# Guarantee- New Issue- Stamp Duty

**By Rajeev Dewal***

1. Guarantee- Old Issue and New Issue

While the conundrum on Guarantee claim period[1] ("Old Issue") continues to remain unresolved and hangs like the Sword of Damocles for a black swan event to occur on another day, a New Issue since emerged is about the change to the scope and rates of Stamp Duty on Guarantee in the State of Maharashtra under the Maharashtra Stamp (Fourth Amendment) Act, 2026 ("the said Act") published in the Maharashtra Government's Official Gazette dated 22 July 2026.

2. On Stamp Duty, Generally

2.1 To provide some background on Stamp Duty: It is tax on document and not on transaction. Developed world has progressively restricted its scope to documents relating to property transfer such as sale or mortgage and generally exempted from it, all other documents such as agreement, guarantee etc.

2.2 Also, developed world generally has rates of Stamp Duty moderate and stable.

2.3 In contrast, Stamp Duty in India applies to large number of documents- property transfer related as also others- with long and complicated categorization of documents for the purpose of Stamp Duty rates (under various Articles in the Schedule to the applicable Stamp Act; Central and State[2].

2.4 Rates differ from State to State. Rates are changed not infrequently. Rates are generally high in business active states like Maharashtra, which also takes lead all the times in rising the rates and widening the scope and number of documents to attract stamp duty. It is observed that the business active states neighbouring Maharashtra (Gujarat, MP, Telangana, Karnataka) generally follow suit. This means a change to Stamp Act in Maharashtra leading to similar change in the several business active states thus resulting in implications across various states.

2.5 All the above creates complexity, uncertainty, adds to the transaction cost and comes in the way of Ease of Doing Business (EoDB). Though Stamp Duty is a significant contributor to the State revenue, there is a need to strike balance between earning direct revenue from Stamp Duty and the EoDB since non ease in any State may lead to businesses opting to shift out of that State or creating and keeping documents outside that State thereby such State not only loosing direct revenue but also a lot more indirectly.

3. On Drafting of laws and regulations, Generally

The drafting of laws and regulations in India often leaves much to the desired owing to want of conceptual clarity on law, insufficient domain knowledge, want of command over language etc resulting in laws and regulations to be verbose and vague creating ambiguity, confusion, room for dispute and also coming in the way of compliance.

The said Act is (also) an example of it as elaborated in the following paragraphs.

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[1] The issue is: Whether a guarantee should provide claim period minimum of 1 year to make it escape from being exposed to the longer statutory claim period (under the Limitation Act, 1963) which is of 3 years in case of a non- government entity being the guarantee beneficiary and 30 years in case of the government entity being the guarantee beneficiary. This issue got highlighted in re: Union of India Vs IndusInd Bank [CA Nos 9087- 9089 of 2016 arising out of SLP (Civil) Nos 16166-16168 of 2011]- judgment dated 15.9.2016.

[2] In keeping with Article 246 of the Constitution of India: "Subject-matter of laws made by Parliament and by the Legislatures of States"

List- I: Union List- Item 91

Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, and policies of insurance, transfer of shares, debentures, proxies and receipts.

List- II: State List- Item 63

Rates of stamp duty in respect of documents other than those specified in the provisions of List I (Union List) with regard to rates of stamp duty.

List- III: Concurrent List- Item 44

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

4. New Issue: Statement of Objects and Reasons as stated in the Bill introducing the said Act

*"The instruments of Bank Guarantees and Financial Guarantees are extensively used in commercial transactions, infrastructure projects, Government contracts, procurement processes and financial activities. At present such instruments of guarantees are not specified as a distinct category of instruments for levy of stamp duty. Such instruments are charged with stamp duty specified under Article 54 of the said Schedule I to the Maharashtra Stamp Act, 1958, which is relating to the Security Bond.*

*The same amount of stamp duty which is chargeable for the first instrument of guarantee, is charged also in cases of renewal or extension of such instruments. This results in charging of repetitive stamp duty in case of renewal or extension of instruments of Guarantee even if the amount of guarantee remains the same.*

*In view of the increasing usage and importance of instruments of financial and Bank Guarantee in commercial and financial activities, the Government considers it necessary to provide a separate Article for charging stamp duty in respect of Financial or Bank Guarantee and to provide different rates of stamp duty for different classes of such instruments. This would also increase the revenue of the Government. It is also proposed to provide for Charging of lesser amount of stamp duty in case of renewal or extension of such instruments if the amount guaranteed by it remains the same as mentioned in first instrument.*

*The Government, therefore, considers it expedient to amend the Schedule I to the Maharashtra Stamp Act, suitably"*

5. Summary of changes made by the said Act

5.1 Introduction of new category "Financial Guarantee or Bank Guarantee" by inserting new article 34: Guarantee.

5.2 Stamp Duty on "Financial Guarantee or Bank Guarantee" is proposed at the same rates as were hitherto applied to Stamp Duty on Security Bond or Mortgage Deed under Article 54.

