

MAHARASHTRA ORDINANCE NO. II OF 2005

REVENUE AND FORESTS DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 7th May, 2005

An Ordinance further to amend the Bombay Stamp Act, 1958

WHEREAS both Houses of the State Legislature are not in session:

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Bombay Stamp Act, 1958, for the purposes hereinafter appearing;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:--

1. Short title and commencement.--

(1) This Ordinance may be called the Bombay Stamp (Amendment) Ordinance, 2005

(2) It shall come into force at once.

2. Amendment of Section 2 of Bom. LX of 1958.--

In Section 2 of the Bombay Stamp Act, 1958 (hereinafter referred to as "the principal Act").--

(1) to clause (i), the following Explanation shall be added, namely:--

"Explanation.-- The terms "signed" and "signature" also include attribution of electronic record as per section 11 of the Information Technology Act, 2000;";

(2) to clause (1), the following Explanation shall be added, namely:--

"Explanation.-- The term "document" also includes any electronic record as defined in clause (i) of sub-section (1) of Section 2 of the Information Technology Act, 2000;".

3. Amendment of Section 4 of Bom LX of 1958.--

In Section 4 of the principal Act, --

(1) in sub-section (1), --

(i) after the words "of any" the words "development agreement", shall be inserted;

(ii) after the words "the conveyance," the words "development agreement," shall be inserted;

(2) in the marginal note after the words "transaction of" the words "development agreement," shall be inserted.

4. Insertion of Section 10B in Bom. LX of 1958.--

After Section 10A of the principal Act, the following section shall be inserted, namely:--

Stock exchange etc. to deduct stamp duty from trading member's account.

10B. Notwithstanding anything contained in this Act, in case of transactions through stock exchange or an association as defined in clause (a) of Section 2 of the Forward Contracts (Regulation) Act, 1952, the stock exchange or, as the case may be, an association, shall collect the due stamp duty by deducting the same from the trading member's account at the time of settlement of such transactions. The Stamp duty so collected shall be transferred to the Government Treasury, Sub-Treasury or General Stamp Office in the manner specified by the Chief Controlling Revenue Authority.

Explanation.-- For the purposes of this section, "stock exchange" means the stock exchange as defined in clause (j) of Section 2 of the Securities Contract (Regulation) Act, 1956.

5. Amendment of Schedule I of Bom. LX of 1958.--

In Schedule I appended to the principal Act.--

(1) in article 1, in clause (1), sub-clauses (a) and (b) shall be deleted;

(2) in article 5,--

(A) in clause (b), in column (2), for the portion beginning with the words "One rupee" and ending with the words "one thousand.", the following shall be substituted, namely:--

"Fifty paise for every rupees 1,00,000 or part thereof of the value of security at the time of its purchase or sale, as the case may be.";

(B) in clause (d), in column (2), for the portion beginning with the words "One rupee" and ending with the words "part thereof.", the following shall be substituted, namely:--

"One rupee for every rupees 10,000 or part thereof of the value of cotton.";

(C) in clause (c), in column (2) in sub-clauses (a) and (c), the following shall be substituted namely:--

"One rupee for every rupees 10,000 or part thereof of the value of silver or gold or sovereigns, as the case may be,";

(D) in clause (f), in column (2), for the portion beginning with the words "One rupee" and ending with the words "part thereof," the following shall be substituted, namely:--

"One rupee for every rupees 10,000 or part thereof of the value of oil seeds.";

(E) in clause (g), in column (2), for the portion beginning with the words "One rupee" and ending with the words "Official Gazette," the following shall be substituted, namely:--

"One rupee for every rupees 10,000 or part thereof of the value of yarn of any kind, non-mineral oil or spices of any kind, as the case may be.";

(F) clause (g-a) shall be renumbered as sub-clause (i) thereof, and after sub-clause (i) as so renumbered, the following sub-clause shall be added, namely:--

"(ii) if relating to the purchase of one or more units in any scheme or project by an investor from a developer;

Same duty as is leviable on conveyance under clause (a), (b), (c) or (d), as the case may be, of article 25 on the market value of the unit,";

Provided that, on conveyance of property by the investor, under an agreement under this sub-clause, to the subsequent purchaser, the duty chargeable for each unit under this clause shall be adjusted against the duty chargeable under Article 25 (conveyance) after keeping the balance of one hundred rupees. If such transfer or assignment is made within a period of three years from the date of the agreement. If on adjustment, no duty is required to be paid, then the minimum duty for the conveyance shall be rupees one thousand.

