore due to be paid to the Government in addition to the market value of the property involving stamp duty of ₹ 36.27 lakh. This was not considered by the SR resulting in short levy of stamp duty.

11.15 As per Article 25 of Schedule-I of Maharashtra Stamp Act, stamp duty at the rate of five per cent is leviable on the conveyance deeds while stamp duty on development agreements is levied at the rate of one per cent upto 4 June 2008 under Article 5 (g-a) of the Act.

Event- The recital of the agreement executed in May 2008 revealed that the purchaser was given the absolute right of the property, the owner had renounced (right, interest and title) and had received ₹ 18.00 crore as consideration money of the property. Thus, document was required to be treated as 'Conveyance Deed' and not as a 'Development Agreement'. Misclassification of the document resulted in short levy of stamp duty of ₹ 1.55 crore.

Audit Report of C and AG 2016

11.16 As per Article-25 (a) (b) (c) (d) of schedule-I of MS Act 1958, stamp duty on conveyance deeds shall be leviable on the true market value of property or the consideration mentioned in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR.

Event - A property was situated in village Warje, the survey numbers were 100 and 101. The area of land was 42,000 sqm and 31,463 sqm respectively. The rates as per ASR were ₹ 10,400 per sqm and ₹ 700 per sqm respectively and the correct market value worked out to ₹ 28.63 crore as against ₹ 4.83 crore mentioned in the document. Hence the short levy of stamp duty.

11.17 As per Article-25(b) (vi) of Schedule –I of MS Act 1958, stamp duty at the rate of five per cent is leviable on the true market value of property which is the subject matter of

conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the ASR.

Further, as per instruction 2.3 (a) of ASR, if the property is occupied by the tenants, then concessions can be allowed only on furnishing any two proofs of tenancy as stated ibid are attached with the registering document and the same shall be the part of the document.

Event: - A conveyance deed was executed on 23 December 2011 for sale of 2,098.90 sqm of land situated within limits of Municipal Corporation of Mumbai Sub Urban District. The said document was executed but was not registered.

The Collector of Stamps (Enforcement-2), Mumbai, based on a complaint (January 2012) impounded the document (March 2012) and worked out the market value of the property as ₹ 75.66 lakh.

However, stamp duty of ₹ 5.00 lakh was levied on the sale consideration of ₹ 1.00 crore mentioned in the document.

It was found that FSI of 2,938.4635 sqm was available on the land, which valued at ₹ 16.40 crore on which stamp duty of ₹ 81.98 lakh was leviable. But Department exempted an area of 2,806.69 sqm from the levy of stamp duty on the ground that it was occupied by tenant. However, there was neither any document in support of the tenancy attached with the document nor was the fact of tenancy mentioned in the document.

11.18 As per Section 2 (na) of MS Act 1958 “market value” for the purpose of levy of stamp duty 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 the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.

Event: - An agreement to sale was executed between owner and a purchaser on 14 November 2008 for development and sale of a land admeasuring 15,700 sqm situated in Haveli Taluka. The Department had levied stamp duty of ₹ 11.28 lakh on the market value of ₹ 2.82 crore. However, the details of working out the market value were not available on record. The property was assessed by the Assistant Town Planner (ATP) and he had worked out the consideration amount as ₹ 14.90 crore. Since the consideration mentioned in the document was more than the market value, the stamp duty of ₹ 59.60 lakh was leviable. This aspect was not considered by the Department resulting in short levy of stamp duty of ₹ 48.32 lakh.

11.19 As per Article 25 (b) (vi) of schedule-I of MS Act 1958, stamp duty at the rate of five per cent and one per cent cess thereon is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR and

under Instructions 17(B) for valuation of bulk land on percentage basis. The IGR issued a circular in March 2011 (effective from 1st April 2011) which stipulated uniform policy for determination of market value of bulk land. The market value was required to be calculated in accordance with the slabs mentioned in the circular.

A Sale Deed was executed (April 2011) between the vendor and purchaser for sale of an area admeasuring 14,210 sqm from village Ghodbunder, within Mira Bhayandar Municipal Corporation limits, for a consideration of ₹ 4.10 crore. The basis on which market value was fixed was not found on record. However, the true market value of the property by application of IGR's circular (slab-wise) worked out to ₹ 14.25 crore involving stamp duty of ₹ 85.48 lakh. Thus, there was a short levy of stamp duty of ₹ 29.46 lakh.

11.20 As per Article 5 (g-a) of Schedule-I to MS Act, 1958, an agreement 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 immovable property in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. However, in cases where the independent rates are not given in the ASR for any zone then the market value is to be determined as per instruction 6 of the ASR.

Event:- The flat rate for the zone was not fixed by the IGR, Pune and the market value was required to be worked out in accordance with instruction 6 of ASR 2012, which stipulated that if the flat rate are not given then market value of the flat = (Land rate + Construction rate) X 1.15 X Area of land. Hence the short levy of stamp duty.

11.21 As per Article 5 (g-a) of Schedule I of MS Act, 1958, an 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 immovable property, in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable.

Event: - Development Agreements were executed between owners and developers on 9 May 2008 for development of a land admeasuring 5,500 sqm situated at Mohammad Wadi of Haveli Taluka, within limits of Pune Municipal Corporation. The Department had worked out the market value of property at ₹ 2.70 crore and consideration at ₹ 5.24 crore and levied stamp duty of ₹ 5.26 lakh on consideration being higher. The detailed working of market value was not available on record.

We noticed that the Department had committed arithmetical mistakes (in adding different values of the consideration) in the deed executed. The total consideration received by the three vendors was ₹ 12.74 crore but the assessing authorities totalled these transactions as ₹ 5.24 crore.

11.22 As per Article 5 (g-a) of Schedule I to MS Act, 1958, an 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 immovable property, in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property (or the consideration stated in the instrument, whichever is higher) is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. Further, as per Article-25(b)(vi)(b)(ii) of schedule-I of MS Act, stamp duty at the rate of five per cent is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher.

Event:- A Development Agreement was executed between owner, developer and sub-developer on 10 June 2011 for development and sale of a land admeasuring 8,200 sqm (FSI 10,906.67 sqm) situated within Vasai Taluka, Thane for a consideration of ₹ 2.38 crore. The Department while adjudicating document, had worked out the market value of property at ₹ 2.36 crore by giving bulk land of ₹ 1.08 crore and levied stamp duty of ₹ 11.92 lakh on consideration being higher. We noticed that the developer had already carried out the construction of buildings up to plinth level.

Thereafter, for further construction an agreement was executed with the subdeveloper for utilising the total FSI of 10,906.67 sqm. However, the benefit of bulk land though not admissible to the sub-developer was allowed incorrectly. The correct market value of the property worked out to ₹ 3.44 crore on which stamp duty of ₹ 17.18 lakh was leviable. Thus, incorrect determination of market value of property resulted in short levy of stamp duty of ₹ 5.26 lakh.

11.23 As per Section 2 (na) of the MS Act, “market value” 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 the date of execution of such instrument, or the consideration stated in the instrument whichever is higher. Further, as per Article-25 (b) (vi) of schedule – I of MS Act, stamp duty at the rate of five per cent is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the Annual Statement of Rates.

Event: - A deed of conveyance was executed between owner and a purchaser on 12 April 2008 for a land admeasuring 10,312.10 sqm. The purchaser approached for adjudication of the document for determination of the market value for the purpose of stamp duty payable on deed. The COS, Mumbai determined the market value of the property as ₹ 63.77 crore. However, while passing the order, the COS, Mumbai incorrectly levied stamp duty of ₹ 23.85 lakh along with penalty of ₹ 2.39 lakh on the consideration of ₹ 4.77 crore mentioned in the document instead of the market value of ₹ 63.77 crore involving stamp duty of ₹ 3.18 crore. This has resulted in short levy of stamp duty of ₹ 2.95 crore.

Audit Report of C and AG 2015

Performance Audits may be viewed at -

http://www.cag.gov.in/sites/default/files/audit_report_files/Chapter_3_Stamp_Duty_and_Registration_Fee.pdf

CHAPTER 12

STANDARDS OF REPORTING

12.1 Reporting

- Compilation of statistical information collected during field audit;
- Vetting of Local Audit Reports (LARs) received from Field Audit Parties; and
- Issue of LARs to concerned audited units and their immediate higher authorities.

12.2 Follow up

- Maintenance of Objection Books;
- Processing of replies to LAR paras;
- Follow up of LARs/LARs paras till their final closure/settlement;
- Maintenance of Recovery Register in the prescribed format;
- Holding of Audit Committee Meetings; and

12.3 Processing of material for Audit Report

- Maintenance of 'Potential Draft Paras Register';
- Issuing of Statement of Facts (SOFs) to the department of the state for their comments;
- Maintenance of 'SOFs' register;
- Periodic review of outstanding SOFs and Potential Draft Paras;
- Processing replies of the department to Statement of Facts;
- Processing of Draft Paras and getting approval of the Head of Department;
- Processing of queries of C & AG HQ relating to Draft Paras;
- Verification and vetting of Replies/Action Taken Notes (ATNs) received from the Government;
- Settlement of Draft Paras on receipt of C & AG HQ communication; and
- Processing of Performance Audit and Thematic Based Report.

Field Audit Offices may arrange the above functions through different sections/groups.

In the performance audits, the report section of the field offices also processes the Action Taken Notes (ATNs) and monitors pending ATNs with the State Government and the PAC; Memorandums of Important Points (MIPs) are also prepared in respect of PA report and Draft Paras selected by PAC for detailed examination;

The power to settle Audit Observations included in the Audit Reports rests with CAG which normally takes advice of the revenue sector.

12.4 Reporting of Audit Findings

12.4.1 Preparation of the Draft Local Audit Report

Draft Local Audit Report should be ready on the last day of the local audit. The Sr Audit Officer/Audit Officer (SAO/AO) or the Assistant Audit Officer (AAO), as the case may be, prepares the Draft Local Audit Report (LAR) from the collected material (AMS, replies to AMS etc.).

In case the departmental officer accepts the audit observations, rectifies the mistakes and recovered the amount involved, the AM needs to be treated as settled after recording the facts thereon. Such matter should not form part of the LAR.

In case the reply given by the department is not acceptable or is not final, such a reply of the memo as well as rebuttal thereon has to be incorporated in the LAR.

The head of office of the audited entity may be apprised about important audit findings and relevant information of jurisdictional units at the time of forwarding LAR to the head of office with copy to the next higher controlling authorities.

While drafting the LAR, the following should be kept in view:

- a. Paras are to be arranged tax effect wise (descending order);
- b. The reply of the head of office should be incorporated with proper rebuttal in case of not acceptance of the audit observations;
- c. All pages of LAR are to be serially numbered;
- d. Cross reference is to be given for all facts and figures mentioned in the audit memo indicating page numbers. Highlighters pen are not to be used on the relevant text of Key Documents;
- e. Key to audit objection may be given before each para. This may include AM number, name of the parties involved in the document, date and year of the document, section of the Act that is contravened, duty in short or non levy pointed out, classification of the para, section under which observation made, tax effect, name of contributor (not for the auditee);
- f. The LAR paras should be captioned properly;
- g. The proposal for Potential Draft Paras should be prepared by Inspecting Officer or simply included as a major finding to be left at the discretion of the Hqrs.

