

## Legal Update: Maharashtra Stamp Duty- Ordinance No.1 of 2021 dated 9.2.2021

### Preliminary

- Maharashtra Government has issued the captioned ordinance to amend Maharashtra Stamp Act.
- It changes Section 5 of Maharashtra Stamp Act with retrospective effect from 11.8.2015.
- It changes Article 6 and Article 40 of Maharashtra Stamp Act effective 9.2.2021.
- This note is to analyse the changes to bring out the effect and suggest a way forward.

### Changes

Before the Ordinance	After the Ordinance	What has changed
<b>Section 5: Instruments relating to several distinct matters.</b>		
Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.	Any instrument comprising or relating to several distinct matters <b>or transactions</b> shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters <b>or transactions</b> , would be chargeable under this Act. (Effective: 11.8.2015)	The words in red reading " <b>or transactions</b> " are added to be effective retrospectively from 11.8.2015
<b>Article 6 (1) and Article 6 (2): AGREEMENT RELATING TO DEPOSIT OF THE TITLE DEEDS, PAWN, PLEDGE OR HYPOTHECATION.</b>		
(a) Up to Rs. 5 lacs- 0.1% Minimum Rs. 100	(a) Up to Rs. 5 lacs- 0.1% Minimum Rs. 100	No change
(b) In any other case- 0.2% Maximum Rs. 10 lacs	(b) In any other case- <b>0.3%</b> Maximum Rs. 10 lacs	Increased from 0.1% to 0.3%
<b>Article 6 (3): (New Sub Article) AGREEMENT RELATING TO DEPOSIT OF THE TITLE DEEDS, PAWN, PLEDGE OR HYPOTHECATION The instrument falling under this article when executed as a collateral or auxiliary or additional security and where the proper duty has been paid on the Principal or Primary security under this article.</b>		
No such provision	Rs. 500.-	This new sub article provides relief in case of multiple security similar to the relief under Article 40(c)
<b>Article 40 (b): Mortgage Deed, without giving possession</b>		
For any amount- 0.5%	(i) Up to Rs. 5 lacs- <b>0.1%</b> Minimum Rs. 100	Reduced from 0.5% to 0.1%
	(ii) In any other case- <b>0.3%</b> Maximum Rs. 10 lacs	Reduced from 0.5% to 0.3%

### Analysis

- Change to Section 5 appears to have been made to bring it in line with Section 5 of the Gujarat Stamp Act, 1958 and a Supreme Court decision<sup>1</sup>. It will allow charge of stamp duty on a document recording multiple matters or transactions to be equal to sum of stamp duties payable on all the matters or transactions if were recorded by separate documents.
- Change to Section 5 with retrospective effect could be onerous on the parties to documents covered under it.
- Changes to Articles 6 have increased the stamp duty for amounts of Rs. 5 lacs and above, making a document for Equitable Mortgage/ Pledge/ Hypothecation costlier. However, it has provided relief by introducing nominal stamp duty of Rs. 500.- when such document of Mortgage/ Pledge/ Hypothecation costlier is for additional security document.
- Changes to 40(b) have brought down stamp duty on Mortgage Deed, which is welcome.

### Way Forward

- To avail benefit of New Sub Article 6(3) where multiple security is held of which Equitable Mortgage/ Pledge/ Hypothecation is additional security, the Sanction Letter/ Facility Letter/ Omnibus Facility Agreement/ and related document for such Equitable Mortgage/ Pledge/ Hypothecation should clearly state it to be Additional Security.
- It is better to henceforth do a Registered Mortgage instead of Equitable Mortgage since-
  - it can be created also at a non- notified place which has sub- registry;
  - stamp duty on both being same, it would offer better security at the same cost; and
  - it would save the hassle of filing Notice of Intimation and the attendant issues.

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<sup>1</sup> Supreme Court judgment dated 11.8.2015 in CA 6054/ 2015- Chief Controlling Revenue Authority Vs Coastal Gujarat Power Ltd & Othrs