

1.1

Basic Concepts of Assets and Investments

The real estate sector has to be at the forefront of India's development agenda on account of its obvious potential to propel economic growth. The importance of this sector is that, it is the second largest employer next only to agriculture and supports nearly 250 ancillary industries such as cement, steel, brick, which are some of the supporting services. Real estate development market in India is around $12 billion, growing annually at 30 per cent.

The sector has of late witnessed a spurt in the demand of not just residential property but also commercial property. Indian cities have found a place for themselves on the world map as attractive investment destinations for international real estate players. Growth in retail, entertainment and information technology (IT) enabled the growth in service sectors which have increased the demand for shopping malls, multiplexes, food outlets, office spaces, convention and business centers and this demand has been met to a large extent by increased private sector participation in this sector.

India is poised for rapid urbanization, which will lead to major developments in the real estate sector. Development of new towns

and cities requires huge amount of investments for which not just private domestic investment but also foreign investments are required. We see the role of the government primarily as a facilitator with the private sector participation bringing in capital, technical and managerial expertise in formulating and delivering good quality mass housing and commercial projects.

Globally, the public/private partnership model is being driven by demand for better quality services. Public/private partnerships can increase not only the number of affordable homes, but the quality of housing through fiscal, regulatory and other incentives. The Indian government has allowed 100% FDI for development of townships that includes housing and associated urban infra-structure. However, not many investment proposals have come. The Government must allow 100% FDI in all sectors of real estate development without restriction as this sector generate intensive employments for locals.

Before delving further into the nuances of real estate sector, let us first understand what an asset is, what is an investment, how investment in property is treated in the accounting world, etc.

What is an asset?

Asset can be anything of material value or utility, the entire property of a person, association, corporation, or estate applicable or subject to the payment of debts. We can also say that asset is anything which the business owns or has title to, in short, have ownership of.

The future economic benefit embodied in an asset is the potential to contribute, directly or indirectly, to the flow of cash and cash equivalents to the enterprise. The potential may be a productive one that is part of the operating activities of the enterprise. It may also take the form of convertibility into cash or cash equivalents or a capability to reduce cash outflows, such as when an alternative manufacturing process lowers the costs of production.

An enterprise usually employs its assets to produce goods or services capable of satisfying the wants or needs of customers; because these goods or services can satisfy these wants or needs, customers are prepared to pay for them and hence contribute to the cash flow of the enterprise. Cash itself renders a service to the enterprise because of its command over other resources.

The future economic benefits embodied in an asset may flow to the enterprise in a number of ways. For example, an asset may be

- ✦ Used singly or in combination with other assets in the production of goods or services by the enterprise;
- ✦ Exchanged for other assets;
- ✦ Used to settle a liability; or
- ✦ Distributed to the owners of the enterprise.

Many assets, for example, Property, Plant and Machinery, etc have a physical form. However, physical form is not essential to the existence of an asset. Patents and Copyrights, for example, are assets if future economic benefits are expected to flow from them to the enterprise and if they are controlled by the enterprise.

Many assets, for example, receivables and property, are associated with legal rights, including the right of ownership. In determining the existence of an asset, the right of ownership is not essential. For example, property held on a lease is an asset if the enterprise controls the benefits which are expected to flow from the property. Although the capacity of an enterprise to control benefits is usually the result of legal rights, an item may nonetheless satisfy the definition of an asset even when there is no legal control. For example, know-how obtained from a development activity may meet the definition of an asset when, by keeping that know-how a secret, an enterprise controls the benefits that are expected to flow from it.

The assets of an enterprise result from past transactions or other past events. Enterprises normally obtain assets by purchasing or producing them, but other transactions or events

may generate assets. Some examples include property received by an enterprise from government as part of a program to encourage economic growth in an area and the discovery of mineral deposits. Transactions or events expected to occur in the future do not in themselves give rise to assets. An intention to purchase inventory does not, by itself, meet the definition of an asset.

There is a close association between incurring expenditure and generating assets but the two do not necessarily coincide. Hence, when an enterprise incurs expenditure, this may provide evidence that future economic benefits were sought but is not conclusive proof that an item satisfying the definition of an asset has been obtained. Similarly the absence of a related expenditure does not preclude an item from satisfying the definition of an asset and thus becoming a candidate for recognition in the balance sheet. For example, items that have been donated to the enterprise may satisfy the definition of an asset.

Assets are divided into two categories.

1. Current Assets

A balance sheet account that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business can be termed as a current asset. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted into cash.

In personal finance, current assets are all assets that a person can readily convert to cash to pay outstanding debts and cover liabilities without having to sell fixed assets.

Current assets are important to business because they are the assets that are used to fund day-to-day operations and pay ongoing expenses. Depending on the nature of the business, current assets can range from barrels of crude oil, to baked goods, to foreign currency. Current assets include cash in hand and in the bank, and marketable securities that are not tied up in long-

term investments. In other words, current assets are anything of value that is highly liquid. Current assets are therefore assets that can be quickly realized and change frequently. The main current assets are stock, debtors and cash.

2. Fixed Assets

A long-term tangible piece of property that a firm owns and uses in the production of its income and is not expected to be consumed or converted into cash any sooner than at least one year's time.

Buildings, real estate, equipment and furniture are good examples of fixed assets. Generally intangible long-term assets, such as trademarks and patents, are not categorized as fixed assets but more specifically referred to as 'fixed intangible assets'.

Fixed assets are items that are for long-term use, generally five years or more. They are not bought and sold in the normal course of business operation. Fixed assets include vehicles, land, buildings, leasehold improvements, machinery and equipment.

In an accrual system of accounting, fixed assets are not recorded when they are purchased, but rather they are expensed over a period of time that coincides with the useful life (the amount of time the asset is expected to last) of the item. This process is known as depreciation. So we can say that, fixed assets are the non-liquid assets that are required for the company's day-to-day operations. They include facilities, equipment, and real property. Any business may have fixed assets which are long-term assets—plant, machinery and equipment, but they will also have assets which can be realized (cashed-in) in the short-term. This is generally taken in accounting terms to be less than a year.

Fixed assets as investments

Money invested in fixed assets or as per the Income Tax Act, "Capital assets" attract the provisions of the Income Tax Act, 1961, in various ways, such as, Capital Gains, Income from House Property, Income from Business and profession, etc.

As per Section 2(14) of the Income Tax Act 1961 "Capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession; personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him, and agricultural land in India.

i. Long term investments

As per Section 2(29A) of the Income Tax Act 1961, long-term Capital Asset means a Capital Asset which is not a short-term Capital Asset As per Section 2(29B) of the Income Tax Act 1961 long-term Capital gain mean Capital gains arising from the transfer of a long-term capital asset. Hence we can say that the long term investments which are not in the nature of stock in trade or personal effects attract the provisions of Capital Gains.

ii. Short term investments

As per Section 2(42A) of the Income Tax act 1961, short-term Capital asset means a Capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Section 2 (42B) of The Income Tax act 1961 defines short-term capital gains as the Capital gains arising from the transfer of a short term capital asset. Hence we can say that the short term investments which are not in the nature of stock in trade or personal effects attract the provisions of Capital Gains.

Fixed assets as Stock-in-trade

As defined in Section 2 (14) of the Income Tax Act 1961, an asset held as stock in trade does not get covered in the definition of a Capital Asset hence the capital gains provision does not apply to them. Any transfer of Stock-in-trade is covered under the profits and gains of from Business or Profession.

Fixed assets held as immovable property

Rent from any buildings and lands appurtenant thereto is chargeable to income tax under the head "Income from house property". As per Section 22 of the Income Tax Act 1961, "The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him, the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head Income from house property.

Rent from any land is chargeable under the head "Income from other sources".

There are certain formalities, which are to be complied with for purchase of immovable property. A few of these formalities with regard to property are as follows:

i) The buyer and the seller need to arrive at a bargain price by mutual discussion.

ii) The price should be based on the market assessment of the property value. Assistance can be taken from a professional value especially with regard to ready-to-move-in and old constructions.

iii) Then the title with regard to the property has to be verified which is the most important aspect in the process of acquisition of property. The purchaser should verify the title of the seller to see whether the vendor is the original owner of the property. Any defect in the title of the seller can make the entire transaction of sale or purchase void. The purchaser should look at the original documents of title to the property i.e., the sale deeds, the conveyance deeds, allotment letters etc.

iv) The chain of past ownership of the property should also be looked into and a close scrutiny of documents of title produced by the seller is essential. It is pertinent that one takes help from a legal expert who is well versed

with the legal requirements and the local laws. It is important to verify the validity of title. The seller must have a clear, valid and marketable title over the immovable property, which is the subject matter of the transaction.

v) Further, it is also required to check the encumbrance status of the property, i.e. whether the property is encumbered or not. The purchaser should seek a no-encumbrance certificate. The encumbrance certificate can be taken from the municipality within which the property falls. This would ensure that there is no outstanding mortgage against the property. The certificate elaborates the history of the property. It further helps to ensure that the title of property belongs to the rightful owner.

vi) Execution of agreement to sell: The buyer and the seller may execute an agreement to sell once the contract for purchase of immovable property has been finalized.

A simple way for sellers to sell their property is to advertise their real estate and meet potential buyers. The purchase and sale of real estate is a complicated matter that is often governed by local laws and laws in the country where the property is located. Hence, it is always better to seek the help of a licensed real estate agent and/or a solicitor to help a person for the negotiation and sale of any real estate.

At the close of the auction, the seller has to contact the highest bidder to discuss entering into a contract for the real property. However, neither party is obliged to complete the real estate transaction.



1.2

What is the Meaning of the Term Real Estate?

The term 'real estate' refers to land as well as building. The word 'land' includes the air above and the ground below and any buildings or structures on it. It covers residential houses, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings, factories and also government buildings.

The transaction includes:

1. Purchase,
2. Sale, and
3. Development of land (both residential and non-residential buildings).

The main players in the real estate market include the following:

1. The landlords.
2. The builders.
3. The developers.
4. Real estate agents.
5. Tenants.
6. Buyers.

Real estate is artificially delineated space referenced to a fixed point on the surface of the earth with a fourth dimension of time. It is built to house an economic activity that is subject to cultural preferences and restricted by the public infrastructure. Real estate is a space-time product, that is, it generates income over time in exchange for the use of space. Examples: apartments, stadiums, party halls, residential units, commercial complex, etc. Thus the term real estate connotes immovable property which can be either land or building or both.

Now let us see the definition of the term 'immovable property' under various Acts.

Transfer of Property Act, 1882

According to (Sec 3), '*Immovable Property*' does not include standing timber, growing crops or grass. Thus, immovable property constitute of 'Building' and 'Machinery' if embedded in the building for the beneficial use thereof. Then it must be deemed to be a part of the building and the land on which the building is situated.

General Clauses Act, 1897

As per Section 3(26), '*immovable property*' shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to any thing attached to the earth. This definition of immovable property is also not exhaustive.

The Registration Act 1908

The definition of the term '*Immovable Property*' under the Registration Act 1908, which extends to the whole of India, except the State of Jammu and Kashmir, is comprehensive.

Section 2(6) defines 'Immovable Property' as under:

"Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to any thing which is attached to the earth but not standing timber, growing crops nor grass".



1.3

Why Real Estate has Become Buzzword?

- The US$ 50b Indian real estate market is booming and expected to grow at 25 per cent annually.
- The boom owing to the consumption powered growth of the country's economy has seen investors planning nearly 250 new shopping malls by 2008, as against just three that existed till 2002.
- The central government adopted a regulation in 2005 allowing foreigners to bid for Indian construction projects with local partners and also reducing their minimum land holding limit from 100 acres to 25 acres.
- Enthused by the liberalized investment guidelines, a slew of foreign builders are rushing to launch projects in Asia's third largest economy.
- Expected annual shortfall of 20 m housing units by 2011. Mumbai alone would need more than 180,000 housing units.
- An opportunity for developing large-scale commercial and residential townships in six cities—Kolkata, Bangalore, Mumbai, Chennai, Hyderabad and New Delhi.

These are just a few of those statements that you might have read in your local newspaper. India is witnessing a remarkable boom in the real estate sector. There are varied reasons for this maddening rush to invest in real estate. The year 2006 started on a promising note when the Government of India opened the construction and development sector in February 2006, and allowed 100 per cent foreign direct investment (FDI) under the 'automatic route' in order to spur investment in the vital infrastructure sector.

The reasons for this boom could be the decline in bank interest rates, fixed deposit rotations in stock markets and receding returns on debt mutual funds, real estate investment is in the headlines again. Investors who deserted the property market option in the late 1990s are back, with a resounding leasing market for grade A commercial property in metros providing a rental yield of 11–12 per cent per annum.



1.4

Contribution of Real Estate Activity to India's GDP

Real Estate Sector in India is the second largest employment generator next only to agriculture. About 250 ancillary industries directly or indirectly depend on real estate activity. It is difficult to estimate the exact contribution of the real estate sector to gross domestic product (GDP) as it appears in a disaggregated and dispersed form in the National Accounts Statistics.

Residential housing and real estate services (activities of all types of dealers such as operators, developers and agents connected with real estate) is covered under the category 'real estate, ownership of dwellings, business and legal services'. The gross value added in the ownership of dwellings is equivalent to gross rental of the residential dwellings less cost of repairs and maintenance. Gross rental is estimated as a product of average gross rental per dwelling and the number of census dwellings and includes imputed rent of owner-occupied houses. The rentals of the industrial/trading establishments are deductible expenses from the profits of these establishments but appear as profits of the business or company renting out the premises.

Similarly, implicit rents on self-owned real estate is accrued as profits from business and is difficult to separate from non-real

estate profits. The addition to the stock of real assets with these businesses appears in the business accounts as capital addition. In the national accounts it would appear under the head 'gross fixed capital formation—construction'. Value of construction output is the additions made to the stock of real estate assets in the public, private and household sectors. The contribution of 'construction' to GDP is the estimate of value added derived from the corresponding estimates of this value of construction output.

Further, current data on the sectors such as ownership of dwellings, real estate services, construction are mostly not available and estimates for the benchmark year is prepared on the basis of base year data and projected for other years with the help of relevant indicators. The contribution to GDP by this sector at current prices is estimated to be about 6.5%, which in value terms is around Rs 1,37,000 crore or 30 billion US Dollars.

However, we do have a proper estimate of contribution of construction industry to our country's GDP. The following table illustrates the contribution of construction activity to India's GDP.

Estimates of GDP at Factor Cost by Economic Activity (At current prices)
(Source: Press Note of GOI on 31st May 2006)

Rs. Crore

Industry	2003–04	2004–05 (Quick Estimate)	2005–06 (Revised Estimate)	Percentage change over previous year 2004–05	Percentage change over previous year 2005–06
Agriculture, forestry & fishing	5,34,689	5,56,146	6,08,681	4.0	9.4
Mining & quarrying	66,101	75,179	84,713	13.7	12.7
Manufacturing	3,90,470	4,53,666	5,09,845	16.2	12.4
Electricity, gas & water supply	56,365	60,719	66,508	7.7	9.5
Construction	**1,59,415**	**1,86,392**	**2,18,131**	**16.9**	**17.0**
Trade, hotels, transport and communication	6,08,330	6,99,762	7,99,842	15.0	14.3
Financing, insurance, real estate & business services	3,69,456	4,05,801	4,64,453	9.8	14.5
Community, social & personal services	3,58,570	4,06,232	4,57,223	13.3	12.6
GDP at factor cost	25,43,396	28,43,897	32,09,397	11.8	12.9



1.5

Future of Real Estate Sector in India

The future of the real estate sector in India is going to be guided by some important factors viz., suitable amendments to the Foreign Direct Investment guidelines in the townships, housing built-up infrastructure and the construction development projects as well as the abolition of service tax on the construction industry especially the housing sector. Conversely, if the abolition per-se is not possible then drastic changes/ modifications in the service tax norms are the need of the hour. This sector is already over-burdened with taxes; any further imposition of taxes in any form would adversely affect the growth of this sector and also the whole economy as such.