12.4.2 Documentation in support of audit findings and conclusions

The State Receipt Audit Party (SRAP) should document audit evidence to support the audit findings and conclusions and to confirm that the audit was carried out in accordance with relevant auditing standards adopted by the C & AG. The documentation may be in the form of data stored on paper, film, electronic and other media and provides the link between the audit work and its resultant outputs. The documentation should cover the basis and extent of audit planning, audit methodology, audit performance and audit findings. The content and

arrangement of the working papers reflect the degree of proficiency, experience and knowledge.

12.4.3 Monetary limits for categorisation of LAR Para

The C & AG HQ revises the monetary limits for categorization of LAR para. At present the monetary limits of LAR paras, are those issues having a combined duty effect of over 10 lakhs. Such paras are usually either included in the Part II A as significant audit findings either by the inspecting officer and vetted by the headquarters or suo motu identified by Hqrs and the same is forwarded to the Draft Para cell for onward transmission to CAG HQ through the report.

Audit findings of serious nature may be included in Part II A irrespective of prescribed monetary limit involved but only in exceptional case only.

12.5 Confidentiality of Materials for Audit Reports

In order to maintain confidentiality/secretcy of the material for draft Audit Reports, instructions issued by Comptroller and Auditor General (C & AG) HQ need to be followed for any audit observation whether in the form of Draft Para/Thematic Paragraph/Performance Topic for probable inclusion in the Audit Reports. The AG needs to place further controls as deemed fit to ensure confidentiality of material for Audit Reports.

12.6 Style Guide

Style guide Indian Audit and Accounts Department (IA & AD) developed for Audit Report is equally relevant to other reports and communication including LARs. The Provisions in the Style Guide are aimed at securing corporate consistency in the reports and obviating the need for repeated redrafting, often guided by individual styles. Therefore, Style guide should be followed in all communication including drafting of LAR/ Potential Draft Paras/SOF/DP.

12.6.1 The instructions of CAG in the 'Standing Order on Role of Audit in Relation to Cases of Fraud and Corruption' is in **Appendix 11** and applicable to the entire process of audit.

12.7 Submission of Draft Local Audit Report

The detailed account of the work done by each member of the State Receipt Audit (SRAP) should be attached with the draft LAR. The draft LAR duly signed by the Supervisory Officer (also called Inspecting Officer) should reach the HQ of respective Field Audit Offices within seven days from the last date of audit.

12.8 Issuing Local Audit Report to Heads of Auditee Units

The LAR duly vetted by the HQ of the respective Field Audit Offices and approved by the concerned GO should be issued to the concerned head of the auditee unit within a month from

the date of completion of local audit, with copies to the all the controlling higher authorities, as applicable.

The Unit head should send his report on the objections in respect of individual matters included in the respective Audit paragraphs of Part-I (Introductory) and Part-II (major irregularities and important points) of the LAR to the unit head and his immediate higher authorities within 30 days from receipt of the LAR.

No reply is required to be sent regarding Part-III (outstanding objections from previous inspection reports), but appropriate remedial action must be taken by the head of the auditee unit within three months.

On receipt of the report, the auditee unit will examine the audit objections in the light of the rebuttal of audit to their earlier comments to the audit memos and send a reply to the Joint District Register (JDR) within a fortnight. The JDR shall in turn send a final reply to audit within a fortnight thereafter.

12.8.1 Potential Draft Paragraphs

The important LAR paras, which exceed the amount fixed as benchmark for DP (presently it is above 10 lakhs) or are otherwise significant are proposed as Potential Draft Paragraphs by the Inspecting Officer of the State Receipt Audit Party (SRAP).

12.8.2 Statement of Facts

Paragraphs marked as Potential Draft Paras need to be examined with reference to the available documents and reply received, if any. 'Statement of Facts' (SOFs) is to be issued in respect of all cases to be processed as Draft Paras. Further, the facts stated in the LAR may once again be verified with the basic records for the factual accuracy or with reference to any further developments at the time of issue of the SOFs. Where the objection is not being accepted by the department, they need to be communicated to the concerned with a suitable rebuttal for his comments. The concerned departmental officer in ordinary course shall furnish reply within a fortnight to the receipt of the SOF.

12.8.3 Draft Paragraphs for Compliance Audit Report

The Draft Paras (Draft Paras) should be drafted in simple and active voice. The preamble of DP should be concise/precise and strictly confined to the point made out in the DP with no unduly long narration.

The following points may be borne in mind:

a. In the beginning, DP should indicate 'Preamble' stating the law and procedure in brief with relevant section, relevant judicial pronouncements or any instructions of the department;

- b.** Thereafter DP should give full facts of the case, audit point involved with the amount of short levy/non levy involving duty effect (including potential duty effect) at the prevailing rates. Further, the facts stated in the LAR may again be cross verified with the source records for the factual accuracy or any further developments at the time of processing of Draft Paras;
- c.** Whether the internal audit wing of the department has checked the same records or not need and they have not raised the same issue needs to be mentioned in the DP; and
- d.** The date of communication of the audit observation, LAR para and SOF to department need to be mentioned alongwith reply of department, if received with rebuttal, if any. The action taken in this regard may also be mentioned.

12.8.4 Criteria for processing of a para as a Draft Para (DP)

The criteria for processing a LAR para as DP for C & AG's Compliance Audit Report are as follows:

- a.** Audit Observations for more than five years old from the dates of the documents may not be processed as Draft Para. For example, in case of Compliance Audit Report for the year ending 31 March 2015, only those documents pertaining to the year 2010 may be floated as Draft Paras;
- b.** Audit observations resulting from the audit conducted during last two years should be floated unless the situation otherwise warrants owing to the presence of some novel issue or some additional fact coming to notice;
- c.** The period of five years from the dates of execution of documents and two years in conducting audit will automatically change with the period of succeeding Audit Report e.g. for Audit Report 2015-16, the documents registered after 1 April 2011 and audit conducted on or after 1 April 2013 would be considered;
- d.** Only those observations should be floated as Draft Paras which involve tax effect equal to or more than the floor limits for Draft Paras prescribed by the C & AG HQ;
- e.** Clubbing of Draft Paras/mistakes, only for meeting the floor limits of Draft Paras may not be done;
- f.** In case, there are more than one observation on the same issue in respect of same offices for different financial years (earlier it was calendar year), only one consolidated DP needs to be proposed;
- g.** Only sustainable Draft Paras need to be pursued with the Hqrs Office. Every effort needs to be made to raise such observations where the observations could be defended strongly with the Auditee Department at later stages;

- h.** Proposing Draft Paras involving levy of penalty may be avoided as penalty is a matter of discretion of the department;
- i.** Before forwarding Draft Paras to C&AG HQ, Field Audit Offices need to ensure that LAR para and SOF on the said observations have been issued;
- j.** Proper linking of relevant Key Documents (KDs) may be attached with DP;
- k.** The relevant portion of the KD which corroborates the audit point may be marked in the margin so that the mistake is easily identified. The DP forwarded should also be marked with KDs;
- l.** Each KD in either physical form or electronic form uploaded in only one file irrespective of numbers of pages;
- m.** Many a times, departmental reply, especially when the audit observation is not accepted, is attached without offering any comments thereon. The Field Audit Offices must offer their comments on non-acceptance of the department;
- n.** The Field Audit Offices need to treat the observation as accepted only when the same has been categorically stated as “Accepted” by the department. The reply of department stating the observation as “Acceptable” and “Seems to be acceptable” should not be considered as acceptance.
- o.** It may be ensured that the cases, which were proposed as Draft Paras are not already printed in the Audit Report or observation has not already been settled locally after discussion with the department (before proposing as Draft Paras);
- p.** In case, there is an observation dealing with a totally different issue/ new issue or is noteworthy as it involves a system flaw or a matter of interpretation of law, even if having money value below the benchmark, the same may also be forwarded to C & AG HQ through a DO letter addressed to Inspector General of Registration (IGR);
- q.** It may be ensured that Draft Paras in excess of 10 per cent of targets are not forwarded to C & AG HQ; Draft Paras may be sent to Comptroller and Auditor General (C & AG) HQ completely by 30 June of every year.
- r.** In case there is litigation surrounding the issue and it does not pertain to audit observation, Draft Paras may be proposed. However, it may be ensured that issue of our observation is not directly or indirectly related to that pending under appeal and decision need to be taken on case to case basis;
- s.** Copy of DP is also forwarded to Field Audit Offices for verification of facts and figures. The correctness of facts and figures need to be re-checked from the KDs and changes be communicated to C & AG HQ on top priority basis.

12.9 End Notes to the Chapter

The reporting framework shall be as under:-

- Part I – Introduction-
This part may commence with an overview of the audit unit and may provide its functional/geographical jurisdiction, budget, financial performance and a perspective of the relative significance of the unit in the overall hierarchy of the department in pursuit of organisational goals. This may be followed by a brief explanation of the scope of audit, the sampling procedure followed and the audit sample – including the implementing units, the subject matter(s) selected and the sources of criteria that have been adopted to evaluate the selected subject matter(s). It may indicate that the audit has been conducted in accordance with the applicable Auditing Standards of CAG.
- Part II – Audit findings –
This part shall contain all findings – both positive and negative findings that pertain to the audit unit and may be arranged in two distinct parts – Part IIA and II B – the first part comprising significant audit findings relating to evaluation of the regularity related subject matter(s)/ specific subject matter(s) and propriety related subject matters and the second part – II B comprising other incidental findings relating to both regularity and propriety aspects. The audit findings should be organised in decreasing order of materiality and significance, if possible. Presentation of audit findings shall conform to the Auditing Standards and other reporting principles enunciated in this chapter and clearly bring out the applied criteria, the results of evaluation of the subject matter against the criteria highlighting the cause and effect relationship. Audit findings may also appropriately indicate the extent of non-compliance and whether they involve systemic issues or represent isolated cases of non-compliance, where considered necessary. Even though compliance audits conducted in accordance with these guidelines are not in the nature of an inspection, the existing terminology of Inspection Report is continued because of its historical import.
- Part III – Follow up on findings outstanding from previous reports–
This part may indicate the progress of settlement of audit findings outstanding from previous Inspection Reports and list out the findings that continue to be outstanding.
- Part IV– Best practices –

Any good practices or innovations, if noticed, during the course of audit may be mentioned.

- Part V – Acknowledgement–

This part may contain the acknowledgement of the extent of audit units' cooperation in all matters including production of records called for in Audit. It may also contain details of persons holding the leadership positions in the audit units.