Explanation.-- For the purposes of this clause, the unit shall include a flat, apartment, tenement, block or any other unit by whatever name called, as approved by the Competent Authority in the building plan.

(G) for clause (h), the following clause shall be substituted, namely:--

- “(h) (A) if relating to,--
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| (i) any advertisement on mass media, made for promotion of any product; or programme or event with an intention to make profits or business out of it. | Two rupees and fifty paise for every rupees 1,000 or part thereof on the amount agreed in the contract. |
| (ii) conferring exclusive rights of telecasting, broadcasting or exhibition of an event or a film. | Two rupees and fifty paise for every rupees 1,000 or part thereof on the amount agreed in the contract. |
| (iii) specific performance by any person or a group of persons where the value of contract exceeds rupees 1,00,000. | Two rupees and fifty paise for every rupees 1,000 or part thereof on the amount agreed in the contract. |
| (iv) creation of any obligation, right or interest and having monetary value, but not covered under this article. | Two rupees and fifty paise for every rupees 1,000 or part thereof on the amount agreed in the contract. |
| (v) assignment of copyright under the Copyright Act, 1957. | Two rupees and fifty paise for every rupees 1,000 or part thereof on the amount agreed in the contract of the value signed for such assignment. |
- (B) if not otherwise provided for, One hundred rupees.”;
- Explanation.--Any duty paid under Article 19, 43 or 51A, as the case may be, shall be adjusted against the duty chargeable under clauses (b), (c), (d), (e), (f) and (g)

(3) in article 6,--

(A) in clause (1), in column (2),--

(i) for the words “five hundred” the words “one thousand” shall be substituted;

(ii) for the words “five lakh rupees” the words “ten lakh rupees” shall be substituted;

(B) in clause (2), in column (2),--

(i) for the words “five hundred” the words “one thousand” shall be substituted;

(ii) for the words "five lakh rupees" the words "ten lakh rupees" shall be substituted;

(4) in article 11, in column (1), in clause relating to "ASSIGNMENT" for the words "See Conveyance" the words, figure and letters "See Development Agreement [Article 5 (g-a)], Conveyance" shall be substituted;

(5) in article 25, in column (1) in Explanation II, in paragraph (i), after the words "name called", the following words shall be added at the end, namely:-
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"as approved by the Competent Authority in the building plan";

(6) in article 27, in column (2), for the words "rupees twenty" the words "rupees one hundred" shall be substituted;

(7) in article 29, in column (1), the following Explanation shall be added, namely:--

"Explanation.--For the purposes of this article, the words "dock or port" shall include "Airport" and "Cargo Hub,";

(8) in article 31, in column (1), for the words and figures "Bombay Registration of Marriage Act, 1953" the words and figures "Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998" shall be substituted;

(9) in article 32, in column (1), the following Explanation shall be added, namely:--

"Explanation.--For the purposes of this Article, notwithstanding anything contained hereinabove, the highest duty on either of the property exchanged shall be chargeable.";

(10) in Article 33, in clause (b), in sub-clause (ii), in column (2),--

(i) for the words "five hundred" the words "one thousand" shall be substituted;

(ii) for the words, "five lakh rupees" the words "ten lakhs rupees" shall be substituted;

(11) for the article 36, the following article shall be substituted, namely:--

"36. LEASE, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease.—

where such lease purports to be--

(i) for a period not exceeding five years

The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d), as the case may be, of article 25, on 10 per