Real estate sector is the second largest employer in India after Agriculture According to a recent study by PHDCCI (PHD Chamber of Commerce Industry) study; the Indian construction industry is all set to become $180 billion sector by 2020 from its present size of 50 billion dollars.

6.5% of country's GDP contributed by this sector. It has Linkages with several other sectors and industry and over 250 associated industries like steel cement etc. An investment of Re 1 in this sector adds about 75–80 paisa to the GDP.

Investment has a multiplier effect. The Finance Minister in his budget speech indicated commitment to take India along a 10%

growth path. If the economy grows at the rate of 10%, the housing sector has the potential to grow at 14% and generate 3.2 million new jobs over a decade.

The Tenth Five-Year Plan had estimated a shortage of 22.4 million dwelling units. Thus, over the next 10 to 15 years, 80 to 90 million housing dwelling units will have to be constructed with a majority of them catering to middle and lower income groups. The investment required for constructing the houses and related infrastructure in this period would, thus, be to the order of US$ 666 billion at roughly US$ 33 billion to US$ 44 billion per year. A study by PHDCCI also pointed out that India needed an investment of 35 billion dollars for road development in the next eight years, which had already received a boost due to job-generating Golden Quadrilateral projects, 55 billion dollars to install new telecom networks in the next 12 years and eight billion dollars to modernize ports. At the same time, new opportunities were arising for the construction industry in the aviation sector as air passenger traffic was expected to double by 2006 and an investment of three billion would be needed in the next decade.

In early 2005, the government had opened up the construction sector and allowed 100 per cent FDI in it. This has given a tremendous boost to the construction sector. With the foreign players coming in, the interests of the property buyers would also be well met. Passing of the SEZ Act in February 2006 has also attracted more FDIs in the sector.

Construction of residential complexes having more than 12 houses was brought under the Service Tax net. Construction of commercial property is already taxable since 2004. Budget 2006–07 has increased service tax to 12% from 10%. Last year's budget had allocated Rs 5,500 crore towards an urban renewal package for seven mega cities with a population over one million.

The major growth in real estate has been observed in the retail sector. The global real-estate consulting group Knight Frank has ranked India 5th in the list of 30 emerging retail markets and

predicted an impressive 20 per cent growth rate for the organized retail segment by 2010. The organized segment is expected to grow from a mere 2 per cent to 20 per cent by the end of the decade, it said.

Investment in the retail real estate segment yields 13–16 per cent return which is quite high when compared to the returns from the residential and office segments. According to a survey by real estate consulting firm CB Richard Ellis (CBRE), office space in Mumbai is more expensive than Manhattan. The CBRE survey, called Global Market Rents, has ranked Mumbai as the world's 15th most expensive place, Manhattan, the 20th, while Delhi stands at the 32nd position.

The boom is also attracting interest from foreign players. Vancouver-based Royal Indian Raj International Corporation (RIRIC) will invest a staggering $2.9 billion in a single real-estate project named Royal Garden City in Bangalore over a period of 10 years. The retail value of the project is estimated at $8.9 billion (Rs 41,000 crore).

Over 200 malls with a combined retail space of 2.5 crore square feet are sprouting across the country at an investment of Rs 12,500 crore across 25 cities in India. According to an ICICI study, malls are estimated to become a Rs 38,447-crore ($8.3 billion) sector by 2010.

Extracts from the Economic Survey 2005–06 concerning real estate

"Construction growth has been in double digits in each of the last three years."

"Substantive commercial bank credit flows to the housing and real estate and retail sectors continue to provide support to the boom in construction and consumer durables."

"Bank credit disbursal during 2004–05 was well diversified across different sectors of the economy, with flows to housing and retail sector particularly strong."

"Cement, buoyed by the resurgence in construction activity in the economy, grew by 10.9 per cent in April–December 2005, up from 6.9 per cent in the corresponding previous period."

"FDI up to 100 per cent under the automatic route is now permitted for development of township, housing, built-up infrastructure and construction development projects. The minimum area requirement has been reduced to 10 hectares for serviced housing plots and 50,000 square meters built up area for construction-development projects."

"Cement prices rose by 12.7 per cent with higher demand from construction boom in the country."

"Housing and real estate sector constitutes not only a major proportion of national wealth but also an important fast expanding service sector in the economy. Because both lenders and borrowers may have large real estate/housing exposures (direct as well indirect), financial balance sheets may be affected by any large volatility of prices in this sector. Thus, it is desirable to monitor housing and real estate prices—an important segment of asset prices—for formulation of appropriate monetary and fiscal measures."

The National Housing Bank (NHB) has set up a Technical Advisory Group (TAG) to explore the possibility of constructing a real estate price index.

Housing price indices: international best practices and an operational housing price index for India

There are various concepts of housing price indices, and many sources and ways for compiling price data, both private and public. The methodology for construction of indices differs from country to country depending on the use and purpose of such indices and the availability of data. With an Adviser, Ministry of Finance as the Chairman, the TAG comprises technical experts and members from NHB, CSO, RBI, Labour Bureau, HDFC, HUDCO, LIC Housing Finance Ltd., Dewan Housing Finance Corporation Ltd., and the Society for Development Studies.

After reviewing international best practices and the methodology, sampling techniques, collection of price data for construction of real estate price indices in USA (index developed by the Office of Federal Housing Enterprise Oversight), Canada (New Housing Price Index) and UK (Halifax index), the TAG has suggested a methodology for India. The TAG decided to conduct a pilot study for Delhi and to use both the (a) hedonic regression model and (b) the basic Laspeyre's weighted index for constructing an HPI for Delhi. The residential colonies in Delhi have been categorized as one of the 8 tax zones (A to H) as decided by the Municipal Corporation of Delhi (MCD) under the Unit Area Method for property tax assessment. The classification of the colonies is largely based on the level of services and the capital value of housing units. 30 colonies in different tax zones have been selected on the basis of transactions for the collection of basic data. These colonies are spread over all parts of Delhi. The TAG has decided to take 2001 as the base year for the construction of HPI on a half yearly basis. The choice of base year for HPI is consistent with the base period of other indices, that is, 2001 for the revised CPI-IW series, 2000–01 for the revised WPI and 1999–2000 for the revised GDP series. For HPI, basic data are being collected for each year since 2001. For each selected colony and for each year, information is being collected for at least 20 transactions, which actually took place during the year. At the First Phase of the pilot study, only residential houses (both independent houses and flats, and both old and new for sale) in urban areas with basic amenities are being considered. At the second stage, commercial housing units will be considered and finally land may be included in order to make it a comprehensive real estate price index. It is well known that the registered prices of houses are grossly under-estimated due to very high registration fees and stamp duty. Due to same reasons and subsequent obligations for the payment of property tax, individual purchasers (except corporate bodies) do not reveal the exact purchase price of a house. Therefore, in addition to information from registration offices, basic data on value, plinth

area, location, age and basic characteristics of houses are being collected from property dealers, Residential Welfare Associations (RWAs), Delhi Development Authority and the private builders."

I. Foreign Direct Investment

Till recently, FDI in real estate was restricted to development of industrial parks, hotels, integrated townships and SEZs. On March 3, 2005, Government of India replaced the integrated township policy to permit FDI up to 100% in townships, housing, built-up infrastructure and construction development projects, under automatic route (Press Note 2 (2005 series)).

As per a recent notification by India's Ministry of Commerce, Foreign Direct Investment in the Indian_real_estate sector is now permitted through the "automatic route", i.e., without requiring the additional approval of the Foreign Investment Promotion Board. This implies that the foreign investor may now by-pass some of the previously required approvals, making the investment process less cumbersome.

Within the real estate sector, foreign investment in India is now permitted in construction and project development related to both residential and commercial development in (i) housing townships; (ii) commercial office space; (iii) hotels and resorts; (iv) hospitals; (v) educational institutions; (vi) recreational facilities; and (vii) city and state level infrastructure.

FDI is now permitted in

- ✦ townships
- ✦ housing
- ✦ commercial premises
- ✦ hotels
- ✦ resorts
- ✦ hospitals
- ✦ industrial parks
- ✦ resorts

- hospitals
- educational institutions
- recreational facilities
- SEZ's, etc.

Certain guidelines exist within the reform measures.

Project conditions

- In residential development, the minimum land area must be 10 hectares (approximately 25 acres).
- In commercial development, the minimum land area must be 50,000 square meters (approximately 540,000 square feet).
- If the project combines residential and commercial development, either one of the above conditions may be satisfied.
- At least 50% of the project must be completed within five years from the date of obtaining all statutory clearances.
- The project must comply with all local land use guidelines.
- The sale of undeveloped land is not permitted, i.e. the developer may purchase undeveloped land but must develop the land before selling it further.

In addition to the above project conditions, the following financial conditions must be satisfied:

Financial conditions

- Minimum capitalization requirement of US$ 10 million for wholly-owned subsidiaries of foreign companies and US$ 5 million for joint ventures with an Indian partner.
- Capital must be brought into India within six months of incorporation of the subsidiary or joint venture.
- Holding period of three years on repatriation of any of the initial investment unless with the prior approval of the Foreign Investment Promotion Board.

II. Public Private Partnership

Real estate development in India is estimated to be in the region of USD 12 billion, growing at a pace of 30 per cent each year. Almost 80 per cent of real estate developed is residential space and the rest comprise office, shopping malls, hotels and hospitals. This double-digit growth is mainly attributed to the off-shoring business, including high-end technology consulting, call centres and programming houses which in 2003 is estimated to have accounted for 10 million square feet of real estate development.

The sustained demand from the Information Technology sector certainly changed the urban landscape in India. It has been estimated that in India, there is a demand for 66 million square feet of IT space over the next five years. Take for instance the city in South India, Bangalore which since 1998 has been on a new trajectory. The more realistic land prices in Bangalore were some of the reasons why the larger metropolitan cities such as Mumbai or Delhi got bypassed. Bangalore soon gave up its title of the Garden City, formerly known for its greenery to become India's own home grown Silicon Valley. Bangalore has positioned itself as the IT capital of India. Several multinational companies continue to move their operations to India to take advantage of lower costs. With human resources being the key element in this industry, the hiring and housing of people, both at their work place and home assume great importance and therefore the need to create space for people to work and live, which in turn triggers the development of other related infrastructure. The predominant trend has been to set up world-class business centres, often campus-style establishments, bearing a distinctive corporate stamp. So distinct are some of these locations that they are being termed as the "temples of modern India"—just an indication of the extent of real estate development taking place.

However, the drawback was that while real estate development reached world-class standards, the urban infrastructure in the city could not keep pace. Issues like power shortages and lack of an effective public transport system became

some of the key drawbacks. This led to the need to explore other alternative locations and thus began similar developments in cities such as Chennai and Hyderabad. But this served as a wake up call for authorities: real estate development and urban infrastructure are inextricably linked and development of one is closely dependent on the other. This also led to the setting up of the Bangalore Action Task Force (BAFT) a popular and successful public-private partnership project to transform Bangalore into a world-class city.

Another example is Gurgaon, a suburb of New Delhi, which has seen a radical change in not just its skyline but also in its basic urban demographics. Gurgaon was once described as just a little town built on a cow pasture. But in the past three years, Gurgaon has sprouted six malls—with five more under construction and has a skyline of shiny new office buildings and call centres. Gurgaon is a shopper's paradise and the malls are vertical versions of their US counterparts: five story high bazaars, housing almost every international brand be it Nike, Nokia, Tommy Hilfiger, Levi, McDonalds along with multiplex cinemas, escalators and huge parking lots.

The real estate market in India predominantly continues to remain unorganized, fairly fragmented, mostly characterized by small players with a local presence. Traditionally, developers were viewed with an element of skepticism. Developers were often identified with dealing with large amounts of unaccounted money, lacked transparency and would use unscrupulous means to obtain various regulatory approvals. Lending to developers was perceived as being risky as builders were known to borrow for one project and utilise it for another or overstretch their limits and not have sufficient funding to complete the building. But things have clearly changed today: for starters, developers have realized the merits of corporatising themselves and enhancing transparency in terms of their financials. While earlier even the reputed builders had difficulty accessing formal channels of credit, today almost every bank and housing finance company has relationship tie-ups with developers and are keen to lend to them

at competitive rates. Lenders are also monitoring the projects more closely. For instance, lending to developers is often through an escrow mechanism which ensures that funds are utilised only for that particular designated project. Today specific projects of developers are also being rated. The objective of the ratings is to help the financers as well as the end users to take a decision while investing in a real estate project. The rating system also means a greater amount of transparency and disclosure on the part of the developers.

In 2002, the Government of India permitted 100 per cent foreign direct investment (FDI) in housing through integrated township development. The merits of FDI are well known—it provides the much needed investment in the sector brings professional players equipped with real estate expertise and facilitates the introduction of new technology. However, the FDI rules in its current form are rather stringent, prior approval of the Foreign Investment Promotion Board is required which admittedly can be rather tedious and there is a lock-in for repatriation of original capital invested for a period of three years. What is rather self-defeating is the stipulation of a minimum land holding of 100 acres. Getting 100 acres of free land in an urban area is almost impossible and consequently barely a handful of projects have been approved. If the minimum area restriction is reduced at least by half and repatriation of profits after the construction period is completed is allowed, FDI in this sector will certainly pick up.

The importance of the housing and real estate sector in India can be judged by the estimate that for every Indian rupee invested in the construction of houses, INR 0.78 is added to the gross domestic product of the country and the real estate sector is subservient to the development of over 250 other ancillary industries. After agriculture, the real estate sector is the second largest employment generator in India. However, mortgage penetration continues to be abysmally low—in India the mortgage to GDP ratio is about 2%. This compares to a mortgage to GDP ratio of over 51% in USA. However, even if one were to

benchmark with more comparable counterparts, the ratio ranges between 15–20% for South East Asian countries. Thus the penetration level of mortgages is miniscule when compared with the shortage of housing units.

a) What is PPP?

A Public Private Partnership (PPP) is a partnership between the public and private sector for the purpose of delivering a project or service which was traditionally provided by the public sector. The PPP process recognises that both the public sector and the private sector have certain advantages relative to the other in the performance of specific tasks, and can enable public services and infrastructure to be provided in the most economically efficient manner by allowing each sector to do what it does best.

Law, justice and order have been the traditional functions of the state. A *welfare state* has a much-expanded role ensuring its citizens *public utilities* like road, power and water supply. The state also provides *merit goods* such as education and health services that have *positive externalities.* Under the Constitution of India, it is *the federal states* that are called upon to shoulder most of these responsibilities. The Government of India has been supplementing the efforts of the State Governments in these welfare functions.

Most of these services have been traditionally provided through *in-house* facilities of governments, *financed and managed directly by them*. Public-private- partnership (PPP), on the other hand, is an approach under which services are delivered by the private sector (non-profit/for-profit organizations) *while the responsibility for providing the service rests with the government.* This arrangement requires the government to either enter into a *contract* with the private partner or *pay for the services* (*reimburse)* rendered by the private sector. *Contracting* prompts a new activity, especially so, when neither the public sector nor the private sector *existed* to provide the service.