- Theme Based Audit (TBA) or alternatively called Thematic Audit (TA) is also undertaken on a selected theme as part of the compliance audit. It is the horizontal study across similar entities/units or sub-set of activities/ projects/entity within the department. It is a long Draft Paragraph covering all issues relating to a theme in audit.

- Lastly, a departmental appreciation may be issued to draw attention of the executive towards system weaknesses etc. A consolidation of audit findings presented through the Departmental Appreciation Note would enable appreciation of both the audit findings that form the basis for Auditor's conclusion on compliance by departments as well as the audit findings that would feature as standalone findings.

Performance Audit

- It primarily focuses on whether interventions, programmes and institutions are performing in accordance with the principles of economy (minimum input to obtain a maximum output), efficiency (optimum utilisation of the available input) and effectiveness (maximum output) and whether there is any room for further improvement. Performance is examined against suitable criteria (set standards) and the causes of deviations from those criteria or other problems are analysed. The aim is to answer key audit questions and to provide recommendations for improvement.

The structure of the performance report as per performance audit guidelines 2014 shall be as under:-

Title: the subject of the performance audit;

- Executive summary: It provides the précis of the main report. The summary should not be very long and should contain only essential information. The major audit findings should be placed in the same sequence as the audit objectives and sub-objectives along with recommendations in brief;

- *Introduction: It consists of a brief description of the subject of study, information on programme, activity, or institution, its objectives, inputs, implementation structure, expected outputs and outcome, etc. The introduction should be brief, yet sufficient to enable the reader understand the context of the programme;*
- *Audit objectives: They are the pivots of the performance audit, which set out the reason for undertaking the audit. The entire exercise of performance audit is built around the audit objectives. These should, therefore, be stated in simple and clear terms. It is useful to set out the audit objectives and sub objectives within each audit objective in the form of complete statement/question;*
- *Scope of audit: It is defined in terms of the period of the programme covered in audit and segments of the programme audited should be set out precisely;*
- *Audit Methodology: It describes methodology used for data collection/evidence gathering and testing may be stated in brief. This adds to the acceptability of the audit findings and forms a statement for transparency of the audit procedure;*
- *Audit criteria: to arrive at the audit findings and conclusions with reference to each audit objective and sub-objective which should be stated with appropriate explanations;*
- *Audit findings and conclusions made during an audit with reference to each objective should be stated;*
- *Recommendations: They should be presented along with the conclusions wherever applicable in a box or highlighted print;*
- *Acknowledgement: it may be useful to indicate or acknowledge in brief the co-operation, acceptance of the criteria/findings and recommendations by the entity. In case the co-operation or response was not forthcoming at any stage it may be indicated if it has resulted in any limitation along with its implication and the special efforts made by the Accountant General to seek cooperation or response;*
- *Glossary of terms: It is helpful to the reader if explanations are provided in a glossary or easy-to-find footnotes. Glossary should be comprehensive, explaining all technical and uncommon terms used in the report.*

Appendices

Index

<u>Appendix</u>	<u>Para No</u>	<u>Page</u>
<u>1</u>	<u>6.3.1,6.3.5,6.3.7,6.6.4</u>	<u>33,34,35,39</u>
<u>2</u>	<u>6.7.11</u>	<u>42</u>
<u>3</u>	<u>4.3.4</u>	<u>21</u>
<u>4</u>	<u>6.8.13</u>	<u>53</u>
<u>5</u>	<u>10.4</u>	<u>122</u>
<u>6</u>	<u>10.6.1</u>	<u>123</u>
<u>7</u>	<u>10.5</u>	<u>123</u>
<u>8</u>	<u>10.6.1</u>	<u>123</u>
<u>9</u>	<u>10.7.1.7</u>	<u>129</u>
<u>10</u>	<u>10.7.1.5</u>	<u>128</u>
<u>11</u>	<u>12.6.1</u>	<u>144</u>

1 Rates of Stamp Duty of Select Instruments under Articles of The Act (Paras 6.3.1, 6.3.5, 6.3.7, 6.6.4)

Article	Description of Instrument	Stamp Duty
4	Affidavit	Rs 100
	(Exemption: for use in the Court or Tribunal or for certain other purposes)	
5	Agreement or its Records or Memorandum of an Agreement	
(b)	relating to purchase or sale of Government securities	0.0005% of the value of security rounded to next lakh
(a) to (g) except (b)	In any other case	0.01% of the value rounded to next thousand
(g-a)(i)	Development Rights Agreement	Same as in the case of a Conveyance under Article 25 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 under Article 25 on the market value
(g-d)	relating to transfer of tenancy rights in:	
	For non-residential use of any size; or For residential use with an area more than 300 sq. feet	Same as in the case of a Conveyance under Article 25 on the market value
	For residential use with an area up to 300 sq. feet	Rs 50
(g-e)	relating to hire purchase	Same duty as on a Lease on the period of repayment i.e without LBT
(h) (i)	relating to certain advertising contracts	0.25% if the amount agreed is up to Rs 10 lakhs rounded to next thousand and 0.5% if the amount exceeds Rs 10 lakhs

Article	Description of Instrument	Stamp Duty
(ii)	relating to contracts for exclusive broadcasting / exhibition rights of a film	0.25% if the amount agreed is up to Rs 10 lakhs rounded to next thousand and 0.5% if the amount exceeds Rs 10 lakhs
(iii)	relating to specific performance by a person where contract > Rs 100,000	0.25% if the amount agreed is up to Rs 10 lakhs rounded to next thousand and 0.5% if the amount exceeds Rs 10 lakhs
(v)	relating to assignment of Copyrights	0.25% if the amount agreed is up to Rs 10 lakhs rounded to next thousand and 0.5% if the amount exceeds Rs 10 lakhs
(iv), (vi)	relating to creation of any obligation, right or interest and having monetary value or project under Built, Operate and Transfer (BOT) system, whether with or without toll or fee collection rights	0.10% if the amount agreed is up to of Rs 10 lakhs rounded to the next thousand and 0.2% if the amount exceeds Rs 10 lakhs.
(B)	General (not otherwise provided for)	Rs 100
6	Agreement for Deposit of Title Deeds, Pawn, Pledge or Hypothecation OR Deposit of title deeds securing amount of loan or for pawn, pledge or hypothecation securing amount of loan	0.1% of the amount secured by the deed rounded to the next thousand, if the amount secured is up to Rs 5, 00,000 and 0.2% in all other cases. The minimum duty is Rs 100
10	Articles of Association of a Company that has no Share Capital or Nominal Capital or Increased Share Capital (Exemption to companies not formed for profit and registered under Section 25 of the Companies Act)	0.2% of the value rounded to the next five lakhs subject to a maximum of Rs 50,00,000
12	Award by an Arbitrator or Umpire (not being an Award directing a Partition)	0.01% of the value rounded to the next 500 subject to a maximum of Rs 100
15	Cancellation (Exemption: Revocation of will)	Rs 100

Article	Description of Instrument	Stamp Duty
16	Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction	Same as in the case of a Conveyance under Article 25 on the market value
17	Certificate or Other Document	0.1% of the value of the shares, scrip or stock rounded to the next thousand
24	Composition Deed	Rs 200
25 (a)	Conveyance (on the true market value)	
	Movable Property	3% of the Market Value rounded to the next 500
(b)	Immovable Property	
	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
(da)	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 :
		i) 5% of market value of the immovable property located in Maharashtra or ii) 0.7% of market value of shares allotted in exchange and consideration if any paid
Special Points for Conveyance:		
	<p>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.</p> <p>2. Assignment of copyrights is exempt from stamp duty.</p>	

Article	Description of Instrument	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 Rs 100
28	Customs / Excise Bond in respect of duties payable / pursuant to Order of any Excise / Customs Officer	1% of the value rounded to the next 500 subject to a maximum of Rs 100 where the amount does not exceed Rs 2500 and in any other case restricted to Rs 100
32	Exchange	Same duty as on a 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 conveyance. In case of a gift to spouse, brother, sister, lineal ascendants or descendants it shall be 2% of market value rounded to the next 500 or the duty as per conveyance whichever is less
35	Indemnity Bond	Rs 200
36	Lease including sub-lease:	Same Duty as on conveyance on the following values:
	a) where lease period is	
	i) up to 5 years	i) 10% of market value
	ii) 5 years to 10 years with a renewal clause	ii) 25% of market value
	iii) 10 years to 29 years with a renewal clause	iii) 50% of market value
	iv) exceeding 29 years or for indefinite period or for perpetuity	iv) 90% of market value

Article	Description of Instrument	Stamp Duty
	Special Points for Lease: 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	
36A	Leave and Licence	
	For a term not exceeding 60 months with or without a renewal clause	0.25% of the total sum of:
		• Licence fees or rent payable;
		• Non-refundable deposit or premium or money advanced; plus
		• Interest @ 10% p.a. on the refundable security deposit or money advanced
37	Letter of Allotment of Shares	Rs 1
39	Memorandum of Association	Rs 100
	a) if accompanied with Articles	Rs 200
	b) if not so accompanied	Same duty as on Articles of Association under Article 10
40	Mortgage Deed	
a)	Where possession is given (including through power of attorney for collection of rents or lease of the mortgaged property)	Same duty as per Article 25 on conveyance on the amount secured by the deed (including advance paid prior to agreement)
b)	Where possession is not given	0.5% of the value rounded to next thousand subject to a maximum of Rs 10,00,000
42	Notary (attestation, etc., by Notary Public)	Rs 25
46	Partition	2% of the market value of the separated share or shares rounded to the next 500

Article	Description of Instrument	Stamp Duty
	<p>Special Points :</p> <p>1. The value of largest share remaining after the partition will be excluded for duty</p> <p>2. In case of order of partition by a Civil Court rebate will be given to the extent of the Court Fees paid</p> <p>3. Rs 100 in case of agricultural land</p>	
47 (1)	Partnership including an LLP, Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind	
(a)	No contribution or cash contribution < Rs 50,000	Rs 500
(b)	Cash Contribution > Rs 50,000	1% of the contribution rounded to the next 50000 and subject to a maximum of Rs 5,000
I	Contribution by way of property (not cash)	Same as on a conveyance on the market value of property
(2)	Dissolution or Retirement	Same as on a conveyance on the market value subject to a maximum of Rs 100
	a) where any property is transferred to a partner other than the one who brought it as his share of contribution	
	b) in any other case	Rs 200
48	Power of Attorney	
	a. for sole purpose of registration	Rs 100
	b. for suits in small causes court	Rs 100
	c. for acting in a single transaction to one or more person	Rs 100
	d. for acting in more than one transaction or generally to one person	Rs 100
	e. for acting in one or more transactions or generally to one or more persons	
	f. (i) for or without consideration and authorising to sell an immovable property	Same as on a conveyance on the market value

