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ELECTRONIC CONTRACTS – APPLICABILITY OF STAMP DUTY

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ELECTRONIC CONTRACTS – APPLICABILITY OF STAMP DUTY

1 **Applicability of Stamp Duty Laws.**

1.1 In India, stamp duty is payable in respect of specified instruments in accordance with applicable Central or State level stamp duty laws, on a fixed or on ad valorem basis.

1.2 Ordinarily, stamp duty is payable in respect of instruments that are physically printed and executed.

1.3 There is no specific provision in the Indian Stamp Act, 1899 (“**Stamp Act”**) that specifically deals with electronic records and/or the stamp duty payable on execution thereof. Instruments are defined under the Indian Stamp Act as “*includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record”.* While a majority of State specific stamp duty laws also do not specifically include electronic records within their ambit, some State stamp duty laws do refer to electronic records. For instance, the Maharashtra Stamp Act, 1958 ("**MSA**") specifically refers to electronic records in the definition of the term “*instrument*” as under:

> ““*instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but 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;*

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> *Explanation. – The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section2 of the Information Technology Act, 2000."*

Clause (t) of sub-section (1) of section 2 of the Information Technology Act 2000 defines an "*electronic record*" as under:

> *""electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;"*

The MSA also defines the term "*execution*" as under, which takes into account, attribution of electronic records as provided under Section 11 of the IT Act:

> *""executed" and "execution" used with reference to instruments, mean "signed" and "signature";*
>
> *Explanation.-The terms "signed" and "signature" also include attribution of electronic record as per section 11 of the Information Technology Act, 2000."*

1.4 From the foregoing, it thus appears that specified instruments, if covered under the MSA would attract payment of stamp duty upon their execution, even if the execution takes place electronically. Similarly, some other states like Delhi, Uttar Pradesh, Karnataka, Gujarat and Rajasthan also include electronic record within the definition of "instrument", thereby imposing stamp duty on such electronic records.

2 Consequences for Non-Payment of Stamp Duty.

2.1 As discussed above, it appears that any contract when executed electronically (and if chargeable to duty under the applicable stamp acts) may attract payment of stamp duty in accordance with the applicable laws. Non-payment of stamp duty in respect of such record/documents would attract consequences similar to those applicable to physical instruments, unless specific consequences have been prescribed for electronically executed instruments under the respective stamp duty laws. For instance, in terms of the Stamp Act and most State stamp duty laws, instruments which are chargeable with stamp duty are inadmissible as evidence in case appropriate stamp duty has not been paid.

2.2 However, under the Stamp Act and most State stamp duty laws, the inappropriately stamped instruments may be admissible in evidence upon payment of applicable duty at a later stage, along with penalty of upto 10 (ten) times the duty chargeable. Further, every person executing or signing otherwise than as a witness any such instruments chargeable with stamp duty, without the same being duly stamped, would be liable for monetary fines as well.

3 **Concluding Remarks.**

3.1 Electronic contracts may be stamped either by taking the print of the document on stamp paper or by getting the printed document franked or by procuring a stamp duty certificate by the process of e-stamping for the specific electronic contracts. However, stamping of electronic contracts, in such a conventional manner, like physical instruments, defeats the entire purpose of 'paperless' electronic contracts.

3.2 The stamp duty laws require suitable amendments to provide for an electronic stamping mechanism, thereby removing the requirement of physical/hard copies of contracts. For instance, stamp duty on documents like the memorandum/articles of association, can easily be paid electronically on the Ministry of Corporate Affairs portal, irrespective of the different stamp duty payable under the state laws. A similar formulation providing for online payment of stamp duty and corresponding references of issuances of receipts/challans in relation thereto, can also be introduced in the stamp duty laws. This formulation, would however not work in respect of documents which require compulsory registration under the Indian Registration Act, 1908, such as sale deed, lease deed, instruments of gifts of immovable property etc., wherein the registrar insists on physical copies of such documents with wet (physical) signature and adequate stamp duty.

3.3 It may also be worthwhile to consider exempting general agreements/documents (subject to nominal stamp duty rates) from payment of stamp duty, if they are executed electronically. Guidance can be taken from the stamp duty exemption available to (electronic) transfer of dematerialized shares, which stamp duty is otherwise applicable to transfer of physical shares. This move will also be in line with the 'Digital India' movement gaining momentum in the country.

Feedback