Private sector innovation and technological, financial and management expertise can be gained through using a PPP approach to projects traditionally within the sphere of local authorities. PPP is another element in the general moves to modernise the public service and local government, providing greater efficiency and effectiveness and ultimately a better quality customer service.

In the old days, not so long ago, government entities used powers of eminent domain, and general obligation bonds, to finance the development of public facilities and infrastructure. Projects such as airports, ship harbors, highways and bridges, utility systems, convention/civic centers, arenas/stadiums, public parking facilities, and selected public housing projects were traditionally completed by private developers under fee-based contracts with public agencies.

Public-Private-Partnership (PPP) provides an opportunity for private sector participation in financing, designing, construction and operation and maintenance of public sector programs and projects. The time has come to forge a greater interface between the public and the private sector in a wide range of activities in the country.

In today's public-private partnerships, a wide variety of public agencies (many more than the typical redevelopment agency—including port authorities, prison systems, school districts, public assembly/convention services, military installations and housing agencies) are using creative, new, and sometimes complex methods to structure, finance, and engineer entertainment retail development and redevelopment deals.

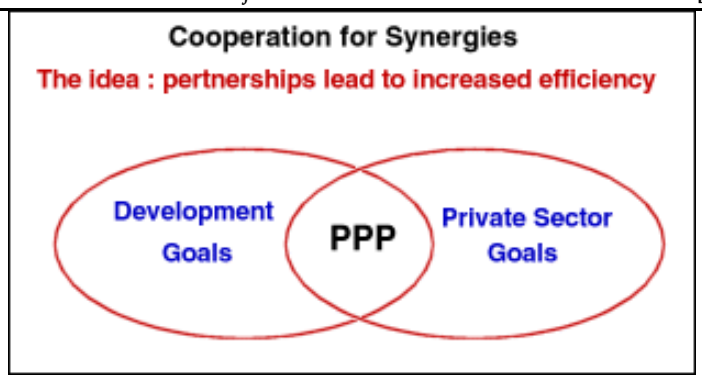
In these partnerships, the agency typically sponsors the project and provides some type of funding, as well as the necessary entitlements. The developer is expected to provide the required equity, as well as some portion of debt, and to manage the pre-development and construction process. A third-party investor may also participate.

In return for their capital, the developers and investors receive a share of the project's return. Both the public agency and the private partners may be able to securitize their portion of the project's cash flow to assist the financing process. There may be additional off-balance sheet financing to provide further leverage.

Ownership of the project can range from 100 per cent public to 100 per cent private and anywhere in between. It's a question of using investment, development and operational incentives ***and*** balancing risk, responsibility, economic return, and level of control.

b) Benefits of public/private partnerships to the public sector

- Induces private development at strategic locations.
- Maximizes governmental investment, development and operational incentives.
- Maximizes use of funds in a special assessment district.
- Creates employment opportunities.
- Reduces traditional risks of real estate ownership, construction and operations.
- Reduces dependence on bond referendums and traditional tax-exempt bond financing.
- Creates new income streams.
- Reduces operating costs.
- Uses less public capital in developing facilities/ infrastructure.
- Improves performance of under-used assets.



A public-private partnership represents considerable advantages.

i) Improved service quality.
ii) Lower project costs.
iii) Less risk.
iv) Framework conducive to innovation.
v) More rapid project execution.
vi) Easier budget management.
vii) Source of additional revenue.

i) Improved service quality

By making use of specific expertise developed within the private sector, in some cases, it is possible to offer citizens better quality service. Subjecting delivery methods to competition also creates further incentive to improve quality.

ii) Lower project costs

PPP projects generally involve a combination of design, execution and future operation activities for the project as a whole. Not dividing a project into numerous small contracts makes it possible to develop a better, integrated solution and promotes economies of scale. Experience elsewhere in the world shows that PPP projects may represent significant savings.

iii) Less risk

PPP projects plan for risks to be managed by the party best placed to do so. Since PPP attribute greater responsibility for project design, execution, operation and financing to the private sector, there is a genuine risk transfer from the public sector to the private sector. This constitutes the main source of savings for the public sector.

Moreover, for projects that are partially or fully funded by independent revenue sources such as highway tolls and charges or permit issuing transaction fees, the risk linked to the level of demand can be partially or fully borne by the private sector.

iv) Framework conducive to innovation

The combination of design/execution/operation activities, the larger scope resulting from projects that have not been divided up and the increased responsibility entrusted to the private sector encourage it to innovate. This is why the PPP agreement stipulates target objectives and allows the private partner to choose the means for attaining them.

v) More rapid project execution

In a PPP, the elements are grouped so as to constitute a large-scale project, thereby generally shortening execution deadlines. Combining design and construction activities allows them to be undertaken concurrently rather than sequentially. The significant latitude granted to private partners for construction and operation setup generally allows projects to be completed more rapidly. However, since the PPP planning stage is more complex, it may require more time than a conventional project. However, as indicated above, that time is usually saved in project implementation.

vi) Easier budget management

By having the private sector responsible for project design, execution and future operation, the public sector ensures that the target objectives are met at the price agreed to when the PPP is signed. This reduces the possibility of major unforeseen cost increases, enabling the public sector to set long-term budgets with greater certainty.

vii) Source of additional revenue

The excess capacity of certain projects may result in marketing potential. It is easier for a private partner to fully use its employees and resources than for the public sector. In some cases, the infrastructure (physical or organizational) required to execute a project exceeds the capacity needed to meet immediate needs. By marketing this excess capacity, the private partner may earn additional revenue, thereby enabling the public sector to reduce its costs.

c) Checklist for public private partnerships

i) PPP presuppositions/requirements

When evaluating PPPs in respect to the consequences of the Directive we will keep a list of general PPP targets in mind—the private partners view, the public partners view, the original selection and acceptance criteria of a general PPP cooperation. We will also have a look if a list of benefits/disadvantages is influenced by the current discussion.

ii) The private view

Profitability: Optimization of capacity load/balance of company

Positive cash flow: Long-term arrangements may lead to negative cash-flow in the beginning of partnership.

The smaller the company the more private Partners need positive cash flows as soon as possible.

Long-term arrangement: Private partners prefer investment costs to be covered from PPP (except optimization of capacity load).

The shorter the arrangement or the duration of contract, the less is the probability of significant investments.

The shorter the contract duration (contracting-out), the more the private partner needs exact calculation of single actions/contracts.

Assurance of scope of work and quality: Assurance of scope of work and quality (minimizing dynamic).

Precise offer, precise costs, calculable risk.

Control of operation, book keeping and management: Private partner needs/usually get a free hand of industrial management.

Commercialisation: Long-term importance of PPP given if new chances arise for further PPPs oder other kinds of public-private co-operation.

iii) The public view

Certainty of achievement of results: Certainty/reliability of achievements of results is very important for public services and political decision makers more than single activities.

Risk transfer: Risk transfer is one of the reasons in favour of creating PPPs, but it is also a central problem of PPPs.

Private motivation is evaluating risk versus profit.

In order to prevent the risks of mis-investment a private partner the less likes to become owner of the values created the greater the volume of PPPs in relation to private capital basis.

Role of financing institutions/banks.

If contracting-out then private partnership is mostly opposing the public contracting-out conditions.

PPP contracts (and prices) contain risks which are transferable from the public to the private partner by more exact specifications.

If risk transfer fails within a PPP then the public partner usually is in a weaker position.

Increasing performance: PPPs combine competence and resources in order to generate added values/innovations. Work on a problem with common understanding.

Flexibility in scope of supply and quality: Political goals and regional problem situations are subjects to change

PPPs who fail to follow these changes (because contract or costs cannot be renegotiated or partner insists on results originally defined, lose their existence).

Change of service demands have to be considered in PPP contracts. Risk management is a value/reason of PPPs.

Contributions to solutions: Common understanding of the problems.

Contributions of each partner have to be clear.

Public service has to communicate both premises.

Cost reduction important but a minor public aspect for a PPP. There are other mechanisms for that. Flexibility in scope of performance and quality is a major issue for public administration and politics versus fix cost/effort calculations of private sector.

iv) Selection criteria for private partners in a PPP

Competence/incrementing expertise: Both side increase/add their competence/expertise, put competence together in order to solve big problems.

Public Sector offers entrance to a new market by offering private partners the opportunity to study the public needs.

Public sector learns professional service offering and production methods.

Reference objects/efforts: Great complexity of PPP-projects, volume significant.

Public sector needs good evaluation criteria for reference objects and delivery of services.

Subcontracting and Service offers desired.

Financial power/size of PPP: PPPs need good financing. Finance power has to be adjusted to the tasks of PPPs.

Commercialisation: PPPs focus on profit interests for the private partner as well as fort he public sector, revenue as well as enabling innovations.

Increase of competence and knowledge should not remain with one of the partners only.

Public sector also needs the right to distribute knowledge, management experience or profit interests.

Problem solutions, goal congruence: Private and public partner need similar/common goals, especially when public actions and politics are involved.

Contributions to a political problem solution.

Problem of financing is a minor goal.

Improve quality of life.

Local solutions.

Employment.

"Corporate Social Responsibility"

Education

Alternatives to public contracting out

Market-based Best Value laws

Private Finance Initiative

Acceptance of public-private partnerships

Success if both partners are enabled to develop their own goals as well as common goals.

Transfer of competence.

Acceptance of PPPs better than other co-operations if consumer of services (which are in public interest) can be offered exact and reliable, if the consumer owns clearly-defined rights and duties and is well informed about alternative solutions.

It is not important which form/kind of service delivery is done by the city, government, PPP or by other players.

Benefits/disadvantages against full privatising of public tasks and services

Full privatising public tasks is reasonable if there is no public interest for a public control.

PPPs are an alternative to full privatisation if services or goods are in the scope of public interest.

PPPs are good if new competences can be generated for all partners which can not be gained by other means or with a lot of effort only.

For the private Partner profitability is significant which can also mean to ensure market shares and use capacities in the full.

For public partners financial power and market competence are of significance. Risk transfer is one of the major issues and problems for PPPs.

General problem with PPPs is the commercialisation of the knowledge and competence gained in partnerships.

Today commercialisation and exploitation is mainly done by the private side of the PPP.

PPPs need a new quality of contracts between partners.

v) PPP at present (worldwide and India)

At present PPP has entered its second phase. Till now there have been 236 projects in 60 countries worldwide. Asia tops the list with 74 projects followed by 58 in Africa, 43 in Latin America, 41 in East Europe and Balkans and 20 with rest of the world. India not only tops the list among Asian countries but also in whole of the world.

In regard to India, it is worth mentioning that *'community support'* for government programs was sought during the First Five Year Plan for *construction of irrigation canals*. During the Seventh Plan, the Ministry of Rural Development set up CAPART for implementing rural development programs through *non-profit agencies*. The Ninth Five Year Plan explicitly recognized the role of NGO's/Voluntary Organizations for social

development. Furthermore, the system of extending *grants-in-aid* to educational institutions by the Ministry of Human Resources Development (Government of India) has been a decade old practice.

Public-Private-Partnership or PPP is a mode of implementing government programs/schemes in partnership with the private sector. The term private in PPP encompasses all non-government agencies such as the corporate sector, voluntary organizations, self-help groups, partnership firms, individuals and community based organizations, PPP, moreover, subsumes all the objectives of the service being provided earlier by the government, and is not intended to compromise on them. *Essentially, the shift in emphasis is from delivering services directly, to service management and coordination.* The roles and responsibilities of the partners may vary from sector to sector. While in some schemes/projects, the private provider may have significant involvement in regard to all aspects of implementation; in others s/he may have only a minor role.

vi) PPP and privatization

The key differences between public-private-partnership and 'privatization' may be summarized as follows:

Responsibility: Under *privatization* the responsibility for delivery and funding a particular service rests with the private sector. PPP, on the other hand, involves full retention of *responsibility by the government* for providing the service.

Ownership*:* While ownership rights under privatization are sold to the private sector along with associated benefits and costs, PPP may continue to retain the legal ownership of assets by the public sector.

Nature of service: While nature and scope of service under *privatization* is determined by the private provider, under PPP the nature and scope of service is *contractually determined* between the two parties.

Risk and reward: Under privatization all the risks inherent in the business rest with the private sector. Under PPP, *risks and rewards are* shared between the government (public) and the private sector.

The potential benefits expected from PPP could be mentioned as below:

Cost-effectiveness: Since selection of the developer/service provider depends on competition or some bench marking, the project is generally more cost effective than before.

Higher productivity: By linking payments to performance, productivity gains may be expected within the program/project.

Accelerated delivery: Since the contracts generally have incentive and penalty clauses vis-à-vis implementation of capital projects/programs *this leads to accelerated delivery of projects.*

Clear Customer Focus: The shift in focus from service inputs to outputs create the scope for innovation in service delivery and enhances customer satisfaction.

Enhanced Social Service: Social services to the mentally ill, disabled children and delinquents etc. require a great deal of commitment than sheer professionalism. *In such cases it is Community/Voluntary Organizations (VOs) with dedicated volunteers who alone can provide the requisite relief.*

Recovery of User Charges: Innovative decisions can be taken with greater flexibility on account of decentralization. Wherever possibilities of recovering user charges exist, these can be imposed in harmony with local conditions.

Nature of collaboration

The government may collaborate with the private developer/service provider in any one of the following ways:

1. ***as a funding agency****:* providing grant/capital/asset support to the private sector engaged in provision of public service, *on a contractual/non-contractual basis.*
2. ***as a buyer****: b*uying services on a long term basis.

3. ***as a coordinator***: specifying various sectors/forums in which participation by the private sector would be welcome.

The funding pattern and collaboration between the public sector and the private sector could take any one of the following forms:

1. Public funding with private service delivery and private management.
2. Public as well as private funding with private service delivery and private management.
3. Public as well as private funding with public/private service delivery and public/private/joint management.
4. Private funding with private service delivery and private management.

Categories (2), (3) and (4) have a special appeal as they promise to supplement government resources through private participation.

vii) Principles of PPP

PPP involves a long-term relationship between the public sector and the private sector. While the collaboration between the two, may take various forms like *buyer seller relationship*[*], *donor-recipient relationship*, the most stable partnership is in the form of *'contract'* binding on both the parties. Following features broadly characterize public-private-partnership.

A. Contractual framework

The contract mirrors the basic objective of the program/project, the tenure of agreement, the funding pattern and of sharing of risks and responsibilities. The need to define the contract very precisely, therefore, becomes paramount under PPP. Projects/

[*] Social services in Germany and the Netherlands are provided mostly through PPP, by non-profit agencies that have a monopoly in these services. The non-profit agencies *get paid for the services rendered* in accordance to the prevailing law and policy.

programs under PPP may, however, broadly be classified under three heads namely (i) service contract (ii) operations and maintenance (management) contract and (iii) capital projects, with operations and maintenance contract.

B. Selection of service provider

Transparency in 'selection' is an essential feature of PPP. Selection of *the developer* or *the service provider* may be done in any of the following three ways.