Article	Description of Instrument	Stamp Duty
Contd 48	(ii) for authorizing to sell immovable property without consideration and given to parents, siblings, spouse, children, grand children, father-in-law, mother-in-law and siblings of the spouse	Rs 500
	g. for construction, development, sale etc. to a developer or promoter	Same as on a conveyance on the market value
	h. in any other case	Rs 100 for each person authorised
<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 Rs 500 only if duty is already paid under article 5 (g-a) on Development Rights' Agreement</p>		
52	Release whereby a person renounces a claim upon other person or property	
(a)	If the release is of an ancestral property in favour of certain specified relatives without any consideration	Rs 200
(b)	Every other Case	Same duty as on a conveyance as on the market value of the share, interest or part renounced
54	Security Bond (where the amount secured does not exceed Rs 2500)	1% of the amount secured rounded to the next 500 subject to a minimum of Rs 100
	Security Bond (where the amount secured exceeds Rs 2500)	0.5% of the amount secured rounded to the next 1000. Maximum. Rs 10,00,000
58	Surrender of Lease	
	i) without consideration	Rs 200
	ii) with consideration	Same duty as a conveyance under article 25 on the amount of consideration
59	Transfer of marketable debentures (except as provided in section 8 of The Indian Stamp Act)	0.5% of the consideration amount rounded to the next 100

Article	Description of Instrument	Stamp Duty
	As per clauses (b),(c) or (d) [exemptions to transfers by endorsements of bill of exchange, cheques, bill of lading, promissory notes etc]	1% of the amount secured rounded to the next 500. Maximum Rs 200.
60	Transfer of lease by way of assignment	Duty as per conveyance under Article 25
61	Trust declared in writing not being will	
	a) where there is disposition of property i) for charitable or religious purpose	2% of the sum settled rounded to the next 500 or market value of the property
	ii) in any other case where there is disposition of property	As per article 25 of the sum settled or market value of the property
	b) where there is no disposition of property	1% of the sum settled or market value of the property rounded to the next 500
63	Works Contract for material and labour involving a transfer of property in goods	
	Where the contract value does not exceed Rs 10 lakhs	Rs 100
	Where the contract value exceeds Rs 10 lakhs	Rs 100 + 0.1% of amount exceeding Rs 10 lakhs

[http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/Schedule/Maharashtra%20Stamp%20Act%20Shulde.pdf]

2. Important Instruments under The Indian Stamp Act (Ref :- Para 6.7.11)

27	Debenture being a marketable security transferable	
(a)	by endorsement and exceeding Rs 1,000	Rs 7.50 + 0.75% of that exceeding 1000
(b)	by delivery and exceeding Rs 1,000	Rs 15 + 1.50% of that exceeding 1000
62	Transfer of shares in an incorporated company or other body corporated	0.75% of the value of shares

Note: - Instruments not in the above table include Bills of Exchange (Section 13), Policy of Insurance (Section 47), Bill of Lading (Section 14) and Letter of Credit (Section 37) for which rates are given in the schedule to the act.

[<http://lawmin.nic.in/ld/P-ACT/1899/189901.pdf>]

3. Ad Valorem Court Fees payable under The Maharashtra Court Fees Act, 1959

(Wherever Applicable) for institution of suits (Para 4.3.4)

Amount or Value of Subject Matter *	Court Fees	
Exceeds Rs 10,000 but not Rs 10,500	Rs 1,505	
Exceeds Rs 25,000 but not Rs 26,000	Rs 3,530	
Exceeds Rs 50,000 but not Rs 55,000	Rs 5,080	
Exceeds Rs 75,000 but not Rs 80,000	Rs 5,830	
Rs 1,00,000	Rs 6,430	
Over Rs 1,00,000 and up to Rs 11,00,000	6,430 + Rs 200 for every Rs 10,000 or part thereof (approx. 2%)	
Rs 11,00,000	Rs 26,430	
Over Rs 11,00,000	Rs 26,430 + Rs 1,200 for every Rs 1,00,000 or part thereof (approx. 1.2%) – subject to a maximum fee of Rs 3,00,000	
Rs 2,38,97,500	Rs 3,00,000	
Rs 2,50,00,000	Rs 3,00,000 (maximum fee)	
* Only some of the slabs are given		

[Note :- Fixed fees are also leviable on Application or petition, Revision application, Application to any civil court, First application for summons to witness, Application for leave to sue as pauper, Bail bonds, Undertaking under Indian Divorce Act etc upto Sr No 40]

[<http://bombayhighcourt.nic.in/libweb/acts/1959.36.pdf>]

4. Table of Registration Fees payable on Important Documents (Para 6.8.13)

Type of Document	RF Leviable
For the registration of agreement of leave and license, if such single document is for one or more year relating to the property situated; a) In the area of limits of a Municipal Corporation	Rs 1000
b) In any other area	Rs 500
Conveyance deed, Sale deed, Agreement for sale, Gift deed, Lease deed, Release deed, Development agreement, Surrender of lease with consideration, Transfer of tenancy, Creation of tenancy, etc.	1% of higher of Agreement value or market value of property determined for stamp duty purpose or Rs 30,000 whichever is less. Maximum Registration Fees payable is Rs 30,000/-
Surrender of lease/Tenancy without consideration	Rs 100/-
Will	Rs 100 (Registration is optional)
Exchange of property	1% of higher of agreement value or market value of the Property which has greatest value or Rs 30,000 whichever is lower.
Partition	1% of market value of the share or shares remaining after separating largest share or Rs 30000 whichever is lower.
Power of Attorney a) Fees for attestation by notary of general or specific power of attorney	Rs 25/-
b) Fees for registration of General or Specific Power of Attorney (to specified nearest relatives)	Rs 100/-
c) Fees for other types of power of attorney	1% of market value of the property or Rs 30,000 whichever is lower.
Affidavit, Declaration, Indemnity bond, Irrevocable Power of Attorney (Simple).	Rs 100/-. Registration is not compulsory. It can be Notarized.

Deposit of title deeds, Pawn, Pledge or Hypothecation (Deed, Agreement or Letter), Housing Loan, Mortgage Deed, Further charge	1% of loan secured or Rs 30,000/- whichever is less.
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[http://igrmaharashtra.gov.in/SB_PUBLICATION/DATA/Registration%20fee%20table.pdf]

5. Declaration to be given by audit party before commencement of audit (Para 10.4)

(This declaration is required to be signed separately by each member of the audit team prior to the commencement of the audit. A copy of the declaration should be given to the head of the audited entity as soon as the audit commences. Each declaration should be enclosed in original with the Inspection Report.)

I,

Shri/Smt./Ms. _____ (name), _____

(Designation) hereby declare that:

- I have read and understood the SAI India's Code of Ethics.
- I will uphold and abide by the SAI India's Code of Ethics and the CSS (Conduct) Rules.
- I do not have any personal or professional interest in the audited entity. As a representative of the SAI India, I undertake to adhere to the following:
 1. I will conduct the audit assigned to me in a fair, honest, timely and competent manner.
 - ii. I will maintain strict confidentiality of all information gathered in the course of audit.
 - iii. I will not behave or conduct myself in an inappropriate manner with any official of the audited entity.
 - iv. I will not accept any kind of inducement prohibited under the Central Civil Services (Conduct) Rules, 1964, directly or indirectly from the audited entity.

Signed: _____ Dated: _____

(Authority: Paragraph No. 3.24 of the Code of Ethics)

7.6. Preliminary Records to be obtained (Para 10.6.1)

In the office of the Sub Registrar/Joint Sub Registrar

1. QUESTIONIARE (May be sent at the time of intimation of audit by SRA HQ so that it may be available on the first day of audit).
2. Cash book
3. Day book/token registers
4. Year-wise/month-wise, Article-wise (Schedule-I of Bombay stamp Act 1958) of abstract of documents registered
5. Administrative report
6. Statement of high value documents submitted to Income tax department.
7. List of adjudicated documents
8. Internal audit wing Inspection reports.
9. List of Stamp Vendors
10. Receipt book of selected months.
11. Any other record relevant for audit planning

After obtaining the preliminary records, the audit party would be in a position to ascertain the scope of audit. Also a list of documents may be prepared by judicious mix of all the documents registered depending upon audit risk involved. The list may include high value transactions, adjudicated documents and documents involving remission in stamp duty. If additional man power and mandays required, the same may be requisitioned at first instance itself.

Selection of documents

Article-wise abstract of documents registered would give an insight about article-wise numbers of documents registered and stamp duty collected. From the Day book/Token register, a list of documents may be prepared by judicious mix of all the documents registered. A separate list of High value transactions, adjudicated documents and documents involving concession in stamp duty may be prepared. After preparation of list of documents registered, a separate list for detailed scrutiny may be prepared depending upon audit risks involved, if additional man-power and man-days required the same may be requisitioned at the first instance itself.

In the Office of The Joint District Registrar/Collector of Stamps

- 1) QUESTIONIARE (May be sent at the time of intimation of audit by SRA HQ so that it may be available on the first day of audit).

- 2) Cash book
- 3) Register of adjudicated cases.
- 4) Register of impounded cases.
- 5) Register of Refund cases.
- 6) Internal audit wing Inspection reports.
- 7) Any other record relevant for audit planning.

Selection of Cases

From the Register of adjudicated and impounded cases, a list of documents may be prepared by judicious mix of all the cases. A separate list of adjudicated documents involving concession in stamp duty may be prepared. Another separate list of refund cases may be prepared and scrutinized. After preparation of list of cases, a separate list for detailed scrutiny may be prepared depending upon audit risks involved, if additional man-power and man-days required the same may be requisitioned at the first instance itself.

Selection of Adjudicated /Impounded and Refund Cases for Scrutiny

Total nos of adjudicated cases	
Total nos of adjudicated cases included in the selection list.	
0-2500000	
2500000 -5000000	
5000000-10000000	
10000000 & ABOVE	
Total nos of adjudicated cases for detailed scrutiny	
0-2500000	
2500000 -5000000	
5000000-10000000	
10000000 & ABOVE	
Total nos of impounded documents	
Total nos of impounded documents scrutinised	
Total nos of documents involving concession in stamp duty	
Total nos of documents scrutinized	

In the Office of The Additional Controller of Stamps Mumbai/ Dy Inspector General of Registration Rest of Maharashtra

QUESTIONIARE (May be sent at the time of intimation of audit by SRA HQ so that it may be available on the first day of audit).

- 1) Cash book
- 2) Register of adjudicated cases
- 3) Register of amalgamation cases.
- 4) Register of impounded cases of movable property.(Enforcement-I)
- 5) Register of impounded cases of immovable property. (Enforcement-II).
- 6) Stamp Account.
- 7) Franking Account.
- 8) Register of stamp duty collected from Bombay Stock Exchange, National Stock Exchange and Commodity Exchanges etc.
- 9) Internal audit wing Inspection reports.
- 10) Any other record relevant for audit planning.

After obtaining the preliminary records, the audit party would be in a position to ascertain the scope of audit.

Selection of Cases

From the Register of adjudicated, amalgamation and impounded cases, a list of documents may be prepared by judicious mix of all the cases. A separate list of adjudicated documents involving concession in stamp duty may be prepared. . After preparation of list of cases, a separate list for detailed scrutiny may be prepared depending upon audit risks involved, if additional man-power and man-days required the same may be requisitioned at the first instance itself.