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| | centum of the market value of the property. |
| (ii) for a period exceeding five years but not exceeding ten years, with a renewal clause contingent or otherwise, | The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d), as the case may be, of article 25, on 25 per centum of the market value of the property. |
| (iii) for a period exceeding ten years but not exceeding twenty-nine years, with a renewal clause contingent or otherwise. | The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d), as the case may be of article 25, on 50 per centum of the market value of the property. |
| (iv) for a period exceeding twenty-nine years or in perpetuity, or does not purports for any definite period, or for lease for period exceeding twenty-nine years, with a renewal clause contingent or otherwise. | The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d), as the case may be, or article 25, on 90 per centum of the market value of the property.”; |

Explanation I.--Any consideration in the form of premium or money advanced or to be advanced or security deposit by whatever name called shall, for the purpose of market value, be treated as consideration passed on.

Explanation II.--The renewal period, if specifically mentioned, shall be treated as part of the present lease.

(12) in article 36A,--

(A) in clause (a),--

(i) in column (1), for the words “thirty three months” the words “sixty months” shall be substituted;

(ii) in column (1) and (2), for the words “eleven months” wherever they occur, the words “twelve months” shall be substituted;

(iii) in sub-clause (i),--

(a) before entry (A), the following paragraph shall be inserted, namely:--

“(1) if relating to residential premises.--”;

(b) in entry (C), in column (1), after the words “five lakh” the words “but does not exceed rupees ten lakh” shall be inserted;

(c) after entry (C), the following entry shall be inserted;

“(D) Where the amount of average annual rent plus the amount of security deposit or money advanced or to be advanced exceeds rupees ten lakh for a single term of twelve months. Five thousand rupees for every term of twelve months or part thereof;”;

(d) after entry (D) so inserted, the following paragraph shall be inserted, namely:--

“(2) if relating to non-residential premises. Twice the amount of duty chargeable for residential premises under entry (A), (B), (C) or (D) above, as the case may be;”;

(iv) in sub-clause (ii),--

(a) before entry (A), the following paragraph shall be inserted, namely:--

“(i) if relating to residential premises,--”;

(b) after entry (C), the following paragraph shall be inserted, namely:--

“(2) If relating to non-residential premises. Twice the amount of duty chargeable for residential premises under entry (A), (B) or (C) above as the case may be;”

(v) in sub-clause (iii),--

(a) before entry (A), the following paragraph shall be inserted, namely:--

“(1) if relating to residential premises.--”:

(b) after entry (C), the following paragraph shall be inserted, namely :--

“(2) if relating to non-residential premises Twice the amount of duty chargeable for residential premises under entry (A), (B), or (C) above

as the case may be;”;

(B) for clause (b), the following clause shall be substituted namely:--

“(b) where such leave and license Same duty as is liable on lease under agreement purports to be for a clause (ii), (iii) or (iv) as the case may period exceeding sixty months be, of article 36;”;
with a without renewal clause.

(13) in Article 40, in clause (b), in column (2). --

(i) for the words “five hundred” the words “one hundred” shall be substituted;

(ii) for the words “five lakh rupees” the words “ten lakh rupees” shall be substituted;

(14) in Article 43,--

(A) in clause (A), in column (2), for the words, and figures “unit of transaction of 4,500 kilograms or part thereof.”, the following shall be substituted, namely:-

“Rupees 10,000 or part thereof, on the value of cotton.”;

(B) in clause (b), in column (2), for sub-clauses (a), (b) and (c), the following shall be substituted, namely:--

“One rupees for every rupees 10,000 or part thereof, on the value of silver or gold or sovereigns, as the case may be.”;

(C) in clause (c), in column (2), for the words figures and letters “10,000 kilogram of oil seeds.”, the following shall be substituted, namely:--

“rupees 10,000 or part thereof, on the value of oil seeds.”;

(D) in clause (d), in column (2), for the portion beginning with the words “yarn of any kind” and ending with the words “Official Gazette.”, the following shall be substituted, namely:--