1. Competitive bidding

This involves *a well publicised* and *a well-designed bid process* to ascertain financial, technical and managerial capabilities of the service provider or the developer. Either of the two formats for bidding, namely *single round sealed bid auction* or *multiple round open-outcry (ascending) bid auction* could be adopted. The appropriate bidding process depends on the *nature of the valuation* that the bidders place on the concession, that is, on the right to do the job. In some cases the valuation of the project depends on factors that are within the bidder's control, such as construction and maintenance cost of a building or a road. These are also known as *'private value items'*. In other cases, the valuation does not depend just on the bidders own assessment, but also on certain unknown factors that need to be anticipated. These unknown factors are common to all bidders and each bidder may update his/her own assessment based on the assessment of other bidders. *These are known as 'common value items' and include factors such as the size of market, willingness-to-pay of consumers and future behaviour of regulators etc .* For private value items, a single-round auction is appropriate since bidders do not need to learn from the revelation of information of other bidders and a sealed bid auction is preferable since that has the least potential for collusion. Concessions with common value characteristics, on the other hand, are best awarded through multiple round bids since this facilitates the process of value discovery by bidders, allowing bidders to observe and respond to

quotations/prices as they emerge. Multiple-round bid can also be sealed-bid, but there is an opportunity to re-bid after the bids are opened. Moreover, wherever the bid process is characterized by *a two-stage process* involving, for instance, mega infrastructure projects, the bidders are required to obtain *from their prospective lenders* the financial terms, expectations regarding state support as well as their comments on the concession agreement etc.

The final selection of the developer/service provider depends upon one or a combination of the following:

(a) lowest capital cost of the project, (b) lowest operation and maintenance cost, (d) lowest bid in terms of the present value of user fees, (c) lowest present value of payment from government, (d) highest equity premium (e) highest upfront fee, (f) highest revenue share to the government and or (g) shortest concession period.

Under situations of only *a sole bid being* received, the authorities have the choice of either accepting or rejecting the sole bid. In the case of rejecting the sole bid, or *when no bid is received*, the project/program proposal itself may be modified and the bid process restarted. Alternatively, the selection of the developer/service provider is done through *competitive negotiation* with the private sector participants.

2. Swiss challenge approach

The Swiss Challenge approach refers to *suo-motu* proposals being received from the private participant by the government. The private sector thus provides (a) all details regarding its technical, financial and managerial capabilities, (b) all details regarding technical, financial and commercial viability of the project/ program (c) all details regarding expectation of government support/concessions.

The government may examine the proposal and if the proposal belongs to the declared policy of priorities, then it may invite competing counter proposals from others (in the spirit of 'Swiss Challenge' approach) giving adequate notice. In the event of a

better proposal being received, the original proponent is given the opportunity to modify the original proposal. Finally, the better of the two is awarded the project/program for execution.

3. Competitive negotiation

Competitive negotiation (direct or indirect) is considered a variant of competitive bidding. The government thus specifies the service objective and invites proposals through advertisements. The government then negotiates/finalizes the contract with the selected bidders. The government agency (or the local authority) may select the service provider/ developer through *competitive negotiation* in the following cases:

a) social sector projects and programs involving VOs/NGOs/Local Community;
b) project involving proprietary technology or a franchise;
c) linkage project related to a mega project or a major activity;
d) projects and programs which failed to solicit any response to a bidding process;
e) suo-motu proposal from a private participant.

Negotiation may, however, be *'simple'* (direct) or '*complex'* (indirect). In the second case, the government negotiates through a *'master contractor'/mother NGO*. In other words, *contracts for (public) services are contracted out* and the master contractor handles all dealings with sub-contractors/franchisees. While the government reviews the works of the master contractor through its monitors (officials) who may visit the site of program implementation and meet the beneficiaries, the master contractor may monitor the program (run by sub-contractors) through collecting information from the beneficiaries selected randomly, based on questionnaires/interviews.

i) Advantage of master contractor

Some of the advantages mentioned about master contracting are:

(a) government has administrative convenience, and better control in dealing with less number of service providers,

(b) funds can be raised from other public and private sources, other than the government

(c) decisions can be taken more quickly, despite political pressures and

(d) training programs can be organized for the subcontractors/ service provider/vendors by the master contractor, more innovatively. However, *'master contract'* is not always relevant and *negotiation vis-à-vis the contract ought to be done directly with the community/beneficiaries*, as for instance, in the case of wild life protection *with the residents living in the vicinity of the forests*. Competitive negotiations are, however, less transparent than competitive bidding. With a view to ensure fairness, nonetheless, it is recommended that the government auditor may audit such 'contracts'.

ii) Payment mechanism

Payment to the private sector could take the form of:

(a) contractual payments

(b) grants-in-aid and

(c) *right to levy user charges* for the asset created/leased-in.

Contractual payments may be in the form of advance payment, progress payment, final payment, annuities and guarantees for receivables etc. Annuities, in turn, could be with respect to recovering the fixed cost or for recovering both variable cost and the fixed cost of the project. In the former case, both the government and the private partner share the risk of running the project.

Grants-in-aid, in turn, can take different forms such as a block grant, capital grant, matching grant, institutional support, etc. Lease agreement license, similarly, may allow the concessionaire to recover the cost of construction/operation and maintenance through levying user charges. Moreover, in the case of lease

agreement, the asset reverts to the government after the expiry of the contract. The agreement ought to also provide for the *condition of asset* that would be returned at the end of the contract.

iii) Monitoring and evaluation

It is, quite often, thought that the job is over with the signing/ finalizing the 'contract'. Payments have to be, however, linked to performance, which in turn requires monitoring. Performance measurement can be done with respect to measuring 'efficiency' or measuring 'effectiveness'. While measurement of *efficiency* entails comparing *the unit cost* of providing the service from *amongst the various alternatives*, measurement of *effectiveness* involves comparing the desired outcomes from amongst the various alternatives.

Monitoring may be done in either of the following ways (i) by government departments authorized to do so, based on a standardized scale, (ii) by independent agencies/regulators based on a standardized scale. (iii) by the department or independent agencies, based on the simple criteria of 'pass' and 'fail' (iv) by the department or independent agencies, based on the feedback received from the beneficiaries. Involvement of third party/ independent agencies for monitoring appears to be preferable as they leave the government hassle free over the project and minimize government control. *A certain percentage of the cost of the project needs to be, therefore, earmarked for contract management.* The government and the developer/service provider could mutually decide the third party. The third party involvement could be further supplemented with provision for adjudication by the (higher) judiciary.

iv) Risk and revenue sharing

PPP involves sharing of risk and reward between the partners. The risk involved in project implementation may be of the following types:

1. Construction/implementation risk, arising from:
   (a) delay in project clearance;
   (b) contractor default;
   (c) environmental damage
2. Market risk, arising from:
   (a) insufficient demand;
   (b) impractical user levies.
3. Finance risk, arising from:
   (a) inflation;
   (b) change in interest rates;
   (c) increase in taxes
   (d) change in exchange rates.
4. Operation and maintenance risk, arising from:
   (a) termination of contract;
   (b) technology risk;
   (c) labour risk.
5. Legal risk, arising from:
   (a) changes in law;
   (b) changes in title/lease rights;
   (c) insolvency of developer/service provider;
   (d) change in security structure.

It is essential that all the generic risks be identified before finalizing the contract. The assurance of the government to share the risks with the private partner is a significant confidence building measure. Quite similarly, if the actual output/returns exceed those contemplated at the start of the project, the windfall is to be shared (equally) between the public and the private sectors.

Local-self-governments and PPP

PPP is a suitable method of delivering services commonly provided by local governments and are generally applicable to most components of service delivery. The types of services that

could be provided through PPP will, however, vary from one local government to the other based on their needs and priorities.

Local governments may consider partnerships with the private sector when any of the following circumstances exist:

1. if there are opportunities to foster economic development.;
2. if the involvement of a private partner would allow the service or project to be implemented sooner than if only the local government were involved;
3. if the project or service provides an opportunity for innovation.
4. if a private partner would enhance the quality or level of service from that which the local government could provide on its own;
5. if there is an opportunity for competition among prospective private partners;
6. if there is support from the users of the service for the involvement of a private partner;
7. if the output of the service can be measured and priced easily.
8. if the cost of the service or project can be recovered through the implementation of user fees;
9. if there is a track record of partnerships between local government and the private sector;
10. the service or project cannot be provided with the available financial resources or expertise of the local government.

Guidelines to PPP issued by Department of Economic Affairs, Finance Ministry

1. Government of India recognizes that there are significant shortcomings in the availability of critical infrastructure in the country at central as well as state and local level and that this is hindering rapid economic development. In addition, the development of infrastructure requires very large investment that may not be possible out of the

budgetary resources of government of India alone. In order to remove these shortcomings and to bring in private sector resource as well as techno-managerial efficiencies, the government is committed to promoting public private partnerships (PPPs) in infrastructure development.

2. It is also recognized that infrastructure projects have a long gestation period and may not all be fully financially viable on their own. On the other hand, financial viability can often be fully financially viable on mechanism that provides government support t reduce project costs. The government of India therefore proposes to set up a special facility to provide such support to PPP projects. This support is generically termed as 'viability gap funding' throughout this document. This facility will be housed in the department of economic affairs (DEA). Suitable budgetary provisions will be made on a year basis.
3. In order to operationalise this facility to the following are now issued.

Criteria

1. In order to be eligible for funding under this facility PPP project shall meet the following criteria:
   i. The project must be implemented, i.e., constructed, maintained and operated during the project term, by an entity with at least 40% private equity.
   ii. The project must belong to one of the following sector:
      a. Roads, railways, seaport, airport:
      b. Power
      c. Water supply, sewerage and solid waste disposal in urban areas and
      d. International convention centres:
   iii. The project should have been vetted/endorsed by the concerned line ministries in the government of India.

iv. All central projects should have received requisite government approval at the appropriate level.

v. The total government support required by the project, including support from the Government of India under this facility, or any other sources of the Government of India and its agencies, must not exceed twenty percent of the total project a cost as estimated in the preliminary project appraisal or the actual project cost, whichever is lower.

2. The implementing agency must be selected through a transparent and open competitive process. The main criterion for selection will be the extent of viability gap funding required by the private partner to successfully implement the project. The extent of viability gap funding shall be determined on the basis of the net present value of the actual viability gap funding required. For this purpose and for all calculations under these guidelines, the rate of discount shall be the rate of interested on10-year gilts on the date of submission of the bid.

Funding

1. Viability gap funding can take various forms, including but not limited to, capital grant, subordinated loans, Operation and Management (O&M) support grant or interested subsidy. A mix of capital and revenue support may also be considered.

2. The funding will be disbursed contingent on agreed milestones, preferably physical, and performance levels being achieved, as detailed in funding agreements.
3. The funding will be provided in installments, preferably in the form of annuities, and with at least 15% of the funding to be disbursed only after the project is fully functioning.

4. In the first year of the facility, funding will be allocated to project on a first-come, first-served basis subject to meeting the eligibility criteria. In later years funding will be provided based on an appropriate formula that balance needs across sector.

Appraisal and approval procedures

1. An empowered committee chaired the additional secretary (EA) and including financial adviser, minister of finance, joint secretary (PF-II), js (banking) and joint secretary of the concerned ministry, with joint secretary (FT), DEA as member secretary, will consider project proposal for viability gap funding. This committee will be authorized to sanction viability gap funding up to Rs 50 crore. Viability gap funding proposals beyond Rs 50 crore will be approved at the level of the finance minister.
2. Project proposals may be posed by either of the following:
   - ✦ The concerned public agency, either a central minister or a government of India agency, or the concerned state government, or urban local body, which owns the underlying assets.
   - ✦ A private party, with sponsorship from the central or state government agency.
3. Project proposal must be accompanied by a preliminary project appraisal, carried out by a public financial institution, as well as a commitment letter on behalf of the lending institutions that they agree to fund the project. The appraisal will cover the following:
   - ✦ Techno-economic viability of the project;
   - ✦ Financial appraisal and project financing arrangements and
   - ✦ Extent and nature of viability gap funding that is proposed.

4. Within 30 days of any project being submitted to the Government, the committee will inform the sponsor whether the project is qualified for funding under this scheme.
5. The project will then be put to bid by the concerned public agency through a transparent and open competitive process. The result of biding will indicate the extent of viability gap funding that is actually required.
6. The lead financial institution shall present its detailed appraisal of the technical and economic viability of the project as proposed by the successful bidder, for the consideration and approval of the Committee/Finance Ministry.
7. The transfer of the viability gap funds and the schedule of such transfers will be approved by the committee.
8. The lead financial institution will be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels.
9. The lead financial institution will release the viability gap funding support to the project authorities when due and obtain reimbursement from DEA.

Private participation in housing is giving way to the new mantra of public-private partnerships. Under this, the government acquires the land which is then developed for residential/commercial use by the private developer. One example is the 'Bengal Ambuja project' in Kolkata, which is a joint venture between the West Bengal Housing Board and the Gujarat Ambuja Cement Group. The housing project caters to the housing needs of various income groups by building 'low density high rise' buildings.

Another example worth emulating is the HUDA model of the Haryana Urban Development Authority (HUDA) under which a number of integrated cities have been developed through public-private partnership. Gurgaon has emerged as the most successful of these, with the country's largest private sector integrated township DLF City being established there. Development of

integrated townships would mean development of residential, commercial, corporate and institutional complexes, besides provision of roads, power, water supply, waste management, storm water drainage as also social infrastructure—medical, community and education facilities. A certain percentage of houses—around 10 per cent—in these townships can be reserved for the economically weaker sections (EWS) and low-income groups (LIG) at affordable rates.



1.6

Selection of Mode of Business for Conducting Real Estate or Construction Business

The various modes in which an enterprise can be started are as follows:

A. Proprietorship
B. Partnership
C. (a) Private limited companies (b) Public limited companies
D. HUF
E. Trusts
F. Co-operative societies

Distinguishing characteristics of each of the above:

A. Proprietorship

1. It is a single person operation. There is no difference between the owner and the company.
2. It is the easiest to set.
3. Profit of the company is the owner's income.

4. Liability is unlimited, i.e., Losses may have to be made good out of the personal assets of the proprietor.
5. The greatest advantage of such an organization is that it requires minimal of legal documentation.

There is no separate law on sole proprietorships.

B. Partnership

1. Two or more persons can start a partnership.
2. The maximum number of partners which are permissible in a firm is 20 and in the case of banking firms it is 10.
3. A Partnership deed in writing paper must be made clearly specifying the name of the partnership firm, the names of the partners, the capital to be contributed by each partner, the profit or loss sharing ratio between partners, the business of the partnership, the duties, rights, powers and obligations of each partner and other relevant details.
4. It must be signed by all partners and witnessed by independent persons.
5. The partnership deed must clearly specify the duties and authorities of all partners.
6. Details of salary and other payments to partners must also be clearly specified in the partnership deed.
7. It is not compulsory for registration of partnership deeds; however, registration ensures certain legal rights to the firm and its partners.
8. The advantages of this form of set-up are that two or more people can come together and start a new business. The disadvantages of this set-up are more or less the same as that of a sole proprietorship concern.
9. The liability of partners in Indian partnerships is joint and several.
10. There is no minimum capital to be subscribed for a partnership.

11. A partnership may be dissolved with the consent of all the partners or in accordance with the provisions in the partnership agreement.

Partnerships are governed by Partnership Act, 1932.

C. Companies

1. Company as a legal person—can borrow, lend, enter into contracts, can sign, can sue and be sued.
2. Has a life beyond the life of the promoters.
3. Can hold assets of its own.
4. Company seal acts as its signature.
5. Comes into existence through a formal and legal "incorporation" process.
6. Promoters, share holders are called "members".
7. The liability of shareholders of a limited company is limited to the extent of unpaid share or to the tune of the unpaid amount guaranteed by the shareholder.
8. Memorandum and Articles of Association: The Memorandum of Association is the charter of the company and specifies the name of the company, the business and activities it can carry, its address, the capital of the company and details of the persons who have formed the company.
9. The Articles of Association of the company specify the rules and regulations of the company, the rights, duties and liabilities of the members and directors.
10. A memorandum of association and articles of association have to be filed with the Registrar of Companies in order to incorporate a company.