Scrutiny of Stamp Account

OB of the stamp (Denomination wise) in the year in which Audit is done	Additions during the period of audit	Issued during the period of audit	Closing balance

Sr.No.	Questions	Yes/ No	Remarks
1)	Whether the opening and closing balance of stamps of various denominations tallied with the stock verification reports?		
2)	Whether the requisite intend for printing the stamp papers were issued to the Government printing press?		

3)	Whether there is abnormal shortage/Excess of stamp due to faulty indent?		
4)	Whether Sales / purchase A/c is proper and correct?		
5)	Whether stamps are issued to authorized vendors only		
6)	Whether A/c. of such vendors is periodically checked by Inspectors of ACOS Office?		
7)	Whether periodical stock verification has taken and any shortages have been reported? If so appropriate action has been taken?		

Scrutiny of Stamp duty remitted on transactions of shares.

Total amount of transactions of shares as submitted by the BOI Share holding the nominated agency	Total amount of stamp duty remitted	Short levy of Stamp Duty	Reference of IR Para

1)	Whether periodical account of stamp duty realized from transaction of shares has been submitted by the designated agency on time, If not whether penal interest has been levied?			
2)	Whether there is any difference between the account submitted by the agency and the account of BSE/NSE or other commodities exchanges etc?			
3)	Whether there is any short recovery of stamp duty?			
4)	Whether the commissions for collection of stamp duty on shares have been correctly calculated?			

In the office of The Dy Inspector General of Registration

Implementation and monitoring mechanism for execution of Government policies

Finalization of the proceeding against determination of stamp duty

Grant of refund of more than 1 lakh and less than 10 lakhs

In the Office of The Inspector General of Registration

Implementation and Monitoring mechanism for execution of Government policies

Finalization of the proceeding against determination of stamp duty

Grant and sanction of refunds above Rs 10 lakhs

In the Office of The Principal Secretary Department of Revenue GoM

Policies framed in consonance with the stated objectives

Cases in which GoM has reduced or remitted the stamp duty on any document

Implementation of the remission issued by the GoM

System of monitoring of the implementation

Human Resources Management policy

Policy for preparation of ready reckoner

[*Local State Receipt Audit Hqrs*]

8.7. Assignment of Duties to Members of the Audit Parties (Para 10.5)

In the Office of the Sub Registrar/ Joint Sub Registrar

Designation of the party member	Details of work allotted
Sr Auditor/Auditor	<ol style="list-style-type: none"> 1) Preparation of Verification Memos of old IR paras. 2) Preparation of list of selected documents. 3) Preparation of list of high value transactions, adjudicated documents and documents involving concession in stamp duty. 4) Preparation of list of remittances from the Cash book of the selected month. 5) Crossing checking of receipts of selected month with the Cash book entries. Checking of franking machine account if any. 6) Obtaining of records from the auditee 7) Cross checking of records given by auditee with the list of documents requisitioned. 8) Scrutiny of documents as assigned by AAO. 9) Preparation of list of Audit Memos.
Assistant Audit Officer-I	<ol style="list-style-type: none"> 1) Preparation of audit strategy. 2) Scrutiny of Circular files. 3) Selection of month for preparation of list of remittances. 4) Selection of documents for detailed scrutiny. 5) Assignment and checking of work of Sr Auditor/Auditor. 6) Scrutiny of documents. 7) Drafting of audit memos.
Assistant Audit Officer-II	<ol style="list-style-type: none"> 1) Checking of Cash book. 2) Selection of month for preparation of list of remittances. 3) Scrutiny of Circular files.

In the Office of the Joint District Registrar/Collector of Stamps

Designation of the party member	Details of work allotted
Sr Auditor/Auditor	<ol style="list-style-type: none"> 1) Preparation of Verification Memos of old IR paras. 2) Preparation of list of adjudicated/impounded and refund cases 3) Preparation of list of adjudicated cases involving concession in stamp duty. 4) Obtaining of records from the auditee 5) Cross checking of records given by auditee with the list of cases requisitioned. 6) Scrutiny of documents as assigned by AAO. 7) Preparation of list of Audit Memos.
Assistant Audit Officer-I	<ol style="list-style-type: none"> 1) Preparation of audit strategy. 2) Scrutiny of Circular files. 3) Selection of documents for detailed scrutiny. 4) Assignment and checking of work of Sr Auditor /Auditor. 5) Scrutiny of cases 6) Drafting of audit memos. 7) Verification of old IR paras.
Assistant Audit Officer-II	<ol style="list-style-type: none"> 1) Scrutiny of Circular files. 2) Scrutiny of cases. 3) Drafting of audit memos. 4) Verification of old IR paras. 5) Any other work assigned by SRAO/AO/AAO- I

In the Office of the Dy Inspector General of Registration

Designation of the party member	Details of work allotted
AAO	<ol style="list-style-type: none"> 1) To check refund cases alongwith relevant records
Sr Adr/Adr	<ol style="list-style-type: none"> 3) To check refund cases alongwith relevant records

In the Office of The Inspector General of Registration

Designation of the party member	Details of work allotted
AAO	1) Scrutiny of the GR's issued by the department 2) Policies framed by the department for realisation of revenue
Sr Adr/Adr	1) Scrutiny of the GR's issued by the department 2) Policies framed by the department for realization of revenue

In the Office of The Principal Secretary Department of Revenue GoM

Designation of the party member	Details of work allotted
AAO I	
AAO II	
Sr Adr/Adr	

[*Local State Receipt Audit Hqrs*]

9 8. Commonly Applied Audit Checks (Para 10.6.1)

ARTICLE 25 (Conveyance) of Schedule-I of Maharashtra Stamp Act 1958

Subject matter of instrument is Conveyance of :-

(A) Agricultural Land

SR NO	QUESTIONS	ANSWER YES/NO	REMARKS
1)	Whether the division of the Village was determined and correct rates of division was applied based on the land revenue?		
2)	Whether three years 7/12 abstracts are attached to the document?		
3)	Whether the nature of agricultural land as jirayat / Hangami Bagayat and Baramahi Bagayat were correctly determined on the basis of details of crops noted in the 7/12 abstract.?		
4)	<p>Where the rates of bare land are not given, whether 75 per cent of jirayat land was applied?</p> <p><u>Valuation of bare land (Pad Jamin) in urban area is to be done at jirayat land rate.</u></p> <p><u>If the land is used for agricultural purposes and such land is also having bare land in such case, valuation of bare land (Pad Jamin) in rural and influence zone is to be done at the rate applicable to the use (Jirayat, Bagayat, Fruit bearing etc)</u></p> <p><u>Hilly bare land in rural area is to be valued at 75% rate of jirayat land and if portion of land is used for agricultural purposes then the valuation is to be done with respect to use of Isand (jirayat, Bagayat, Fruit bearing etc)</u></p>		

5)	In case of agricultural land situated in No Development zone of C Class Municipal Council, whether the market valuation of land is done by applying the slabs of bulk land given in instrument no 17 (B) of Annual Statement of Rates (ASR)?		
6)	Whether the land situated in mining belt/ used for wind mill has been valued at double the rates of ASR?		
7)	Whether the agricultural land situated in rural areas used for non – agricultural purpose is valued by adopting 50 per cent of rates of non-agricultural applicable to the village?		
8)	Where the agricultural land is purchased for farm house, Whether the rate of probable NA has been applied in the market valuation?		
9)	Where the rates of hilly land are not given in the ASR, Whether 75 per cent of Jirayat land was applied?		
10)	In case of salt land, Whether 60 per cent of Bagayat land was adopted for market valuation? <u>Note: - The instruction applied is that for rural area excluding villages in influence zone.</u>		

(B) Bulk land

1)	Whether the rate of correct zone was adopted in the valuation?		
2)	Whether the Bulk land falls in the Regional Plan /Agricultural Zone /No Development Zone or the bulk agricultural land fall in areas Where there is no Regional plan or Development Plan, If so whether all the slabs given in the instruction were adopted in the market valuation?		

3)	<p>In case where both the hectare rate and sq meters rates are given in the ASR, Whether up-to 2000 sq mtrs sq mtrs rates were adopted and for remaining area hectare rates were applied?</p> <p>Note:- In case property falls in the zone for which both ha rate and sqmt rates are given in the ASR for a land, for first 2000 sq mt land valuation is to be done at sqmt rate and for remaining area ha rate is applied.</p>		
4)	<p>Whether the Bulk land falls in the Regional plan/Agricultural Zone and is situated in Residential/Commercial/Industrial use or is situated in probably Non Agricultural /Non Agricultural value zone, If so whether all the slabs given in the instruction were correctly adopted in the market valuation?</p>		
5)	<p>In case the land is reserved for public purpose whether the market valuation of the land is done by adopting 80 per cent of rates?</p>		

I Plot of land

1)	<p>Whether the rate of correct zone was adopted in the valuation?</p>		
2)	<p>If layout for residential/commercial/industrial purposes are sanctioned and whole layout sold then valuation is to be done at 80% of NA rate.</p> <p>If only a plot in a layout is sold, in such case the valuation should be done at NA rate on the whole plot area.</p>		

3)	Where the plot is situated more than 50 mtrs from the main road, Whether 70 percent of the rates applicable to land on main road were adopted on the basis of certificate of appropriate authority?.		
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Subject matter of instrument is Conveyance of :-

(1) Flat

1)	Whether the rate of correct zone was adopted in the valuation?		
2)	Whether the carpet area of flat is converted into built up area?.		
3)	Whether correct area of flat as given in the schedule of property was considered for valuation?.		
4)	Whether the rates of flat depending on its floor, situated in building having lift facility was correctly adopted in the market valuation.		
5)	In case of old flats, whether depreciation depending on the age of building on the basis of Completion/Occupation Certificate or other evidences like Electricity bill, Telephone bill etc was given?		
6)	In case along-with flat, the terrace is conveyed, Whether 40 percent residential rates was considered in the valuation?		
7)	In case of the upper floor terrace is conveyed along-with flat whether 25 percent residential rates was considered in the valuation?		
8)	In case land appurtenant to flat is conveyed, whether 40 per cent residential rates were considered in the valuation of such land?		

9)	In case of open Parking whether 40 percent of land rates or in case of covered parking whether 25 per cent residential rates were considered in the valuation?		
10)	In case separate independent rates for flat are not given in ASR, whether the valuation of flat is done by adopting land Plus (construction method after deducting the applicable depreciation) X 1.15 X flat area?		