“yarn of any kinds, non-mineral oils or (sic) of any kind, as the case may be.”;

(E) in clause (a), in column (2), for the words “part thereof.”: the following shall be substituted , namely:--

“part thereof on the value of goods.”;

(F) in clause (g), in column (2), for the portion beginning with the words “One rupee” and ending with the words “one thousand rupees.”, the following shall be substituted, namely:--

"Fifty paise for every rupees 1,00,000 or part thereof, on the value of security.";

(G) in column (1), the following Explanation shall be added at the end, namely:--

"Explanation. -- For the purposes of clauses (b), (c), (d), (e) and (g), if any duty is paid under Article 51A, then the same shall be reduced from the duty payable under this article.";

(15) after Article 51, the following article shall be inserted, namely:--

"51A. RECORD OF TRANSACTION (ELECTRONIC OR OTHERWISE) EFFECTED BY A TRADING MEMBER THROUGH A STOCK EXCHANGE OR THE ASSOCIATION REFERRED TO IN SECTION 10B--

(a) if relating to sale and purchase of Government securities. Fifty rupees for every rupees on crore or part thereof of the value of security

(b) if relating to purchase or sale of securities, other than those falling under item (a) above, --

(i) in case of delivery One rupees for every rupees 10,000 or part thereof.

(ii) incase of non-delivery. Twenty paise for every rupees 10,000 or part thereof.

(c) if relating to futures and options trading Twenty paise for every rupees 10,000 or part thereof.

(d) if relating to forward contracts of commodities traded through an association or otherwise. One rupees for every rupees 1,00,000 or part thereof".

Explanation I.- any duty paid under this article shall be adjusted towards the duty chargeable if any under Article 5, 19 or 43, as the case may be.

Explanation II.- For the purpose of clause (b), securities shall have the same meaning as defined by the Securities Contract (Regulation) Act, 1956

(16) for Article 52, the following article shall be substituted, namely:-

“52. RELEASE, that is to say, any instrument (not being instrument as is provided by Section 24) whereby a person renounces a claim upon other person or against any specified property. Five rupees for every five hundred or part thereof, or, the market value of subject matter of property.

Provided that, the provisions of Section 32A shall, mutatis mutandis, apply to such release or arrangement of like nature as they apply to an instrument under that section”.

(17) in Article 59, in Column (2), the words “subject to a maximum of ten thousand rupees” shall be deleted.

STATEMENT

With a view to give effect to the proposals in respect of the revision of rates of stamp duty levied under the Bombay Stamp Act, 1958, obtaining in the Budget Speech of the Hon’ble Finance Minister for the year 2005-2006, it is proposed to make certain amendments in the said Act. The important provisions proposed to be made in the said Act are broadly as follows:-

(a) to cope up with the new form of trading after inception of the Depositories Act, 1996 (Act No.22 of 1996) and the Information Technology Act, 2000 (Act No. 2) of 2000) and to facilitate stamp duty collection, a simplified categoriwise structure as delivery and non-delivery transactions is being introduced;

(b) to rationalise the structure of payment of stamp duty in respect of Investors Agreements and to bring voluntary compliance, a new system is being introduced.

(c) to provided for the levy of stamp duty on the leases on the basis of the market value of property;

(d) leave and licence agreements are being categorized on the basis of residential and non-residential premises with raising of the period of leave and licence agreements from thirty three months to sixty months.

(e) so as to bring new categories of instruments in the tax net, article 5 is being amended to include the instruments relating to advertisement on mass media, telecasting and broadcasting, etc. and new article 51A is being inserted to provide for levy of stamp duty on record of transaction effected by a trading member through a stock exchange or association.

2. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Bombay Stamp Act, 1958 (Bom IX of 1958), for the purposes aforesaid, this Ordinance is promulgated.

S.M. KRISHNA

Mumbai

Dated the 7th May, 2005.

Governor of Maharashtra

By order and in the name of the Governor of Maharashtra

K.S. VATSA,

Secretary to Government.