In India, companies are broadly classified as Public Sector (Government owned) and Private Sector Companies. Private sector companies may further be classified as Private Limited and Public Limited Companies.

(a) Private Limited companies

Private Limited company means a company formed with the word 'private' in its name .A private limited company can be formed with a minimum of 2 members.

The Articles of Association of such companies includes the following restrictions:

- ✦ articles of association restricts the right to transfer its shares;
- ✦ limitation to the number of shareholders to 50 (excluding employees and former employees);
- ✦ prohibition towards invitation to the public to subscribe to shares and debentures;
- ✦ shares of private limited companies may not be quoted in the stock exchange;
- ✦ The minimum paid up capital for a private company would be Rs. 100,000.

Following are some of the privileges and exemptions of a private limited company:

1. Minimum number is members are 2 (7 in case of public companies).
2. Prohibition of allotment of the shares or debentures in certain cases unless statement in lieu of prospectus has been delivered to the Registrar of Companies does not apply.
3. Restriction contained in Section 81 related to the rights issues of share capital does not apply. A special resolution to issue shares to non-members is not required in case of a private company.
4. Restriction contained in Section 149 on commencement of business by a company does not apply. A private company does not need a separate certificate of commencement of business.
5. Provisions of Section 165 relating to statutory meeting and submission of statutory report do not apply.

6. One (if 7 or fewer members are present) or two members (if more than 7 members are present) present in person at a meeting of the company can demand a poll.
7. In case of a private company which is not a subsidiary of a public limited company or in the case of a private company of which the entire paid up share capital is held by the one or more body corporate incorporated outside India, no person other than the member of the company concerned, shall be entitled to inspect or obtain the copies of profit and loss account of that company.
8. Minimum number of directors is only two. (3 in case of a public company)

(b) Public Limited companies

Public Limited company means a company which is not a private limited company. It does not carry the word 'private' in its name and also do not have the restrictions as carried out in the private limited companies. Public limited companies are generally large companies with widespread shareholding with shares being quoted in the stock exchange. The minimum paid up capital for a public company would be Rs 500,000.

Distinction between Company and Partnership

1. A Partnership firm is sum total of persons who have come together to share the profits of the business carried on by them or any of them. It does not have a separate legal entity. A Company is association of persons who have come together for a specific purpose. The company has a separate legal entity as soon as it is incorporated under law.
2. Liability of the partners is unlimited. However, the liability of shareholders of a limited company is limited to the extent of unpaid share or to the tune of the unpaid amount guaranteed by the shareholder.

3. Property of the firm belongs to the partners and they are collectively entitled to it. In case of a company, the property belongs to the company and not to its members.
4. A partner cannot transfer his shares in the partnership firm without the consent of all other partners. In case of a company, shares may be transferred without the permission of the other members, in absence of provision to contrary in articles of association of the company.
5. In case of partnership, the number of members must not exceed 20 in case of banking business and 10 in other businesses. A Public company may have as many members as it desires subject to a minimum of 7 members. A Private company cannot have more than 50 members.
6. There must be at least 2 members in order to form a partnership firm. The minimum number of members necessary for a public limited company is seven and two for a private limited company.
7. In case of a partnership, 100% consensus is required for any decision. In case of a company, decision of the majority prevails.
8. On the death of any partner, the partnership is dissolved unless there is provision to the contrary. On the death of the shareholder the company's existence does not get terminated and no fresh application for sales tax, income tax numbers need to be done.

Companies are governed by Companies Act, 1956.

D. HUF

This form of organization exists under Hindu law and is governed by the law of succession. The joint Hindu family form is a form of business organization in which the family possesses some inherited property. The inheritance of the property is among the male members. The share of ancestral property is inherited by a member from his father, Grandfather and great grandfather.

The important features of the joint Hindu family business are as follows:

1. Membership by birth: Membership of the joint Hindu family business is automatic by birth of a male child and is not created by an agreement between persons.
2. Management: The management vests in the Karta, the eldest member of the family. However, the Karta may associate other members of the HUF to assist him.
3. Liability: The Karta has unlimited liability, i.e., even her/his personal assets can be used for payment of business dues but every other coparcener has a limited liability up to his share in the HUF property.
4. There is no restriction on the number of coparceners of the HUF business. However, the membership is restricted to three successive generations. A male child at the time of birth becomes a coparcener. Thus, an HUF does not restrict membership to minors.
5. Unaffected by death: The HUF business continues even after the death of a coparcener including the Karta. The next senior most surviving male member of the HUF becomes the Karta. However, it may come to an end if all the members notify that they are not members of the joint Hindu family.

E. Trusts

A Trust is created when a donor attaches a legal obligation to the ownership of certain property based on his confidence placed in and accepted by the donee or trustee, for the benefit of another.

The person who intends to create the trust with regard to certain property for a specified beneficiary and who places his confidence in another for this arrangement is called the Author of the Trust; the person who accepts the confidence is called the Trustee; the person whose benefit the confidence is accepted is

called the Beneficiary; the subject matter of the trust is called Trust Property.

The Trustees control the trust's assets and decide how the income (and capital) of the trust is to be distributed, and ensure that it is in line with the charitable purposes of the trust.

The author of the trust must indicate with reasonable certainty the following:

- ✦ Intention to create trust.
- ✦ Purpose of the trust.
- ✦ Beneficiaries of the trust.
- ✦ The trust property.

A trust can be created:

1. By any person competent to contract.
2. With the permission of a principal civil court of original jurisdiction by or on behalf of a minor.
3. Any person or corporation capable of transferring property or interest in property can create a Trust.
4. A company can create a Trust provided it is *intra vires* the objects of the company and within the powers mentioned in its Memorandum of Association.

Trust can be a public trust, set up for the benefit of the general public or a private family trust that is restricted to specified individuals.

Trusts are governed by The Indian Trusts Act ,1982.

F. Co-operative Societies

A cooperative form of business organization is different from other forms of organization. It is a voluntary association of persons for mutual benefit and its aims are accomplished through self help and collective effort.

The main principle underlying a cooperative organization is mutual help, i.e., each for one and all for each. A minimum of 10 people are required to form cooperative society. It must be

registered with the Registrar of Cooperative Societies under the Cooperative Societies Act.

The capital of a cooperative society is raised from its members by way of share capital. It can also obtain additional resources by way of loans from the State and Central Cooperative Banks.

Although a cooperative society has much in common with partnership there are differences between the two types of organization. In a partnership mutual benefit is restricted to partners only, but in a cooperative society it extends to its member as also the public. For example, in a consumer cooperative store or a cooperative credit society, the benefits are available to the members as well as the general public. Besides, partnership requires the existence of some business activity whereas a cooperative may be formed whenever individuals have common needs which are difficult to fulfill single handed. Also, registration is optional in the case of partnership but it is compulsory for a cooperative society.

The main advantages of a co-operative society are:

- ✦ Easy formation
- ✦ Open membership
- ✦ Democratic management
- ✦ Limited liability (to the extent of capital contributed by the members)
- ✦ Stability (as it enjoys separate legal existence)
- ✦ Economic operations
- ✦ Government patronage

Cooperative society are governed by The Co-operative Societies Act, 1912 and Multi-State Co-Operative Societies Act, 1984.

Choice of the business structure

The choice of the business structure depends on a number of factors including nature of business, finance involved, degree of control and risks desired and government regulations. However, a

private limited company with its inherent advantages can be considered as the most suitable form of organization.



2.1

Various Laws Involved in Real Estate Transactions

The various laws governing the real estate transactions have been abridged as follows:

I. The Indian Contract Act, 1872.
II. The Transfer of Property Act, 1882.
III. The Indian Registration Act, 1908.
IV. The Specific Relief Act, 1963.
V. The Urban Land (Ceiling & regularization) Act, 1976.
VI. The Land Acquisition Act, 1894.
VII. The Indian Evidence Act, 1872.
VIII. The Indian Stamps Act, 1899.
IX. The Rent Control Act.
X. The State Laws governing the real estates.
XI. The Consumer Protection Act, 1986.
XII. The Arbitration & Conciliation Act, 1996.
XIII. Income Tax Act, 1961.
XIV. The Wealth Tax Act, 1957
XV. The Co-operative Societies Act, 1912
XVI. The Multi-state Co-operative Societies Act, 2002

I. The Indian Contract Act, 1872

There is one basic difference between the law of contracts and other laws. It does not specify the number of rights and duties, which the law protects or enforces. It rather consists of a number of limiting principles, subject to which the parties may create the right and duties for themselves, which the law will uphold.

In a sense, the parties to a contract make the law for themselves. So long as they do not infringe upon legal provisions, they remain at liberty to make what rules they like regarding the subject matter of their agreement, and the law protects the parties in respect of their mutual determinations.

Section 1 of Contract Act provides that any usage or custom or trade or any incident of contract is not affected as long as it is not inconsistent with provisions of the Act. In other words, provision of Contract Act will prevail over any usage or custom or trade. However, any usage, custom or trade will be valid as long as it is not inconsistent with provisions of Contract Act. The Act extends to the whole of India except the State of Jammu and Kashmir; and came into effect on 1 September 1872.

a) Definition of contract

According to Section 2 (h), the term contract means an agreement enforceable by law.

Generally, the real estate transaction begins with an agreement between the parties. The legislation specifies when a party can be said to have the capacity to contract. A contract pertaining to real estate can be entered into, by an individual (who is not a minor or of unsound mind), partners of a firm, a corporate body, a trust, a sole corporation, the manager of an undivided family and a foreigner. All the requirements of a valid contract, i.e., consideration, intention to contract and validity under the law of the land must be satisfied.

Definition of 'consideration': When, at the desire of the promisor, the promisee or any other person has done or abstained

from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consid-eration for the promise [Section 2(d)].

b) Steps involved in contract

The steps involved in the contract are:

1. Proposal and its communication.
2. Acceptance of proposal and its communication.
3. Agreement by mutual promises.
4. Contract.
5. Performance of Contract: All agreements are not contract. Only those agreements which are enforceable by law are 'contracts'. Following are essential requirements of a valid contract.
    - i. Offer and its acceptance.
    - ii. Free consent of both parties.
    - iii. Mutual and lawful consideration for agreement.
    - iv. It should be enforceable by law. Hence, intention should be to create legal relationship. Agreements of social or domestic nature are not contracts.
    - v. Parties should be competent to contract.
    - vi. Object should be lawful.
    - vii. Certainty and possibility of performance.
    - viii. Contract should not have been declared as void under Contract Act or any other law.
    - ix. Communication, acceptance and revocation of proposals Communication of proposal/revocation/ acceptance are vital to decide validity of a contract. A 'communication' is complete only when other party receives it.
    - x. Acceptance must be absolute - In order to convert a proposal into a promise, the acceptance must (1) be absolute and unqualified; (2) be expressed in some

usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance [Section 7].

xi. Acceptance of offer is complete only when it is absolute and unconditional. Conditional acceptance or qualified acceptance is no acceptance.

xii. Promises, express or implied. Insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied [Section 9]. For example, if a person enters a bus, there is implied promise that he will pay the bus fare.

c) Types of contract

There are five types of contract, they are:

1. Void contracts
2. Voidable contracts
3. Valid contracts
4. Unenforceable contracts
5. Illegal/unlawful contracts

1. Void contracts

Section 2 (j) of the Indian Contract Act, 1872 defines a void contract as under:

"A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable". It is clear from this definition that a void contract is a contract which was valid originally, i.e.,

at the time of its formation, but becomes void subsequently on account of the happening of some subsequent event. In other words, it is a contract which was valid originally, but becomes void (ceases to be enforceable by law) subsequently.

Thus a void contract is not void ab initio. It becomes void subsequently, when it ceases to be enforceable by law. A void contract is perfectly valid and binding on the contracting parties until it becomes void, i.e., cases to be enforceable by law. It is for this reason that void contracts are known as ex post facto void contracts.

Examples of void contracts

(i) Subsequent impossibility

As per Section 56 of the Indian Contract Act, 1872 a contract becomes void by supervening impossibility i.e., by subsequent impossibility of performance. Suppose X and Y contract to marry each other. After formation of the contract, but before the time fixed for the marriage, Y becomes mad. In this case, the contract becomes void because of impossibility of performance i.e., impossibility of marriage.

(ii) Subsequent illegality

As per Section 56 of the Indian Contract Act, 1872 a contract becomes void by supervening illegality i.e., subsequent illegality. Suppose X agrees to sell Y 1000 bottles of liquor on or before a specified date, but before the delivery, the Government introduces prohibition of sale of liquor. In this case, the contract becomes void due to subsequent illegality of the business.

(iii) Impossibility of contingent event

As per Section 32 of the Indian Contract Act, 1872, a contingent contract to do or not to do something on the happening of an uncertain future event becomes void, when that event becomes impossible. Suppose, A agrees to deliver imported garments to D when the ship carrying the garments arrives at Cochin port. But the ship sinks on the way. In this case, the contract becomes void.

2. Voidable contract

Section 2 (i) of the Indian Contract Act, 1872 defines voidable contract as under:

"An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract". From this definition, it is clear that a contract is voidable if it is enforceable by law at the option of only one of the contracting parties, and not at the option of both the contracting parties. In short, it is a contract which can be enforced or which can be avoided at the option of one of the contracting parties i.e., the aggrieved party.

Examples of voidable contract

i) Normally, a contract becomes voidable when the essential element of free consent is not present. Such a contract is voidable at the option of the aggrieved party, i.e., the party whose consent is so obtained. For instance, if A coerces B to enter into a contract with him for the sale of B's house at knife point. In this case, B' s consent is obtained by coercion. In such a case, B can either enforce the contract or rescind the contract. A cannot enforce it against B.

ii) Section 53 of the Indian Contact Act says when a contract contains reciprocal promises, and one party to the contract prevents the other party from performing his promise, then the contract becomes voidable at the option of the party so prevented. Suppose X contracts with Y to repair Y's house for Rs. 5000. X is ready to repair. But Y does not permit X to repair. In this case, the contract becomes voidable at the option of X and so, it can be avoided by X.

iii) Section 55 of the Act says when one party to the contract promises to do a certain thing within a definite or specified time, but fails to do so, then, the contract becomes voidable at the option of the other party, if the intention of the parties was that time should be an essential condition of the contract. Suppose R

contracts with S to whitewash S's house for Rs 1000 within a week, but R fails to do so within the prescribed time. In this case, the contract becomes voidable at the option of S.

When does a voidable contract become a void contract?

A voidable contract becomes void when the party entitled to repudiate such a contract exercises his option to repudiate the contract. Suppose A forces B to sell his house to him for Rs 10,000 at knife point, in this case, the contract is voidable and it can be repudiated or avoided by B. If B decides to rescind or avoid the voidable contract, the contract becomes void.

Differences between void contract and voidable contract

1. A void contract is not enforceable at law at the instance of either party. But a voidable contract is enforceable at the option of the aggrieved party.
2. A third party gets no right to a thing transferred by a person claiming the same under a void contract. On the other hand, a third party acquires good title to a thing transferred by a person claiming the same under a voidable contract provided the transfer takes place before the contract is voided.

3. Valid contract

A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law only when it satisfies all the essential elements of a contract as contained in Section 10 of the Indian Contract Act. So, a valid contract is an agreement which satisfies all the essentials of a contract, as contained in Section 10 of the Indian Contract Act. For example, if A offers to sell his house to B for Rs 10 lakhs and B accepts the same, there is a valid contract. The legal rights conferred and the legal obligations imposed by a valid contract are enforceable by law against each other.