(2) Row-House, Penthouse/Duplex/Bungalow

1)	Whether the rate of correct zone was adopted in the valuation?		
2)	Whether the total area of Row-House, Penthouse/Duplex/Bungalow exceeds 150 Sq mtrs, located in Group Housing Scheme and situated in Municipal Corporation areas of Thane, Kalyan-Dombivali, Bhiwandi-Nizampur, Mira Bhayandar, Navi Mumbai, Pune, Pimpri Chinchwad and Nasik then the valuation is done by incrementing the residential rates by 25 percent?		
3)	In cases of Row-House, Penthouse / Duplex / Bungalow is situated in areas other than aforesaid Municipal Corporation the valuation is done by adopting the land plus construction method after giving the applicable depreciation to construction?		
4)	In case separate independent rates of residential property are not given in ASR, whether the valuation of Residential building on independent plot is done by adopting land Plus (construction method after deducting the applicable		

(3) Shops

1)	Whether the rate of correct zone was adopted in the valuation?		
2)	Whether the carpet area of shop is converted into built up area?.		
3)	In case shop is not road facing, whether 80 per cent rates were considered for valuation on the basis of location map?		
4)	In case shop is situated on lower ground floor, whether 80 per cent rates were considered for valuation?		
5)	In case of basement, whether 80 per cent rates were considered for valuation?		
6)	In case of mezzanine, whether 70 per cent rates were considered for valuation?		
7)	In case land appurtenant to shop is conveyed, whether 40 per cent shop rates were considered in the valuation of such land?		
8)	In case along-with shop terrace is conveyed, whether 40 percent shop rates was considered in the valuation?		
9)	In case of shop having area between 464 sqm up-to 929 sqm, whether 10 percent rates were reduced in the valuation. Similarly if the area of shop is more than 929 sqm then whether 20 percent rates were reduced?		
10)	In case of shops in Malls, whether the rates were increased in the valuation as under:- Ground/Upper Ground floor = 1.20 times Lower Ground floor= 1.00 times Second and above floor= 0.80 times?		
11)	In case of Dispensary/Bank is situated on Ground floor, whether shop rates were considered in the valuation?		

12)	In case separate independent rates for shop on ground floor is not given in ASR, whether the valuation of shop is done by adopting land Plus (construction method after deducting the applicable depreciation) X 1.50X shop area?		
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(4) Upper floor commercial

1)	Whether the rate of correct zone was adopted in the valuation?		
2)	Whether the carpet area of upper floor commercial is converted into built up area?		
3)	Whether the rates of upper floor commercial depending on its floor, situated in building having lift facility was correctly adopted in the market valuation?		
4)	In case of upper floor commercial having area between 464 sqm up-to 929 sqm, whether 10 percent rates were reduced in the valuation. Similarly if the area of shop is more than 929 sqm then Whether 20 percent rates were reduced?		
5)	In case separate independent rates for upper floor commercial is not given in ASR, whether the valuation of shop is done by adopting land Plus (construction method after deducting the applicable depreciation) X 1.25 X upper floor commercial area?		
6)	In case along-with upper floor commercial terrace is conveyed, whether 40 percent upper floor commercial rates was considered in the valuation?		

(5) Industrial

1)	Whether the rate of correct zone was adopted in the valuation?		
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2)	Whether the carpet area of industrial Gala is converted into built up area?		
3)	In case separate independent rates for industrial gala is not given in ASR, whether the valuation of shop is done by adopting land Plus (construction method after deducting the applicable depreciation) X 1.20 X Gala area?		
4)	In case separate independent rates for industrial building is not given in ASR, whether the valuation of shop is done by adopting land Plus (construction method after deducting the applicable depreciation)?		

ARTICLE 32 (Exchange of Property) of Schedule-I of Maharashtra Stamp Act 1958

1)	Whether in case of Exchange of property, stamp duty is levied on the market value of the property of the greatest value?		
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ARTICLE 34 (GIFT) of Schedule-I of Maharashtra Stamp Act 1958

1)	Whether stamp duty is levied at concessional rate of 2 percent or the rate specified in the aforesaid article whichever is less, in case the property is gifted to a family member being the husband, wife, brother or sister of the donor or any lineal ascendant or descendent of the donor? Note :- Whether the valuation of the gifted property is done as per classification of property (Flat, shop, agricultural land, plot etc)		
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ARTICLE 36 (Lease) of Schedule-I of Maharashtra Stamp Act 1958

1)	Where the lease purports to be for a period not exceeding five years, whether stamp duty was levied on 10 per centum of the market value of the property?		
2)	Where the lease purports to be for a period not exceeding ten years, Whether stamp duty was levied on 25per centum of the market value of the property?		
3)	Where the lease purports to be for a period not exceeding twenty nine years, whether stamp duty was levied on 50 per centum of the market value of the property?		
4)	Where the lease purports to be for a period exceeding twenty nine years or in perpetuity, Whether stamp duty was levied on 90 per centum of the market value of the property?		
5)	Whether any consideration in the form of premium or money advanced or to be advanced or security deposit by whatever name called has been treated as consideration passed on for the purpose of market value and stamp duty has been levied on the consideration amount?		
6)	Whether the renewal specifically mentioned has been treated as part of the present lease?		
7)	Whether the valuation of property is done as per classification of property.		

ARTICLE 36A (Leave and Licence) of Schedule-I of Maharashtra Stamp Act 1958

1)	Where the Leave and Licence agreement purports to be for a period exceeding sixty months, whether stamp duty was levied as leviable on lease on the market value of the property?		
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ARTICLE 40 (Mortgage-Deed) of Schedule-I of Maharashtra Stamp Act 1958

1)	Where in case a mortgager who gives to the mortgager to collect rents or a lease of the property mortgaged or part thereof is deemed to be given as possession, whether stamp duty is charged as conveyance on the amount secured by the mortgage deed?		
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ARTICLE 46 (Partition) of Schedule-I of Maharashtra Stamp Act 1958

1)	Whether stamp duty at the rate of 2 per cent was levied on the amount of separated share excluding the largest share?		
2)	Where the instrument of partition is related to partition of agricultural land, whether stamp duty of Rs 100 was levied?		

ARTICLE 48 (Power of Attorney) of Schedule-I of Maharashtra Stamp Act 1958

1)	In case where the power of attorney authorizing to sell or transfer immovable property without consideration or without showing any consideration is given to father, mother, brother, sister, wife, husband, daughter, grandson, grand-daughter or such close relative whether stamp duty of Rs 500 in any other case whether stamp duty was		
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	levied as conveyance on the market value of the property?		
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[Note: - The check list prescribed above is only illustrative and additional checks depending upon the nature of instrument may be applied during the course of audit. In case of any doubt reference may be made to the instructions of ASR, Sections and Articles of Bombay Stamp Act, 1958.]

[*Local State Receipt Audit Hqrs*]

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10 9. An Overview of the Performance Audit Guidelines 2014 (Para 10.7.1.7)

Chapter 1: Introduction

1. They inter alia outline principles, objectives, approach, methodology, techniques and procedures for conducting performance audits. These guidelines are based on the existing guidelines of C&AG of India and International Standards of Supreme Audit Institutions- (ISSAI) 100, 300 and 3000 and ASOSAI Performance Auditing Guidelines
2. The Accountant General is expected to make situational or subject specific adjustments to the provisions set out in these guidelines.
3. Performance auditing seeks to provide new information, analysis or insights and, where appropriate, recommendations for improvement.
4. Performance Audits is required to address the issues of economy, efficiency and effectiveness.
5. Performance auditors may find answers to the following two basic questions:
 - a. Are things being done in the right way?
 - b. Are the right things being done?
6. The main objective of performance auditing is to constructively promote economical, effective and efficient governance. It also contributes to accountability and transparency.
7. Public Sector audits have certain basic elements (i) Three parties in the audit i.e. the auditor, the responsible party, intended user, (ii) the subject matter information and (iii) criteria to assess the subject matter.
8. The subject matter of a performance audit need not be limited to specific programmes, entities or funds but can include activities (with their outputs, outcomes and impacts) or existing situations (including causes and consequences). The subject matter is determined by the objective set out and formulated in the form of audit questions.
9. Audit criteria within the context of performance audit are audit specific, reasonable standards of performance against which the economy, efficiency and effectiveness of operations can be evaluated and assessed. These could be the rules and regulations in force.
10. As in all audits, the users of performance audit reports seek confidence about the reliability of information in the reports. The performance auditors should, therefore, in all cases provide findings based on sufficient and appropriate evidence and actively manage the risk of inappropriate reports.

11. Performance audits provide entities and stakeholders with information and assurance about the quality of management of public resources and also assist public sector managers by identifying and promoting better management practices.

Chapter 2: Mandate and General Principals of Performance Audit

1. The audit mandate of the Department is derived from the Constitution of India. Article 151 of the Constitution of India provides that the reports of the Comptroller and Auditor General of India relating to the accounts of the Union or a State government shall be submitted to the President or the Governor of the State respectively, who shall cause them to be laid before each House of Parliament/ Legislature of the State.
2. The General Principles are –
 - a. Auditor should comply with the relevant ethical requirements and be independent.
 - b. Auditors should set a clearly defined audit objective that relates to the principles of economy, efficiency and effectiveness.
 - c. Auditors should choose a result, problem or system-oriented approach, or a combination thereof, to facilitate the soundness of audit design.
 - d. Auditors should establish suitable criteria which correspond to the audit questions and are related to the principles of economy, efficiency and effectiveness.
 - e. Auditors should actively manage audit risk, which is the risk of obtaining incorrect or incomplete conclusions, providing unbalanced information or failing to add value for users.
 - f. Auditors should maintain effective and proper communication with the audited entities and other parties sharing the responsibility of the subject matter throughout the audit process and define the content, process and recipients of communication for each audit.
 - g. Collectively, the audit team should have the necessary professional competence to perform the audit. This would include in addition to the knowledge of the domain of the audited entity, sound knowledge of auditing, research design, social science methods and investigation or evaluation techniques, as well as personal strengths such as analytical, writing and communication skills.
 - h. Auditors should exercise professional scepticism, but also be receptive and willing to innovate.
 - i. Auditors should apply procedures to safeguard quality, ensuring that the applicable requirements are met and placing emphasis on appropriate, balanced and fair reports that add value and answer the audit questions.

- j. Auditors should consider materiality at all stages of the audit process. Thought should be given not only to financial but also to social and political aspects of the subject matter, with the aim of delivering as much added value as possible.
- k. Auditors should document the audit in accordance with the particular circumstances thereof. Information should be sufficiently complete and detailed to enable an experienced auditor having no previous connection with the audit to subsequently determine what work was done in order to arrive at the audit findings, conclusions and recommendations

Chapter 3: Strategic Audit Planning and Selection of Subjects

1. Strategic Audit planning is the process of determining the long term goals for the Department and the best approach for attaining them. It consists of strategic goals (mission statement), strategic objectives (more specific and detailed statements) and strategic measures to attain them.
2. Strategic Audit Plan of the Department sets out a vision that provides an important starting point in deciding what to audit; sets out the outcomes that we are trying to achieve and in general, better managed government programs and better accountability to Parliament and the public.
3. Before preparing the strategic audit plan, it would be useful to develop a sound understanding of: general economic and social conditions; government priorities, goals and programmes; and the regulatory and accountability frameworks within which the audited entities operate.
4. One of the important components of annual audit plan is the selection of specific subjects for performance audits to be undertaken in the audit cycle. The audit plan component for the performance audit would typically include subjects relating to specific sectors or the states under their audit jurisdiction and also certain audits with All-India scope.

