CHANGES TO THE APPLICABLE STAMP DUTY BASIS THE KARNATAKA STAMP (AMENDMENT) ACT, 2023

1. INTRODUCTION

In response to longstanding stagnation, on February 03, 2024, the Karnataka state government notified the Karnataka Stamp (Amendment) Act 2023 ("**Amendment Act**")[1] and brought the provisions of the Amendment Act into force. The Amendment Act modernized stamp duty rates for over 50 (fifty) legal instruments, including without limitation, power of attorney, deeds, memorandums, title agreements, conveyance, counterparts, and affidavits. Additionally, a new article has been added with respect to bank guarantees. This overdue update acknowledges the inflationary realities of our time, ensuring fairer revenue collection for the state. Below, we offer a quick summary of these refreshed rates, marking a positive step forward.

2. REVISED STAMP DUTY IN CERTAIN SECTORS

2.1 Corporate and Commercial

While analyzing revised rates on commercial agreements, we observed significant changes in the stamp duty rates. For instance, in agreements like share subscription agreement and shareholders' agreement (not explicitly covered under other Articles under the schedule i.e. covered under Article 5(j)), the stamp duty has surged by 2.5 times, from INR 200 to INR 500. Moreover, indemnity provisions (Article 29 read with Article 47(b)) now incur higher stamp duty of INR 500, notably increasing overall costs for agreements with indemnity clauses.

Further, the stamp duty on the agreement or memorandum of an agreement relating to building works or labour or services (*works contracts*), has also increased (Article 5(i-d)). For such agreements, where the amount or consideration does not exceed INR 10,00,000, the stamp duty is now INR 500, and where amounts exceed INR 10,00,000, it is INR 500 plus an additional INR 500 for every INR 10,00,000 or part thereof, capped at INR 10,00,000.

The stamp duty applicable on the articles of association of a company where the company has no share capital or nominal share capital, or increased share capital (Article 10) has risen to INR 5,000 for every INR 10,00,000 or part thereof, subject to a maximum of INR 1,00,00,000. Also, the stamp duty on a letter of allotment of shares or in respect of any loan to be raised by any company (Article 31) has increased from INR 1 to INR 10.

2.2 Mergers or Re-constitution

The stamp duty applicable to the merger, re-construction or de-merger of a company, pursuant to an order made by the High Court or National Company Law Tribunal has notably risen. It is now determined as the

[1]https://erajyapatra.karnataka.gov.in/(S(ag0jpajup0pec3lvtatcaese))/WriteReadData/2024/6828.pdf.

higher of, either (i) 5% of the market value of the property of the transferor company located in Karnataka, or (ii) 5% of the aggregate value of shares allotted (Article 20(4)). This increase may lead to forum shopping, with parties potentially relocating registered offices outside Karnataka, even if the cap remains unchanged at INR 25,00,00,000.

Furthermore, upon the reconstitution of a partnership, (a) if the partners had contributed immovable property as their share, and such property remains with the firm when the partner exits, the stamp duty payable has risen to 5% on the market value of the immovable property retained with the firm, up from the previous 3%, and (b) in any other case, from INR 1,000 to INR 2,000 (Article 40(B)).

2.3 Banking and Financial Institutions and their forever collaterals

A new entry i.e., Article 56, has been added by the Amendment Act which provides for the stamp duty payable on bank guarantees. Now, when it comes to agreements, whether paper or e-bank guarantees, stamp duty has clear rates: INR 300 for paper bank guarantees and INR 200 for e-bank guarantees.

What may need all of us to brace for impact though is the revised stamp duty rates on collaterals. Stamp duty for agreements relating to depositing title deeds, pawn or pledge as security for loans sees a significant bump from 0.1% to 0.5%, capped at INR 500 for loans under INR 10,00,000 (Article 6(2)(i)). And for loans exceeding INR 10,00,000, the erstwhile cap of INR 10,00,000 is gone and now stands replaced with a flat 0.5% rate. This change promises to reshape debt transactions, boosting state revenue by a large margin.

Moreover, security bond or mortgage-deed, now have revised stamp duty rates. For amounts under INR 1,000, it's INR 2 for every INR 100 or part thereof; for larger sums, a fixed rate of INR 500 applies (Article 47). These adjustments signal a dynamic shift in stamp duty regulations, with far-reaching implications for financial and property transactions alike.

Even stamp duty on conveyance, if relating to assignment of receivables by the originator to the special purpose vehicle, in the process of securitization under securitisation and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has been revised to INR 2 for every INR 1,000 or part thereof, subject to maximum INR 5,00,000 (Article 20(6)).

2.3 Miscellaneous Legal Instruments

The Stamp duty on affidavits has seen a 5x increase from INR 20 to INR 100 (Article 4), whereas on counterparts the same has been increased from INR 500 to INR 1,000 (Article 22(b)). Additionally, the stamp duty on the power of attorneys have mostly moved from INR 100 to INR 500 (*except where the power of attorney holders are more than 5, the same has been increased from INR 200 to INR 1,000*) (Article 41). While the agreements pertaining to purchase or sale of a government security continues to be stamped at a rate of 0.01%, the erstwhile cap of INR 1,000 on such agreements has been done away with (Article 5(b)).

Another crucial stamp duty change is in Article 5(e)(ii), for agreements pertaining to sale of immovable property without delivery of possession, wherein the erstwhile cap of INR 20,000 has been removed.

The stamp duty payable on an arbitration award in relation to movable property has also been increased to 1% of the amount or market value of the movable property (Article 11(b)). This is significantly higher as compared to the stamp duty of INR 500 payable on arbitration awards in Maharashtra, and as a result, this change may disincentivize parties to conduct arbitration in Karnataka.

Further, conveyance relating to transferable development rights is proposed to be stamped at 5% on the market value of transferable development rights or consideration, whichever is higher (Article 20(7)).

3. QUICK VIEW

These stamp duty hikes will have ripple effect on various transactions involving the subject matter of the instruments. Given that, many other states are yet to revise their stamp duty rates from the stagnated ones that have been applicable for years, these increased rates may make stamping agreements in Karnataka comparably more expensive, and as a result may contribute to higher operational costs for businesses located here. Higher stamp duty rates may influence economic activities leading to businesses and individuals alike assessing the financial implications of various transactions, and investment decisions. As mentioned above, the increased stamp duty rates may potentially result in businesses choosing place of arbitration and housing registered offices, outside the state of Karnataka, owing to the increased merger or arbitrations costs, respectively.

It's crucial to recognize that consequences of these revised rates (including potential decisions for stamping instrument in Karnataka versus in other states) will vary depending on transaction nuances. Parties involved should be mindful of revised stamp duty rates to avoid legal complications, as insufficiently stamped documents risk inadmissibility in court, necessitating payment of dues and penalties upon impounding.

Despite the business impact, one cannot ignore the silver lining in all this which is the revenue boost for the government. The increased stamp duty will help the Karnataka government leverage the same for enhanced revenue streams, funneling funds into public services and state initiatives. This serves as a ray of hope, illuminating avenues for improved community welfare and infrastructure development, as a result of the revisions in the rates, which were long overdue.

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Date: February 19, 2024

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