5.3 Stamp Duty on "Financial Guarantee or Bank Guarantee" in favour of Government Corporation, Local Authority, or Statutory Body, in respect of public works or public procurement is limited to Rs 500.-

5.4 Stamp Duty on renewal or extension of Financial or Bank Guarantee without increase in the guaranteed amount is limited to 0.25 per cent. of the amount secured by such deed, subject to a maximum of Rs 25,000.-.

5.5 Introduction of new category: Letter of Guarantee with Stamp Duty only of Rs. 500.-

6. New Issue: Analysis and Interpretation

6.1 The expression "Financial Guarantee" is not defined under law but may be understood generally as a guarantee under which the Guarantor is required to pay money only.

6.2 If so, it would have been useful to have in the said Act, a definition of or explanation about Financial Guarantee reading on the lines below:

"Financial Guarantee means a guarantee under which the Surety (Guarantor) is obliged to pay money and money only in the amount of or up to the amount as stated therein, to the Creditor (Guarantee Beneficiary) on default of the Principal Debtor under the guarantee".

Going by the above, almost all guarantees will fall under the scope of Financial Guarantee. This is since a guarantee other than Financial Guarantee could only be a Guarantee where (A) the Guarantor is to deliver not money but the same performance as of the Principal Debtor on such Principal Debtor's default; or (B) A manufacturer's Warranty for replacement of goods on the goods being defective etc.

6.3 Again, the expression "Bank Guarantee" is not defined under law but may be understood generally as a guarantee issued by a bank (and financial institution since financial institutions also issue guarantees).

If so, it would have been useful to have in the said Act, a definition of or explanation about Bank Guarantee reading on the lines below:

"Bank Guarantee means a guarantee issued by a banking company (as defined under the Banking Regulation Act, 1949) and a financial institution (as defined under the Reserve Bank of India Act, 1934).

Incidentally, since a Bank Guarantee in terms above is only for money, all Bank Guarantees fall under the ambit of Financial Guarantee obviating separate mention of Bank Guarantee!!!

6.4 The premise under the Statement of Objects and Reasons of the said Act that "The "Bank Guarantees" and Financial Guarantees" are charged with stamp duty specified under Article 54 is not correct for all guarantees but appears correct only in respect of such guarantees which are being witnessed (and at times called Security Bond) and not otherwise. Such guarantees otherwise (i.e. not witnessed) are currently charged as agreement under Article 5 [Ideally under Article: 5(h)(A)(iv)- ad valorem and by some under Article: 5(h)(B)- Rs.500]. [Ideally under Article: 5(h)(A)(iv)- ad valorem and by some under Article: 5(h)(B)- Rs.500].

6.7 Stamp Duty proposed under the said Act on Financial Guarantees or Bank Guarantees is higher for such guarantees for amount over Rs. 5 lacs as can be seen below:

Current Stamp Duty under Article 5(h)(A)(iv)

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| (*a*) if the amount agreed does not exceed rupees ten lakhs; | 0.1 per cent of the amount agreed in the contract subject to minimum of Rs 100. |
| (b) in any other case. | 0.2 per cent of the amount agreed in the contract. |

Current Stamp Duty under Article: 5(h)(B)- Rs.500

Proposed Stamp Duty under Article 34A:

(a) On Financial or Bank Guarantee

(*i*) if the guarantee amount secured On by such deed does not exceed rupees five lakhs: 0.1 per cent. of the amount secured by such deed, subject to a minimum of five hundred rupees;

(*ii*) in any other case: 0.3 per cent. of the amount secured by such deed, subject to a maximum of twenty lakh rupees;

(*iii*) where the guarantee is issued in favour of the Government Corporation, Local Authority, or Statutory Body, in respect of public works or public procurement: Rs.500.-

(*iv*) renewal or extension of an existing financial or bank guarantee without increase in the guaranteed amount: 0.25 per cent. of the amount secured by such deed, subject to a maximum of Rs 25,000.-

(b) On Letter of Guarantee excluding instruments mentioned in clause (*a*): Rs 500.-

6.8 The purpose of introducing a sub category viz Letter of Guarantee is unclear as it is not found in the Statement of Objects and Reasons as stated in the Bill introducing the said Act and it would have been useful to have it therein to have better understanding of which guarantees fall under it.

**The issues pointed out under Para 6.2, 6.3 and 6.8 leave scope for interpretation and uncertainty resulting in legal risk. Hence, it would be advisable for the issuers and receivers of guarantees to decide a way forward in the matter carefully taking into account the nature and purpose of guarantees they deal with, their counterparties' risk profile and their own risk appetite; better in consultation with their Legal Counsels.**

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