Selection of subjects:-

- a. Risk profiling of audited entities, sectors and programmes help in deciding the selection of subjects.
- b. A topic will have a high significance if the project or activity it addresses is central to the functioning of the entity.
- c. Visibility of a subject is an assessment of the interest it generates in the general public and the legislature.
- d. Past audits by the Department could provide an index of significance, materiality and risk of the subjects.

- e. Estimated impact of the performance audit is also a criterion for prioritisation. This could be the impact of improved economy, efficiency and effectiveness of the entity, project or activity which is the subject of performance audit.
- f. Coverage refers not only to previous audit coverage by the Department but also to other independent reviews of the activity
- g. The stage of the programme development should also be kept in mind when assessing management performance.
- h. The Accountant General may elicit suggestions from the Executive or those charged with governance of the audited entities for the subjects or areas which could be selected for audits maybe through holding of seminars etc.

The data and information gathered for strategic planning for performance audits and risk profile of the entity or programme should be updated periodically

Chapter 4: How to plan individual performance audits

1. Through Pilot Study
2. By developing Guidelines and assessing resources
3. Through development of a detailed audit proposal that identifies the specific audit tasks to be undertaken
4. By drawing up an audit proposal after –
 - a. Understanding the entity/programme;
 - b. Defining the objectives and the scope of audit i.e answering questions such as what, where, who, which period;
 - c. Determining audit criteria;
 - d. Deciding audit approach (system oriented, result oriented and problem oriented);
 - e. Developing audit questions;
 - f. Assess audit team skills and whether outside expertise required;
 - g. Preparation of Audit Design Matrix;
 - h. Establishing time table and resources;
 - i. Intimation of Audit programme to audit entities.

Chapter 5: Various Elements of Implementing the Performance

1. This chapter contains the practices and procedures to be followed by the audit team during the implementation of the performance audit.
2. Entry conference at the commencement of performance audit is to be held with Secretary of the department concerned by the Accountant General. The purpose of this conference

is to inform the entity about the areas to be audited along with audit objectives, the audit approach and the time-frame within which the audit is expected to be carried out.

3. Accountant General should send an engagement letter to the Secretary/Chief Executive of the entity, communicating the launch of the audit along with details of the entity units tentatively selected for audit and the timeframe for audit and request him/her to issue necessary directions to the functional officers and field units
4. The steps involved in field audit process to collect, interpret and analyse the data in relation to the stated audit objectives are as under:-
 - a. Entry Meeting besides Entry Conference before commencement of the audit of selected auditable units.
 - b. Information may be gathered on the basis of physical evidence, documents (including written statements), oral testimonies (interviews), or by other means depending on the objectives of the audit.
 - c. Audit findings are the specific evidence gathered by the auditor to satisfy the audit objectives. The audit design metric and the audit findings matrix assume importance.
 - d. Developing Recommendations
 - e. Exit Meeting
 - f. Supervision

Chapter 6: Aspects Relating to Evidence and Documentation

Audit evidence is the information collected and used to support audit findings with the concept of competence, relevance and sufficiency of evidence, particularly in the context of performance audits.

Some factors that may affect the competence, relevance and sufficiency of the evidence are:

1. Samples selected are not representative (sufficiency);
 2. Evidence collected relate to an isolated occurrence (sufficiency);
 3. Evidence is incomplete and does not establish a cause and effect relationship (sufficiency, relevance);
 4. Evidence is conflicting (competence); and
 5. Evidence is biased (competence).
- Evidence can be categorised with reference to their type as physical observation (photographs, charts, maps, graphs or other pictorial representations, etc.) oral (audit interviews and inquiries), documentary (physical or electronic form) or analytical (analysis and verification of data).

- The sources of evidence may vary from case to case. The following are however some illustrative sources of evidence:
 1. Policy Statements and Legislations
 2. Published Programme Performance Data
 3. Management Reports and Reviews
 4. Files of the entity on the subject
- Meticulous documentation of the evidence supports the audit conclusions and confirms that the audit was carried out in accordance with relevant standards.
- All relevant documents and information collected and generated during a performance audit constitute the working papers. Ideally the working papers should consist of three sections – each linked to the other: planning; execution and reporting.
- Documentation in a performance audit requires maintenance of audit file along with set of working papers.

Chapter 7: Reporting Process of Draft Performance Audit Report

The reporting process is illustrated as under:-

1. Preparation of audit observations
 2. Draft report issued to the entity
 3. Response of the entity
 4. Exit Conference
 5. Sr. Management response to the report
 6. Draft Final report
 7. Response of the entity or those charged with Governance on Draft Final report
 8. Final Report
- An Audit Observation is defined as an area of potential control weakness, policy violation, financial misstatement, inefficiency in programme implementation and achievement of programme objectives, or other problematic issue identified during the audit.
 - The audit teams should be encouraged to use Audit Design Matrix as well as Audit Finding Matrix for cross reference to ensure that nothing is left out.
 - The draft audit report is to be prepared upon conclusion of the field audit of the controlling unit of the entity and all field units selected for audit. The purpose of preparation of the draft report is to seek formal response of the entity audited.

- It is important that the entity is persuaded to provide written response to the draft audit report.
- The performance audit should be concluded with an exit conference with the Chief executive of the audited entity e.g. Secretary/ Pr. Secretary to the Government concerned as the case may be.
- In case any information is required from third parties, audited entity would requisition the same from the third party and provide to Audit.
- The supervision and review by the headquarters of the audit report prepared by field audit offices with particular reference to the audit findings and conclusions, recommendations, evidence, drafting, etc is a measure of quality control.
- After incorporating the replies of audited entity and modifications suggested by headquarters, the draft final report should be prepared.
- Then send the bond copy of the report with appropriate annotations for the approval of the report by Comptroller and Auditor General, after which the report stands cleared for printing.
- Characteristics of a good report include completeness, objectivity ensured through balanced content and tone, the conclusions and recommendations follow logically, the report is easy to read and understand and consistency throughout.

Chapter 8: Follow-up Procedures

The objectives of follow up of performance audits are –

1. Assisting the legislature
2. Achieving improvements in performance of the public sector program
3. Evaluating the Department's performance
4. Providing an input to the strategic planning of performance audit by the Department.

The outcome of follow up procedure is continuous improvement and inventory of recommendations. An annual follow up programme should be undertaken to provide feedback to the legislature.

[http://cag.gov.in/sites/default/files/guidelines/PA_Guidelines2014.pdf]

11- 10. An Overview of the Compliance Audit Guidelines (Para 10.7.1.5)

Chapter 1:- Introduction

The chapter inter alia discusses applicability –

- a. to suit the needs of the IA&AD department, the specific adjustments for individual initiative and professional judgement for the AG;
- b. The audit mandate derived from the DPC act;
- c. Definition of compliance audit as a regulatory system to correct the deviations from the determined criteria and rules and regulations with special reference to ISSAI 4100 and CAG's regulations on audit and accounts 2007.
- d. It is basically concerned with regularity and proprietary audit.
- e. Next is about the three parties involved in compliance audit viz the auditor, responsible party and the intended users.

Chapter 2: General Principles of Compliance Audit

The chapter inter alia lays down that –

- a. The Auditors shall plan and conduct audit with professional scepticism (questioning mind) and exercise professional judgement (application of knowledge, skills and experience) and is expected to observe the prescribed code of ethics, take responsibility for overall audit and consider audit risk throughout the process and also the materiality of audit objections.
- b. Auditor should also prepare sufficient audit documentation.
- c. Should maintain effective communication and determine the audit scope.
- d. Also has to understand the audited entity and control environment while all the time considering the audit risk especially in regard to fraud.

Chapter 3: Compliance Audit Plan

It is inter alia stated in the chapter that –

- a. The entire audit universe (i.e auditee units established for a purpose of implementation of Government policy) by a combined effort implements the Government policy as well as collects revenue and incurs expenditure till the last mile of implementation and this universe is broken down into units for planning and scheduling audits.
- b. An Audit Unit is defined as a unit, which has one or more of the following attributes:
 - Substantial devolution of administrative and financial powers;
 - Functional autonomy; and

- Operational significance with reference to achievement of objectives of the apex auditable entity.
- c. Further, that this requires top down, risk based, department centric mechanism for macro level planning and conducting compliance audits and preparation of annual compliance audit plans.
- d. Also a top down and risk based approach to identification of audit units intends to place the Department/Sector as the centre piece of the audit focus and provide a scientific mechanism of defining audit units.

Chapter 4: Planning Compliance Audits

It inter alia includes planning for individual compliance audit i.e –

- a. Understanding the auditable entity;
- b. Understanding the relevant principles of sound public sector financial management;
- c. Identification of intended users;
- d. Consideration of materiality and risk assessment;
- e. Determining the scope of audit;
- f. Development of audit objectives;
- g. Sampling considerations and
- h. Considerations related to direction, supervision and review of the audit teams.
- i. Then it is stated that an audit plan should be prepared especially with reference to the apex auditable entity.

In it the scope of audit should be defined with reference to what to audit, who to audit, where to audit and which period to audit and prepare the compliance audit design matrix with the audit objectives and the relevant criteria.

Then the compliance audit in digital environment, the team composition and intimation to the auditable entity is discussed.

Chapter 5: Conducting Compliance Audits

It is stated inter alia herein that

- a. The conduct of audits is about gathering evidence, evaluating evidence, forming conclusions, documenting the audit process and communicating with the auditable entities.
- b. Audit evidence or simply evidence is the information used by the auditor for arriving at the audit conclusions.

- c. In the planning phase, the auditors shall review the internal controls and institutional arrangements established by the auditable entity to prevent, detect, and rectify instances of noncompliance.
- d. Also, the audit has to combine and compare the evidence from different sources in order to meet the requirements for sufficiency and appropriateness of audit evidence.
- e. Sufficiency is the measure of the quantity of evidence.
- f. The quantity of evidence needed is affected by the risks of the subject matter information being non-compliant or prone to compliance deviation (i.e. the higher the risks, the more evidence is likely to be required) and also by the quality of such evidence (i.e. the higher the quality, the less may be required).
- g. Appropriateness is the measure of the quality of evidence; i.e its relevance, its validity and its reliability in providing support for the auditor's conclusion.
- h. The sufficiency and appropriateness of evidence is dependent on the professional judgment of the auditor and is also influenced by several factors.
- i. The evidence gathering and evaluation is a simultaneous, systematic and an iterative process and involves audit procedures such as document scrutiny, physical inspection etc, evaluating for sufficiency and appropriateness and reassessing risk for further evidence.
- j. Next is the drawing up the audit findings matrix, documentation of audit evidence supporting the audit conclusions and confirming that the audit was carried out in accordance with relevant standards and comprises of audit file with working papers and
- k. Lastly, about the good communication with the auditable units through entry meetings for example.