4. Unenforceable contracts

An unenforceable contract is a contract which is valid in itself, but cannot be enforced in a court of law because of some technical defect, say absence of writing, absence of registration, want of requisite stamp, expiry of time, etc.

Example

An oral arbitration agreement is unenforceable because, as per the arbitration law, an arbitration agreement is required to be in writing. Similarly, an insufficiently stamped bill of exchange or promissory note cannot be enforced in a court of law.

5. Illegal or unlawful contracts

Section 23 of the Indian Contract Act deals with such contracts. An illegal or unlawful contract is one whose object or consideration

i. is forbidden by law or
ii. is of such a nature that, if permitted, it would defeat the provisions of any law or
iii. is fraudulent or
iv. involves or implies injury to the person or property of another or
v. is immoral or
vi. is opposed to public policy.

Examples

An agreement to commit murder, assault or robbery, etc.

Illegal contracts are void ab initio. All illegal agreements are void. But all void agreements are not illegal.

Further, when the main agreement is illegal, then the other incidental or collateral to the main agreement are also void. Suppose A engages B to murder C and borrows Rs 1 lakh from D to pay B. In this case, the main agreement between A and B is illegal. As such, the agreement which is collateral to the main

agreement i.e., the loan agreement between A and D is also illegal. This means D cannot recover the loan from A through a court of law. However, if D is not aware of the purpose of the loan and if it can be proved, then the agreement is not tainted with illegality.

d) Contract of Agency

Agency is a special type of contract. The concept of agency was developed as one man cannot possibly do every transaction himself. Hence, he should have opportunity or facility to transact business through others like an agent. The principles of contract of agency are: (a) Excepting matters of a personal nature, what a person can do himself, he can also do it through agent (e.g. a person cannot marry through an agent, as it is a matter of personal nature) (b) A person acting through an agent is acting himself, i.e. act of agent is act of Principal. Since agency is a contract, all usual requirements of a valid contract are applicable to agency contract also, except to the extent excluded in the Act. One important distinction is that as per Section 185, no consideration is necessary to create an agency.

Agent and principal defined: An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal' [Section 182].

Who may employ agent? Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent [Section 183]. Thus, any person competent to contract can appoint an agent.

Who may be an agent? As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained [Section 184]. The significance is that a Principal can appoint a minor or person of unsound mind as agent. In such case, the Principal will be responsible to third

parties. However, the agent, who is a minor or of unsound mind, cannot be responsible to Principal. Thus, Principal will be liable to third parties for acts done by Agent, but agent will not be responsible to Principal for his (i.e. Agent's) acts.

Consideration not necessary: No consideration is necessary to create an agency [Section 185]. Thus, payment of agency commission is not essential to hold appointment of Agent as valid.

Authority of agent: An agent can act on behalf of Principal and can bind the Principal.

Agent's duty to Principal: An agent has following duties towards principal.

i. Conducting principal's business as per his directions.
ii. Carry out work with normal skill and diligence.
iii. Render proper accounts [Section 213].
iv. Agent's duty to communicate with principal [Section 214].
v. Not to deal on his own account, in business of agency [Section 215].
vi. Agent's duty to pay sums received for principal [Section 218].
vii. Agent's duty on termination of agency by principal's death or insanity [Section 209].

Remuneration to Agent: Consideration is not necessary for creation of agency. However, if there is an agreement, an agent is entitled to get remuneration as per contract.

Rights of Principal

i. Recover damages from agent if he disregards directions of Principal.
ii. Obtain accounts from Agent.
iii. Recover moneys collected by Agent on behalf of Principal.
iv. Obtain details of secret profit made by agent and recover it from him.
v. Forfeit remuneration of Agent if he misconducts the business.

Duties of Principal

i. Pay remuneration to agent as agreed.
ii. Indemnify agent for lawful acts done by him as agent.
iii. Indemnify Agent for all acts done by him in good faith.
iv. Indemnify agent if he suffers loss due to neglect or lack of skill of Principal.

Termination of Agency: An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors [Section 201]. In following cases, an agency cannot be revoked.

i. Agency coupled with interest (Section 202).
ii. Agent has already exercised his authority (Section 203).
iii. Agent has incurred personal liability.

e) Remedies for Breach of Contract

When a contract is broken, the injured party has one or more of the following remedies:

i. Rescission of Contract: When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.
ii. Suit for compensations.
iii. Suit for specific performance.
iv. Suit for injunction.

II. Transfer of Property Act, 1882

This Act lays down the general principles of realty, like part-performance and has provisions for dealing with property through sale, exchange, mortgage, lease, lien and gift. A person acquiring

immovable property or any share/interest in it is presumed to have notice of the title of any other person who was in actual possession of such property. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally in the manner prescribed by any law for the time being in force. A transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property. A transfer of property may be made without writing

Transfer of property

Transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act. Living person includes a company or association or body of individuals, whether incorporated or not, (Section 5).

Property, which cannot be transferred

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.

(h) Any transfer for an unlawful object or for a unlawful consideration with in the meaning of Section 23 of the Indian Contract Act, 1872 is illegal and hence void.

(i) A tenant having an non-transferable right of occupancy.

(j) An estate in respect of which default has been made in paying revenue.

(k) the lease of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Transfer of title of ownership

Transfer of property refers to taking over of possession from one person to another person. The Transfer of Property Act 1882 contains specific provisions regarding what constitutes transfer and the conditions attached to it. According to the Act, 'transfer of property' means an act by which a person conveys property to one or more persons, or himself and one or more other persons. The act of transfer may be done in present or for future. The person may include an individual, company or association or body of individuals, and any kind of property may be transferred.

Every person, who is competent to contract, is competent to transfer property, which can be transferred in whole or in part. He should be entitled to the transferable property, or authorised to dispose off transferable property which is not his own. The right may be either absolute or conditional, and the property may be movable or immovable, present or future. Such a transfer can

be made orally, unless a transfer in writing is specifically required under any law.

A transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, unless a different intention is expressed or implied.

In case the property is transferred subject to the condition which absolutely restrains the transferee from parting with or disposing off his interest in the property, the condition is void. The only exception is in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Generally, only the person having interest in the property is authorised to transfer his interest in the property and can pass on the proper title to any other person.

According to Section 6 of the Transfer of Property Act, property of any kind may be transferred. The person insisting non-transferability must prove the existence of some law or custom which restricts the right of transfer. Unless there is some legal restriction preventing the transfer, the owner of the property may transfer it. However, in some cases there may be transfer of property by unauthorized person who subsequently acquires interest in such property.

According to Section 43 of the Transfer of Property Act 1882, in case a person either fraudulently or erroneously represents that he is authorised to transfer certain immovable property and does some acts to transfer such property for consideration, then such a transfer will continue to operate in future. It will operate on any interest which the transferor may acquire in such property. This will be at the option of the transferee and can be done during the time during which the contract of transfer exists. As per this rule, the rights of bona fide transferee, who has no notice of the earlier transfer or of the option, are protected. This rule embodies a rule of estoppel, i.e., a person who makes a representation cannot later on go against it.

The rights of the transferees will not be adversely affected, provided they acted in good faith; the property was acquired for

consideration; and the transferees had acted without notice of the defect in title of the transferor.

It should be noted that these conditions must be satisfied:

There must be as representation by the transferor that he has authority to transfer the immovable property. The representation should be either fraudulent or erroneous.

The transferee must act on the representation in good faith.

The transfer should be done for a consideration.

The transferor should subsequently acquire some interest in the property he had agreed to transfer.

The transferee may have the option to acquire the interest which the transferor subsequently acquires. The exercise of option must be during the period of continuation of the contract and not afterwards.

When all these conditions exist, the transferee becomes entitled to the interest, which is subsequently acquired by the transferor. It is to be noted that the transferee, acting upon the representation, has no right against any subsequent bonafide transfer for consideration.

Sale

Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised (Section 54). Transfer of tangible immovable assets of value of Rs 100 or above or other intangible thing can be made only by registered instrument and in case of tangible immovable property of less than Rs 100 may be made either by registered instrument or by delivery of property

Rights and liabilities of buyer and seller of immovable property (Section 55)

a) Liabilities of seller

i. In the absence of the contract to the contrary the seller is bound:

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

ii. Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

b) Rights of seller

The seller is entitled:

i. to the rents and profits of the property till the ownership thereof passes to the buyer;

ii. where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

c) Liabilities of buyer

The buyer is bound:

i. to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

ii. to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs but where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

iii. where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

iv. where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of

the property, the principal moneys due on any

encumbrances subject to which the property is sold, and the interest thereon afterwards accruing

d) Rights of buyer

The buyer is entitled:

i. where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

ii. unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

e) Mortgage, mortgagor and mortgagee

A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement that may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed (Section 58).

Where the principal money secured is Rs 100 or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Rights of mortgagor

After the principal money has become due, the mortgagor has a right, on payment of the mortgage-money, to require the mortgagee:

1. to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,
2. where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and
3. either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right transferred to the mortgagee has been extinguished:

A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Rights of Mortgagee

Mortgagee has, at any time after the mortgage- money has become due to him, and before a redemption decree or the mortgage-money has been paid or deposited a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

The mortgagee has a right to sue for the mortgage-money:

1. where the mortgagor binds himself to repay the same;
2. where, the mortgaged property is wholly or partially destroyed
3. where the mortgagee is deprived of the whole or part of his security in consequence of the wrongful act or default of the mortgagor.

Liabilities of mortgagee

When the mortgagee takes possession of the mortgaged property, he must:

1. manage the property as if it were his own;
2. collect the rents and profits thereof;
3. pay the government revenue, charges of a public nature and rent;
4. make necessary repairs of the property;
5. must not commit any act which is destructive or permanently injurious to the property;
6. he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee.

Lease

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent (Section 105).

A lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Rights and liabilities of the lessor

1. The lessor is bound to disclose to the lessee any material defect in the property;
2. The lessor is bound on the lessee's request to put him in possession of the property;
3. If the lessee pays the rent and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

Rights and liabilities of the lessee

1. Any material part of the property destroyed and permanently unfit for the purposes for which it was let by fire, tempest or flood, or violence of an army or of a mob, the lease shall, at the option of the lessee, be void:
2. If the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;
3. Bound to pay, the premium or rent to the lessor or his agent in this behalf;
4. May remove, at any time whilst he is in possession of the property leased all things which he has attached to the earth provided he leaves the property in the state in which he received it;
5. Must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;
6. On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Exchange

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange" (Section 118).

If any party to an exchange is by reason of any defect in the title of the other party deprived of the thing received by him in exchange, then such other party is liable to him for loss caused thereby or for the return of the thing transferred still in the possession of such other party from him without consideration

The rights and liabilities are same as of seller and buyer.

Gift

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donor, and accepted by or on behalf of the donee (Section 112).

Acceptance of the gift must be made during the lifetime of the donor and while he is still capable of giving.

For making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Where a gift consists of the donor's whole property, the donee is personally liable for all the debts due and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

Charge

Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the

provisions contained in the Transfer of Property Act which apply to a simple mortgage shall, so far as may be applicable, apply to such charge. Thus charge can be contractual or statutory.

III. The Registration Act, 1908

The purpose of this Act is the conservation of evidence, assurances, title, and publication of documents and prevention of fraud. It details with the formalities for registering an instrument.

Immovable property

Immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass (Sub-Section 6 of Section 2).

Movable property

Movable property includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property (Sub Section 9 to Section 2).

Documents for which registration is compulsory

a. Instruments of gift of immovable property:
b. Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to or in immovable property:

c. Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of instruments in (2) above.

d. Leases of immovable property from year to year; or for any term exceeding one year, or reserving a yearly rent.

e. Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property (Section 17).

Documents for which registration is optional

Any of the following documents may be registered under this Act, namely:

a. instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

b. instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

c. leases of immovable property for any term not exceeding one year, and leases exempted under Section 17;

cc. instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a

value less than one hundred rupees, to or in immovable property;]

d. instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

e. wills.

Time for presenting documents

No document other than a will shall be accepted for registration unless presented within four months from the date of its execution. A copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final (Section 23).

Documents executed by several persons at different times

Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution (Section 24).

Provision where delay in presentation is unavoidable

If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the prescribed time, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration (Section 25).

Documents executed out of India

When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till

after the expiration of the prescribed time, the registering officer, if satisfied

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in India

may, on payment of the proper registration fee, accept such document for registration (Section 26).

Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Evidently, therefore, all the above documents have to be in writing. An unregistered document will not effect the property comprised in it, nor be received as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part-performance under the Transfer of Property Act or as collateral).

Who can present documents for registration?

1. Person executing the documents.
2. Representative of such person authorized by power of Attorney.
3. Agent of such person authorized by power of Attorney.

When the Registrar can refuse to register the document?

1. The registrar can refuse to register the document on the following grounds:
2. If the document is in a language, which the registering officer does not understand and which is not commonly used in the district, unless it is accompanied by a true translation into a language commonly used in the district and also by true copy;
3. If in the document interlineations, blank, erasure or alteration appears unless the persons executing the

document attest with their signatures or initials such interlineations, blank, erasure or alteration;

4. If any person by whom the document purports to be executed denies its execution;
5. If any person appears to the registering officer to be a minor, an idiot, or a lunatic;
6. If any person by whom the document purports to be executed is deed and his representative or assignee denies its execution;

It is pertinent to mention that the Registrar can impound the document, if it contains deficient stamp duty and send the same to the collector for necessary action.

IV. Special Relief Act, 1963

This Act is only to enforce individual civil rights [Section 4]. A person dispossessed of immovable property without his consent (other than in due course of law) can recover possession by a suit filed within six months from the date of dispossession. In a suit for specific performance of contract, the Court shall presume that monetary compensation for its performance would not afford adequate relief. The court could also grant a permanent/ mandatory injunction preventing the breach of such contract and award damages.

Specific Relief Act is complimentary to the provisions of Contract Act and Transfer of Property Act, as the Act applies both to movable property and immovable property. The Act applies in cases where Court can order specific performance of a contract or act.

Meaning of 'Specific performance'

Specific performance means Court will ask the party to perform his part of agreement, instead of asking him to pay damages to other party.

Recovering possession of immovable property

1. A person who is entitled to possession of a specific immovable property may recover it in the manner provided in Code of Civil Procedure. (Section 5)
2. If any person is disposed without his consent, of immovable property otherwise than by course of law, he can recover possession, even if any other title is set up in such suit. Such suit shall be brought within 6 months. No suit can be filed against Government for recovery of possession [Section 6]. Even an unlawful possession of immovable property can be taken away only by lawful means and not forcefully.

Specific performance of contract

Specific performance of contract can be ordered, at the discretion of Court, in the following cases

(a) Where there exists no standard for ascertaining damage caused by the non-performance of act agreed to be done or

(b) When the act agreed to be done is such that compensation in money for non-performance will not give sufficient relief [Section 10]. As per explanation (ii) to section 10, breach of contract in respect of movable property can be relieved (by paying damages) unless the property is not an ordinary article of commerce or is of specific value or interest to the tariff, or consists of goods which are not easily available in the market. In other words, Court may order to deliver specific article only if it is special or unique article, not available in the market. In other cases, Court will order damages but not order specific performance of contract. In case of immovable property, normally, specific performance will be ordered, as such property is usually unique. Section 12(1) states that Court shall not order performance of part of contract, except in cases specified in that section.

Contracts which cannot be specifically enforced

Following contracts cannot specifically enforced:

1. Where compensation is adequate relief.
2. Contract runs into such minute or numerous details or depends on personal qualifications of parties or is such that Court cannot enforce specific performance of its material terms.
3. Contract which in its nature is determinable.
4. Contract, performance of which involves a continuous duty, which Court cannot supervise [Section 14]. In other words, in case of movable articles or contract of intricate nature, specific performance will normally not be ordered by Court. Specific performance of contract of personal nature cannot be ordered.

Discretionary powers of Court

Jurisdiction of Court to decree specific performance is discretionary. Court will not order specific performance merely because it is lawful to do so [Section 20(1)]. Court will consider various aspects before issuing decree for specific performance. Court can grant compensation in lieu of even in addition to specific performance [Section 21].

Other cases when Court can order specific performance

1. Order rectification of instrument if it does not reflect real intention of parties. This may happen through fraud or mutual mistake [Section 26]
2. Order rescission of contract (Section 27)
3. Cancellation of instrument by getting declared that it is void (Section 31)

V. Urban Land (Ceiling and Regulation) Act (ULCRA), 1976

This legislation fixed a ceiling on the vacant urban land that a 'person' in urban agglomerations can acquire and hold. A person is defined to include an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. This ceiling limit ranges from 500–2000 sq. m. Excess vacant land is either to be surrendered to the competent authority appointed under the Act for a small compensation, or to be developed by its holder only for specific purposes. The Act provides for appropriate documents to show that the provisions of this Act are not attracted or should be produced to the Registering officer for registration under the Registration Act.

The objective of acquiring the excess vacant land could not be achieved because of intrinsic deficiencies in the legislation itself. The provisions under Sections 19, 20 and 21 of the Act have together proved counter-productive to the objectives of the legislation. So far, only 19020 hectares could be taken possession of by State Governments and Union Territories and the remaining land was locked up in various litigations. This has only helped to push up land prices to unconscionable levels and practically brought the housing industry to a stand-still.

This legislation was repealed by the center in 1999. The Repeal Act, however, shall not affect the vesting of the vacant land, which has already been taken possession by the State Government or any person duly authorized by the State Government in this regard under the provisions of ULCRA. The repeal of the Act, it is believed, has eliminated that large amount of litigation and released huge chunks of land into the market.

VI. The Land Acquisition Act, 1894

This Act authorizes governments to acquire land for public purposes such as planned development, provisions for town or

rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government, in its present form. The Act hinders speedy acquisition of land at low prices, resulting in cost overruns.

Steps for Land Acquisition

Based on the Land Acquisition Act 1894, the steps currently involved in land acquisition are as under

1. A notification is published in official gazette and in two daily newspapers whenever it appears to the appropriate Government the land in any locality is needed for any public purpose. Thereupon it shall be lawful for any officer authorized by such Government to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose, to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon, to mark such levels, boundaries and line by placing marks and cutting trenches;
2. The officer so authorized shall at the time of such entry pay for all necessary damages.
3. Declaration shall be made that land is required for public purposed under the signature of a Secretary to such Government. Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated.
4. After declaration, Collector to take order for acquisition.
5. The Collector shall thereupon cause the land to be market out.
6. The Collector shall then cause public notice at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and

that claims to compensations for all interests in such land may be made to him.

7. The collector will make inquiry into measurements, value, claims and awards.
8. The Collector shall make an award within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse.
9. Award of Collector when to be final.
8. After making an award for possession of the land, land shall vest absolutely in the Government, free from all encumbrances.

VII. The Indian Evidence Act, 1872

Evidence means and includes:

1. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence.
2. All documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

Section 110 deals with the burden of proof regarding title to property when the competition is between a person in possession and the owner who is out of possession. The rule laid down in Section 110 is that the burden of proof that the person in possession is not the owner is on the person who alleges that he is not the Owner.

Ownership chiefly imports the right to exclusive possession and enjoyment of a thing. The owner in possession has the right to exclude all others from possession and enjoyment of it and if he is wrongfully deprived of what he owns, he has the right to recover possession of it. Ownership also imports the power to dispose of property, to sell, mortgage or donate. Right to possession and Right to dispose of are therefore incidents of

Ownership. Where there is ownership there goes with it the right to possession and the right to dispose. The law therefore holds that a person would not be in possession of property unless he was the owner and places the burden on his opponent.

The principle of the Section does not apply in the following cases:

(i) Where the possession is merely judicial as distinguished from actual present possession.

(ii) Where possession is obtained by fraud or force.

VIII. The Indian Stamp Duty Act, 1899

Stamp means any mark, seal or endorsement by any agency or person duly authorized by the state government and includes an adhesive or impressed stamp for the purpose of duty chargeable under the act.

Duly stamped as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in India.

Stamp duty is to be paid on every instrument executed in India, which is mentioned in Schedule 1 of India Stamp Act, 1899. Schedule 1 covers 65 instruments. Some of the instruments relating to real estate on which stamp duty is payable are Affidavit, Agreement to lease, certificate of sale, conveyance in the nature of part performance and Mortgage deed. No stamp duty is payable in respect of any instrument executed by or on behalf or in favour of developer or Unit or in connection with the carrying out of purposes of Special Economic zone (SEZ).

There is a direct link between Registration Act and Stamp Act. The Payments of Stamp duty followed by the registration of the agreement are two important acts when one enters into an

agreement with a developer/seller. Both, the developer/seller and the purchaser need to be present at the Sub-Registrars office for registering the agreement.

a) Power of Parliament

Parliament can make law in respect of Stamp Duty. It can prescribe rates of stamp duty. The stamp duty rates prescribed by Parliament in respect of bill of exchange, cheques, transfer of shares etc. will prevail all over India. However, other stamp duty rates prescribed by Parliament in Indian Stamp Act, 1899 (e.g. stamp duty on agreements, affidavit, articles of association of a company, partnership deed, lease deed, mortgage, power of attorney, security bond etc.) are valid only for Union territories. In case of States, the rates prescribed by individual States will prevail in those States.

b) Power of the State

The Stamp duty is a State subject and hence would vary from state to state. The stamp duty in many states is paid as per the true market value as assessed by the Stamp Office. When an agreement is to be stamped, it needs to be unsigned and undated and after the Stamp Office affixes stamps on the agreement, one may execute the agreement. The Stamp Duty payable in various states could be ascertained from the Stamp Duty Calculator

c) Instruments chargeable to stamp duty

Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded [Section 2(17) of Indian Stamp Act]. Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule [Section 3]. The list includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc. Thus, if an instrument is not

listed in the schedule, no stamp duty is payable. 'Instrument' does not include ordinary letters. Similarly, an unsigned draft of an agreement is not an 'instrument'.

d) Duty payable when there are several instruments

In case of sale, mortgage or settlement, if there are several instruments for one transaction, stamp duty is payable only on one instrument. On other instruments, nominal stamp duty of Re. 1 is payable [Section 4(1)]. If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments [Section 5]. However, it may happen that one instrument covering only one matter can come under more than one descriptions given in Schedule to Stamp Act. In such case, highest rate specified among the different heads will prevail [Section 6].

e) Powers to reduce stamp duty

Government can reduce or remit whole or part of duties payable. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons. Government can also compound or consolidate duties in case of issue of shares or debentures by companies [Section 9(1)]. 'Government' means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and 'State Government' in case of stamp duties on other documents [Section 9(2)].

f) Mode of payment of stamp duty

The payment of stamp duty can be made by adhesive stamps or impressed stamps. Instrument executed in India must be stamped before or at the time of execution (Section 17). Instrument executed out of India can be stamped within three months after it is first received in India [Section 18(1)]. However, in case of bill of exchange or promissory note made out of India, it

should be stamped by first holder in India before he presents for payment or endorses or negotiates in India [Section 19].

g) Valuation for stamp duty

In some cases, stamp duty is payable on ad valorem basis i.e. on basis of value of property etc. In such cases, value is decided on prescribed basis.

h) Adjudication as to stamp duty payable

Adjudication means determining the duty payable. Normally, the person paying the duty himself may decide the stamp duty payable and pay accordingly. However, in cases of complex documents, the person paying the duty may not be sure of the stamp duty payable. In such case, he can apply for opinion of Collector. He has to apply with draft document and prescribed fees. Collector will determine the stamp duty payable as per his judgment [Section 31(1)].

i) Meaning of the term 'duly stamped'

'Duly stamped' means that the instrument bears an adhesive or impressed stamp not less than proper amount and that such stamp has been affixed or used in accordance with law in force in India [Section 2(11)]. In case of adhesive stamps, the stamps have to be effectively cancelled so that they cannot be used again. Similarly, impressed stamps have to be written in such a way that it cannot be used for other instrument and stamp appears on face of instrument. If stamp is not so used, the instrument is treated as 'un-stamped'. Similarly, when stamp duty paid is not adequate, the document is treated as 'not duly stamped'.

Instrument cannot be accepted as evidence if not duly stamped An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an arbitrator or any other authority authorised to receive evidence. However, the document can be accepted as evidence in criminal court.

j) Case when short payment is by mistake

If non-payment or short payment of stamp duty is by accident, mistake or urgent necessity, the person can himself produce the document to Collector within one year. In such case, Collector may receive the amount and endorse the document that proper duty has been paid [Section 41].

Stamp duty needs to be paid on all documents which are registered and the rate varies from state to state. With stamp duty rates hovering around 8–10% in various states, India has perhaps one of the highest levels of stamp duty. Some states even have double stamp incidence, first on land and then on its development. In contrast the maximum rate levied in most developed markets whether in Singapore or Europe is in the range of 1–2 per cent. Even the National Housing and Habitat Policy, 1998, recommended a stamp duty rate of 2–3 per cent. Most of the methods to avoid registration are basically to avoid payment of high stamp duty.

Another fallout of high stamp duty rates is the understatement of the proceeds of a sale. This is also linked to payment of income tax and capital gains tax. When registration has not been effected, a transfer is not deemed to have taken place and hence capital gains tax can be totally avoided. Thus, the present provisions in various laws and their poor implementation have led to a situation where there is considerable financial loss to the exchequer on account of understatement of sale proceeds, non-registration and consequent non-payment of stamp duty and avoidance of capital gains tax.

IX. Rent Control Act

Rent legislation in India has been in existence for a very long time. Rent control by the government initially came as a temporary measure to protect the exploitation of tenants by landlords after the Second World War. However these rent

control acts became almost a permanent feature. In order to impose control over rent and unreasonable eviction of tenants, rent control orders were issued in 1941. The order was renewed periodically and ultimately Act XVII of 1960 came into force.

Rent Control Act is a State subject and the State Government has the exclusive jurisdiction to legislate on the subject.

Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. Besides, it effectively allows the tenant to alienate rented property. Tenants occupying properties since 1947 continue to pay rents fixed then, regardless of inflation and the realty boom. Some of the adverse impacts of the Rent Control Act are:

Negative effect on investment in housing for rental purposes

1. Withdrawal of existing housing stock from the rental market.
2. Accelerated deterioration of the physical condition of the housing stock.
3. Stagnation of municipal property tax revenue, as it is based on rent.
4. Resultant deterioration in the provision of civic services.
5. Increase in litigation between landlords and tenants.

The Rent Control Act, in fact, is the single most important reason for the proliferation of slums in India by creating a serious shortage of affordable housing for the low income families. Low and middle-income families typically live in rented accommodation all over the world and the need for such accommodation in our clients will only increase as the economy modernizes, labour mobility increases and urbanization takes place. It is, therefore, necessary to increase the stock of rental housing. Promotion of rental housing can have a significant impact on the economy in many ways:

1. It reduces shortage of housing for a large Section of the population who cannot afford ownership

2. Housing construction being a labour-intensive activity, investment in housing generates employment for both skilled and unskilled labour.
3. Housing has backward and forward links with many other industries.
4. Rental housing helps in stabilizing real estate prices and checking speculation, thus making housing affordable for the weaker sections.
5. It helps check proliferation of slums.

In the absence of rent control, dilapidated urban housing would be periodically pulled down and replaced by modern apartment buildings and other complexes leading to more rational use of prime locations and also creating a continuous process of urban renewal. This has not happened in India because rent control combined with security of tenure provides no incentive for house owners to undertake renovation work. This explains the run down appearance of many of our buildings in prime locations, which gives India cities a much more shabby appearance than their counter parts in other developing countries. Repeal of the Rent Control Act could unleash a construction boom as has happened in many major cities all over the world. This is not only necessary to meet the growing demand for housing but it would also have a highly favorable effect on employment generation.

In 1992, the Central Government proposed a model rent control legislation, which was circulated in all states. The model Act proposed modification of some of the existing provisions regarding inheritance of tenancy and also defined a rent level beyond which rent control could not apply. The Delhi Rent Control Act based on this model law was passed in 1997. Punjab, Gujarat, West Bengal, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan are few of those states that have adopted this model rent control legislation.

The Economic Administration Reforms Commission and the National Commission on Urbanisation recommended reform of the Rent Legislation in a way that balances the interests of both

landlord and the tenant and also stimulates future construction. The Government of India then formulated a model rent control law and recommended to the State Governments to undertake amendments to existing rent control laws or enact new laws on the basis of the model law. Thus the State Governments to decided to amend their rent control laws to provide for regulation of rent and eviction in the spirit of modern economy in a manner more suited to their States, by adopting some provisions of the model rent control law and some of the existing law of Rent Control in their own state.

In this context, I am going to discuss some of the provisions of Karnataka Rent Control Act, 1999:

Following are some of the features of the said legislation.

1. Its application is now restricted to premises,
   (i) To any residential building the standard rent of which exceeds rupees 3,500 per month in the areas covered by Karnataka Municipal Corporation Act, 1976 and rupees 2,000 per month in other areas and a commercial building having plinth area of not exceeding 14 square meter.
   (ii) Which are more than 15 years old.
2. The Rent Deed is required to be in writing and registered.
3. Tenancy is made inheritable to a limited extent.
4. Provision is made,
   (a) for collection of standard rent in relation to the investment on property and for enhancement of rent, and for determination of Standard Rent by Rent Controllers;
   (b) for registration of middlemen and estate agents;
   (c) for adjudication of eviction application by Rent Courts, with only Right of Revision, but no appeal;
   (d) for immediate eviction of tenants of State or Central Government Employees, members of Armed Forces,

widows, handicapped persons and persons above the age of 65 years under certain circumstances;

(e) to lay down Special Procedure for trial of cases before the controllers and also the Courts so as to achieve quick disposals and negotiated settlement.

(f) to impose certain Special obligations on the landlords and tenants, etc.

How is standard rent calculated?

Standard rent is calculated on the basis of 10 per cent per annum of the aggregate amount of the cost of construction and the market price of the land on the date of commencement of construction.

The standard rent shall be enhanced according to the provisions of the Third Schedule.

(a) Cost of construction shall include cost of electrical fittings, water pumps, overhead tanks, storage tank and other fixtures;

(b) In case any fixture referred to in clause (a) is used by more than one occupant in a building, the cost included in the cost of construction of the premises shall be in proportion to the plinth area of the premises;

(c) The cost of construction shall be the actual amount spent on construction, and where such amount cannot be ascertained the cost shall be determined according to the scheduled rates of the State Public Works Department.

(d) The market price of the land shall be the price at which the land was bought as determined from the registered deed of sale, if construction commenced in the year of registration.

(e) The land component in the premises shall be the plinth area of the building and the vacant land totalling 50 per cent of the plinth area as apportioned.

(f) Where a building has more than one premises, the market value of the land for one premises depends on the proportion of the plinth area of the premises to the plinth area of the building.

(g) Notwithstanding anything contained in clauses (c) and (d) the cost of construction and the market price of the land comprised in the premises purchased from or allotted by the Government or a local authority shall be the aggregate amount payable to such Government or the local authority, provided the controller may, in order to arrive at the cost of construction and the market price of the land, allow in addition, subject to a maximum of 30 per cent of the amount payable to the Government or local authority, any expenditure incurred for improvement, additions or structural alteration in the premises.