Chapter 6: Reporting Compliance Audits

- a. Auditors should consider materiality for reporting purposes and adhere to the principles of completeness, objectivity, timeliness and contradictory process while reporting.
- b. The top down, risk based approach to conducting compliance audit, as described in earlier chapters, is envisaged to provide a department centric view of the extent of compliance. Present the results to the end users in a prescribed form.
- c. A Departmental Appreciation Note may be issued to the Apex Auditable Entity (Department/ Sector) where a specific subject matter has been selected to assess the extent of compliance from a departmental perspective or the Accountant General intends to draw attention of the executive towards system weaknesses etc. It includes broad overview of the department, objectives and scope, audit findings, conclusion and acknowledgement.

- d. A follow up process facilitates the effective implementation of corrective actions and provides useful feedback to the Apex Auditable Entity/ audit units and at the same time facilitates the auditors to plan future audits.

[http://cag.gov.in/sites/default/files/guidelines/Compliance_Guidelines_approved_final_preface.pdf]

12. 11. An Overview of the ‘Standing Order on Role of Audit in Relation to Cases of Fraud and Corruption’ (Para 12.6.1)

Chapter 1:- Introduction

Inter alia it is stated that the order becomes part of all audits where the examination of systems to detect and prevent fraud and corruption is one of the sub objectives.

Chapter 2:- Fraud Examination

Corruption and Fraud are generally interlinked. In fact Corruption is a special type of Fraud. Illustrative but not exhaustive Fraud and Corruption in contracting for goods and services as given in Appendix A are as under:-

- Bribery and Kickbacks
- Changes on original contract for flow of additional funds
- Duplicate payments
- Collusive or cartel bidding by fixing artificial prices
- Conflict of interest
- Defective pricing through inflated invoices
- False invoices
- False representations by the contractor to bag the contract
- Splitting of purchases
- Phantom contractor
- Pilferage of public assets
- Tailored specifications in favor of contractor
- Supply orders without need

Chapter 3:- Characteristics of Fraud

Fraud is distinguished from error depending on whether it is intentional or unintentional. It involves deliberate misrepresentation and / or significant information to obtain undue or illegal financial advantage. It may involve the management or those charged with governance or the employees of an entity. Auditors could only report suspected /presumptive fraud and could not make legal determinations. Materiality should be adjusted in order to make the audit more responsive to risk arising out of fraud and corruption.

Chapter 4:- Characteristics of Corruption

It means to unlawfully and improperly enrich themselves and/or those close to them or induce others to do so through abuse of public power.

Chapter 5:- Nexus between Fraud and Corruption

Fraud involves deliberate misrepresentation of information that is recorded and summarized by an entity by either an employee or the management. It affects directly the financial statements and records of the entity. Corruption on the other hand is linked to acts of bribery and may or may not be reflected in the records of an entity.

Chapter 6:- Types of Fraud and Corruption

There are several types that are illustrated in Appendix A and B

Chapter 7:- Respective Responsibilities of Management and Audit

The audited entity establishes and maintains internal controls to provide reasonable assurance. The implementation and continued operation of accounting and control systems designed to check fraud rests primarily with the management of the audited entity and is well documented.

Audit must evaluate and report on the adequacy and competence with which the management has discharged its responsibility.

Audit should be alert to the shortcomings in the system that provides an environment conducive to fraud and corruption and recommend measures to improve the environment.

Audit should extend procedures wherever there is suspicion of material fraud.

Chapter 8:- Considerations of Fraud in audit of financial statements

There are two misstatements possible during the audit of financial statements –

- a) Fraudulent financial reporting
- b) Misappropriation of assets

Chapter 9:- Considerations of Fraud in Performance Audits

The vulnerability/risk of fraud and corruption should be given due consideration at the planning stage.

The audit objectives should include effectiveness of internal controls.

Possible indicators of fraud should be probed further and report its findings especially in regard to the performance information and evidence of delivery of goods and services.

Chapter 10:- Considerations of Fraud in Receipt Audits

Ascertain what internal controls are in place to ensure a prompt detection, investigation and prevention of irregularities, double refunds, fraudulent or forged refund vouchers or other loss of revenue through fraud, error or wilful omission or negligence to levy or collect taxes or to make refunds. Auditors might also suggest improvements in the systems and procedures of collection of receipts.

Chapter 11:- Considerations of Fraud in audit of World Bank and other externally assisted projects

Auditors should report to the funding agency whether the implementing agency has incurred expenditure on the scheme as per the terms of assistance and the project appraisal report and the GOI instructions. Also to identify the inadequacies in systems and controls such as failure of the administration to take corrective action on recommendations in earlier report etc.

Chapter 12:- Professional Skepticism

It means a questioning mind by the auditors and a critical assessment of audit evidence.

Chapter 13:- Fraud awareness at the audit planning stage

The field offices should carry out an independent assessment and prioritize the audit planning accordingly inter alia focusing on high risk areas as illustrated in Appendix A and B of this order. Also assess the risk caused by fraud to financial statements. Based on the risk assessment, devise the objectives and design audit procedures.

Chapter 14:- Vigilance about fraud at audit execution stage

During the course of audit work the audit teams/officers should be vigilant and seek explanations if they come across fraud indicators as illustrated in Appendix A and B of this order.

Chapter 15:- Audit evidence

Evidence could only be persuasive and not conclusive due to legal connotation and should be reported without being judgmental. Moreover, the evidence should also be capable of proving that the audit teams/officers have discharged their functions with reasonable care and due diligence.

Chapter 16:- IT fraud

IT fraud could involve the manipulation of computer or computer data by whatever method, in order to obtain dishonestly money, property, or some other advantage of value or to cause loss. Steps to prevent include proper access controls. For auditors it is data inquiry, analysis and a reporting software.

Chapter 17:- Documentation

The documentation should include the identified and assessed risks of fraud and its linkages to audit procedures

Chapter 18:- Supervision and Review

Should be exercised in accordance with the Auditing Standards of C&AG of India and other instructions from time to time

Chapter 19:- Reporting

Reports of individual cases of fraud and corruption should be addressed confidentially to the controlling authority concerned or the secretary of the administrative department according to its seriousness with the approval of group officers or the AG or with his approval. The more serious cases should be shared with the investigative authorities such as State Vigilance Commission.

Suspected / Presumptive fraud should be highlighted in bold type in inspection reports and audit notes etc. In the forwarding letter to the Bond Copy to the Hqrs Office, the number of cases with money value should be indicated as also highlighted in the submission note of the file relating to the Bond Copy.

A Qualification of audit opinion if any in the financial statements should be inserted.

Chapter 20:- Follow up

The draft of the annual post audit report letter to the chief minister should have a brief mention of issues relating to fraud and corruption

Chapter 21:- Additional instructions

This is the instructions regarding database, objection book, skill development, developing sector specific guidelines/checklists, reporting to Hqrs and continuance of the existing provisions relating to reports on defalcations and losses.

Appendix A: - Illustrative fraud and corruption in contracting for goods and services

Already discussed in chapter 2.

Appendix B: - Some indicators (red flags) for possible fraud and corruption (illustrative)

Regarding procurement and contracting of goods and services in defining stage, selection stage and contract performance and evaluation stage.

Appendix C: - Extracts from the provisions of General Financial Rules

Provisions regarding GFR 33 – Report of Losses, GFR 34 – Loss of Government Property due to fire, theft, fraud, GFR 37 – Responsibility for Losses and GFR 38 – Prompt Disposal of cases of Loss may be kept in mind during audit.

[http://cag.gov.in/sites/default/files/guidelines/Book_Fraud_Corruption.pdf]

Glossary and Abbreviations

AAO	Assistant Audit Officer (Field level)/ Assistant Administrative Officer
ASR	Annual Statement of Rates
C&AG (HQ)	Headquarters Office at Delhi
AAP	Annual Audit Plan
ACM	Audit Committee Meeting
AM	Audit Memo
ASOSAI	Asian Organisation of Supreme Audit Institutions
AQMF	Audit Quality Management Framework
BO	Branch Officer
Bill of Exchange	A written order or promissory note to make a specified payment to the signatory or to a named payee.
CA	Compliance Audit
C&AG	Comptroller and Auditor General of India
CCRA	Chief Controlling Revenue Authority
Compromise of Doubtful Rights	It is only an acknowledgement of rights
CSN	Cadastrel Survey No
Court of Wards	For protection of property of heirs deemed to be a minor
COS	Collector of Stamps
DCA	Department Centric Audit
DCR	Development Control Regulations
DDO	Drawing and Disbursing Officer
DOR	Department of Revenue
DOR	Department of Revenue
DP	Draft Paragraph
DPC	Duties, Powers and Conditions (DPC) Act, 1971
Deed of Appointment	Transfer of Property by a person authorized to exercise the power
Dominant Heritage	Land for the beneficial enjoyment of which the right exists
Easement	the right to use the real property of another for a specific purpose
Remission	Exemption
FAO	Field Audit Office
FSI	Floor Space Index
Fungible FSI	Compensatory FSI for free of FSI areas such as balconies
GO	Group Officer
GN	Gut No
HQ	Headquarters
ITES	Information Technology Enabled Service
IELD	Industries Energy and Labour Department
IA&AD	Indian Audit and Accounts Department
INTOSAI	International Organisation of Supreme Audit Institution
Inter Vivos	Between living persons
Intestate	Not having made a will before one dies.

Lists in the Constitution of India	List of subjects on which the Union (I), State (II) and Concurrent (III i.e both could legislate)
M S Act	Maharashtra Stamp Act
PSI	Package Scheme of Incentives
Penthouse	A flat or dwelling above it
RFD	Revenue & Forest Department
RSD	Registration & Stamps Department
SRAP	State Receipt Audit Party
SEZ	Special Economic Zone
SDEC	Stamp Duty Exemption Certificate
SN	Survey No
Testamentary	Relating to or bequeathed or appointed through a will.
LAR	Local Audit Report
MS	Maharashtra State
OB	Objection Book
PA	Performance Audit
PAC	Public Accounts Committee
PD	Principal Director
PDP	Potential Draft Para
Pari Delicto	Two persons or entities at equal fault
Registration of Charge	Means an interest or right which a lender or. creditor obtains in a property of a company
SOF	Statement of Facts
Sr.AO	Senior Audit Officer (Field level)/Senior Administrative Officer (C&AG HQ)
Suburban District	is a district of Maharashtra in Konkan Division. Its headquarters is in Bandra. It consists of three administrative subdivisions: Kurla, Andheri, and Borivali
SMU	Strategic Management Unit
TDR	Transfer of Development Rights
UDD	Urban Development Department
Unearned Income	Income from sale of a class II land i.e tiller of that land and not the owner
Without Replacement	Sampling is called without replacement when a unit is selected at random from the population and it is not returned to the main lot