Other charges

(A) A tenant shall be liable to pay to the landlord, besides the rent, the following charges not exceeding 15 per cent of the rent for the amenities (air-conditioner, electrical heater, water cooler, geyser, refrigerator, cooking range, furniture, playground meant for exclusive use by the tenant, sun breakers and usufructs.

(B) Maintenance charges 10 per cent of the rent.

(C) Without prejudice to the landlord's liability to pay the property tax to the local authority, the pro rata property tax in relation to the premises.

In order to calculate the monthly charges payable by the tenant to the landlord towards the property tax, the amount paid

or payable as property tax for the immediate preceding year or the estimated tax payable shall form the basis.

The landlord shall be entitled to receive from the tenant charges for electricity or water consumed or other charges levied by a local or other authority, which is payable by the tenant.

Third schedule

The rent enhancement under clause (a) of sub-section (1) of section 6 or sub-section (1) of section 7 shall be calculated, compounding on a yearly basis, with reference to the date of agreement in the case of rental agreement and the date of commencement of construction in the case of standard rent.

Provided that the enhancement, calculated till the commencement of this Act, shall be on the basis of the size of the premises to specified percentages. Provided further that the enhancement in the case of a tenancy entered into before commencement of this Act shall be effected gradually in five equal yearly instalments.

Explanation

The base calculation of rent enhancement after the commencement of this Act shall be the rent payable in the year as if the total enhancement of rent due at the commencement of this Act came into effect immediately rather than gradually over a five-year period, and such annual enhancement of rent shall be payable in addition to the graduated enhancement.

Provided also that when the landlord is a widow, a disabled person or a person aged 65 or more, the rent enhancement shall not be spread over five years but come into force with immediate effect.

Obligations of a middlemen or estate agent (Section 20)

1. Every middleman or estate agent shall register with the Controller of the area.

2. A middleman or estate agent shall be entitled to commission at prescribed rates.
3. Every middleman or estate agent shall, within ten days from the last day of each quarter of every calendar year, file returns in the prescribed form to the Controller, giving details of transactions during the quarter and the brokerage or commission received.
4. No middleman or estate agent shall be liable to pay to his principal any rental charges exceeding the amount he is entitled to receive under this Act from the tenant.

Restriction on sub-letting

Where, at any time before the date of application of Part V of the Karnataka Rent Control Act, 1961 (Karnataka Act 32 of 1961), a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then, notwithstanding the fact that the consent of the landlord was not obtained, the premises shall be deemed to have been lawfully sub-let.

After the commencement of the Act no tenant shall without the written consent of the landlord sub-let the whole or part of the premises or transfer or assign his rights in the tenancy or in any part thereof.

Revision of rent in certain cases (Section 9)

1. Where a landlord has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of the tenant incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the

premises, the landlord may lawfully increase the rent per year by an amount not exceeding ten percent of such cost.

2. Where, after the rent of a premises has been fixed under this Act, or agreed upon, as the case may be, there has been a decrease, diminution or deterioration of accommodation in such premises, the tenant may claim a reduction in the rent.

Notice of revision of rent (Section 10)

1. Where a landlord wishes to revise the rent of any premises under sub-section (1) of section 9, he shall give the tenant a notice of his intention to make the revision and, in so far as such revision is lawful under this Act, it shall be due and recoverable from the date of improvement, addition or structural alteration.
2. Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1882 (Central Act 4 of 1882).

Unlawful charges not to be claimed (Section 11)

1. It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be of any premises.
2. Nothing in this section shall apply,
   (a) to any payment made in pursuance of an agreement entered into before the commencement of this Act;
   (b) to any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to, or taken on lease by, the

landlord if one of the conditions of the agreement is that the landlord should let to that person the whole or part of the premises when completed for the use of that person or any member of his family but not exceeding the amount of agreed rent for a period of five years, for the whole or part of the premises to be let to such person.

Explanation

For the purpose of clause (b) of this sub-section, a member of the family of a person means, in the case of an un-divided Hindu family, any member of the joint family of that person and in the case of any other family, the husband, wife, son, daughter, father, mother, brother, sister or any other relative dependent on that person.

X. State Laws Governing Real Estate

While each state has its own set of laws, which govern planned development, rules for construction and Floor Area Ratio (FAR) or Floor Space Index (FSI) and formation of societies and condominiums, two laws that exist in every state, are the stamp duty and rent laws.

The local real estate transactions are governed by the rules framed by local municipal bodies. For example, Karnataka has Bangalore Development Authority governed by Bangalore Development Authority Act, 1976. Similarly, Delhi has Delhi Development Act, 1957. The functions of these authorities/local governing bodies can be divided into categories:

1. Planning Functions
2. Development Functions

The planning functions in brief involve the following:

1. Preparation of development plan for the concerned city or area within its jurisdiction
2. Preparation of Scheme Plans.

3. Approval of Development Plans for Group Housing and Layouts.
4. Approval of building plans.

The Development functions in brief involve the following:

1. Planning and implementation of schemes to provide for Residential sites, Commercial sites, Industrial sites, Civic Amenity sites, Parks and playgrounds.
2. Construction of Commercial complexes.
3. Construction of houses for Economically Weaker Sections, Low Income Group, Middle Income Group, High Income Group.
4. Development of major infrastructure facilities.

XI. The Consumer Protection Act, 1986

The Consumer Protection Act enables a person to file a complaint against the builder for deficiency in service and claim damages from him.

For the purpose of the Consumer Protection Act, the term "Consumer" has been defined separately for "goods" and "services".

1. **For the purpose of "goods",** a consumer means a person belonging to the following categories:

   (i) One who buys or agrees to buy any goods for a consideration that has been paid or promised or partly paid and partly promised or under any system of deferred payment.

   (ii) It includes any user of such goods other than the person who actually buys goods and such use is made with the approval of the purchaser.

Note: A person is not a consumer if he purchases goods for commercial or resale purposes However, the word "commercial" does not include use by consumer of goods bought and used by

him exclusively for the purpose of earning his livelihood, by means of self employment.

2. **For the purpose of "services",** a "consumer" means a person belonging to the following categories:

One who hires or avails of any service or services for a consideration that has been paid or promised or partly paid and partly promised or under any system of deferred payment;

It includes any beneficiary of such service other than the one who actually hires or avails of the service for consideration, and such services are availed with the approval of such person.

The construction work has been brought under the term service w.e.f. 18 June 1993. Hence, any deficiency in service on the part of the builder also will make him liable under this Act.

The objective Consumer Protection Act was to protect interest of consumers regarding quality, potency, purity, standard and price of goods. It provides a right to seek redress against unfair trade practices and unscrupulous exploitation of consumers.

Relief available to the consumers

Depending on the nature of relief sought by the consumer and facts, the Forums may give orders for one or more of the following relief:

(a) Removal of defects from the goods
(b) Replacement of the goods
(c) Refund of the price paid
(d) Award compensation for the loss or injury suffered
(e) Removal of defects or deficiencies in the services
(f) Discontinuance of unfair trade practices or restrictive trade practices or direction not to repeat them;
(g) Withdrawal of the hazardous goods from being offered to sale or
(h) Award for adequate costs to parties

Under the Consumer Protection Act, a three-tier redressal forum has been set up at the national, state and district levels.

1. National Consumer Disputes Redressal Forum known as National Commission **established by the Central Government**
2. State Consumer Disputes Redressal Forum known as State Commission **established by the state government in the state**
3. Consumer Disputes Redressal Forum known as District Forum **established by the state government in each district.**

Procedure under Consumer Protection Act Section 12(1) provides that a complaint in relation to any goods sold or delivered or to be sold or delivered or any service provided or agreed to be provided may be filed with consumer forum.

The Act envisages setting up of 'Consumer Disputes Redressal Agency' at local, i.e., district level, state level and national (Central) level. District Forum has jurisdiction to decide consumer disputes where value of goods or services and the compensation claimed does not exceed Rs 20 lakh. State Commission has jurisdiction to decide the cases where value of goods and services plus compensation is over Rs 20 lakh but not over Rs 100 lakh. In addition, it decides appeals filed against order of District Forum. National Commission (HQ at New Delhi) has original jurisdiction where matter is over Rs 100 lakh. It also has appellate jurisdiction over State Commission. Appeal against order of State Commission can be filed only in case of original order by State Commission i.e. when matter was over Rs 20 lakh. No appeal can be filed to National Commission in case where State Commission has passed order in appeal against original

order of District Forum.

Appeal against order of National Commission lies with Supreme Court only in matters where it exercises original

jurisdiction, i.e., when matter is over Rs 100 lakh. There is no provision of appeal in cases where National Commission decides under its appellate jurisdiction, i.e., when it decides appeal against order of State Commission.

Thus, in all cases, only one appeal has been provided [However, revision petition to National Commission, which is second appeal by back door, can be filed].

XII. The Arbitration and Conciliation Act, 1996

The Arbitration Act, 1996 that repealed the Arbitration Act, 1940 governs arbitration over commercial disputes. The underlying idea is that disputes may be settled between persons without recourse to a court of law.

Commercial contract usually contains an arbitration clause. The Act defines "Arbitration Agreement" as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Though arbitration must be in writing, it need not be signed by the parties nor need it be embodied in a formal document. It may be evidenced by a clause in a contract, or in correspondence.

Where there is an arbitration agreement between the parties and if one of them takes recourse to a court of law without a reference to arbitration, the Act empowers the court to stay the proceedings to oblige the party to abide by the arbitration agreement.

A person who has a contractual capacity may refer a dispute to arbitration. Disputes of a civil or quasi-civil nature may be referred. So far as sale or purchase contracts are concerned, all of them can be referred to arbitration.

The Arbitration Act contemplates two different types of arbitration:

1. By an arbitration agreement without the intervention of the Court, the proceeding take place outside the court but the court may be approached for filing the award and for

a decree in terms of the award. Most of the provisions of the Act pertain to this form of arbitration.

2. Arbitration through Court where a suit is pending.

Arbitration Act has over-riding effect

Section 5 of Act clarifies that notwithstanding anything contained in any other law for the time being in force, in matters governed by the Act, the judicial authority can intervene only as provided in this Act and not under any other Act.

Unless a contrary intention is expressed, an arbitration agreement is deemed to include the following terms:

i. That the reference shall be to a sole arbitrator.

ii. If the reference is to be made to an even number of arbitrators, they must appoint an umpire not later than one month form their appointment.

iii. The arbitrators must make their award within four months of their entering on the reference or after having been called upon to act by a written notice from either party. The Court may, however, extend the time.

iv. If the arbitrators do not make an Award within the time stated above or if they notify that they cannot agree, the umpire must forthwith enter on the reference.

v. The umpire must make his award within two months or such extended time as the Court may allow.

vi. The parties to the reference and those claiming under them must submit themselves for examination on oath by the arbitrators or the umpire and must also produce all documents, papers and other evidence which may be required.

vii. Subject to the provisions of the Act, the Award will be binding on the parties.

viii. The cost of the reference shall be at the discretion of the arbitrators or umpire.

Appointment of an Arbitrator

i. The parties can agree on a procedure for appointing the arbitrator or arbitrators. If they are unable to agree, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator who will act as a presiding arbitrator [Section 11(3)]. If one of the parties does not appoint an arbitrator within 30 days, or if two appointed arbitrators do not appoint third arbitrator within 30 days, the party can request Chief Justice to appoint an arbitrator [Section 11(4)].

ii. The Chief Justice can authorise any person or institution to appoint an arbitrator. [Some High Courts have authorised District Judge to appoint an arbitrator]. In case of international commercial dispute, the application for appointment of arbitrator has to be made to Chief Justice of India. In case of other domestic disputes, application has to be made to Chief Justice of High Court within whose jurisdiction the parties are situated [Section 11(12)].

When can the appointment of an Arbitrator be challenged?

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment [Section 12(1)]. Appointment of Arbitrator can be challenged only if

(a) Circumstances exist that give rise to justifiable doubts as to his independence or impartiality

(b) He does not possess the qualifications agreed to by the parties [Section 12(3)]. Appointment of arbitrator cannot be challenged on any other ground. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the proceedings can continue and the arbitrator can make the arbitral award.

However, in such case, application for setting aside arbitral award can be made to Court. If the court agrees to the challenge, the arbitral award can be set aside [Section 13(6)]. Thus, even if the arbitrator does not accept the challenge to his appointment, the other party cannot stall further arbitration proceedings by rushing to court. The arbitration can continue and challenge can be made in Court only after arbitral award is made.

Power and duties of arbitrator

Unless a contrary intention appears in the arbitration agreement, the arbitrator (or umpire) shall have the power

i. to administer oath to parties and witnesses
ii. to state a special case to the Court for opinion on a question of law
iii. to make his award conditional
iv. to correct any clerical error in the Award
v. to administer interrogatories to the parties
vi. to decide on the cost of the reference and
vii. to make an interim award pending the final award.

Duties

i. He must enter on the reference.
ii. He must act judicially by appointing a proper time and place for hearing parties.
iii. He should not hear one party in the absence of the other.
iv. He must not receive information from one side which is not disclosed to the other side
v. He should be fair to both the parties and should not refuse to hear either party or shut out the evidence of either party
vi. He should be impartial and must not act as an agent or advocate of either party

vii. He must decide all matters referred to him for decision
viii. He should not exceed his authority
ix. He must discharge his duties personally and not delegate his task to any one else and
x. He should make and sign his award within the prescribed time.

Conduct of Arbitral Proceedings

The Arbitral Tribunal should treat the parties equally and each party should be given full opportunity to present his case [Section 18]. The Arbitral Tribunal is not bound by Code of Civil Procedure, 1908 or Indian Evidence Act, 1872 [Section 19(1)]. The parties to arbitration are free to agree on the procedure to be followed by the Arbitral Tribunal. If the parties do not agree to the procedure, the procedure will be as determined by the arbitral tribunal.

Law of limitation applicable

Limitation Act, 1963 is applicable. For this purpose, date on which the aggrieved party requests other party to refer the matter to arbitration shall be considered. If on that date, the claim is barred under Limitation Act, the arbitration cannot continue [Section 43(2)]. If Arbitration award is set aside by Court, time spent in arbitration will be excluded for purpose of Limitation Act [so that case in court or fresh arbitration can start].

Flexibility in respect of procedure, place and language

Arbitral Tribunal has full powers to decide the procedure to be followed, unless parties agree on the procedure to be followed [Section 19(3)]. The Tribunal also has powers to determine the admissibility, relevance, materiality and weight of any evidence [Section 19(4)]. Place of arbitration will be decided by mutual agreement. However, if the parties do not agree to the place, the

same will be decided by tribunal [Section 20]. Similarly, language to be used in arbitral proceedings can be mutually agreed. Otherwise, Arbitral Tribunal can decide [Section 22].

Submission of statement of claim and defence

The claimant should submit statement of claims, points of issue and relief or remedy sought. The respondent shall state his defence in respect of these particulars. All relevant documents must be submitted. Such claim or defence can be amended or supplemented any time [Section 23].

Hearings and written proceedings

After submission of documents and defence, unless the parties agree otherwise, the Arbitral Tribunal can decide whether there will be oral hearing or proceedings can be conducted on the basis of documents and other materials. However, if one of the parties requests, the hearing shall be oral. Sufficient advance notice of hearing should be given to both the parties [Section 24]. [Thus, unless one party requests, oral hearing is not compulsory].

Settlement during arbitration

It is permissible for parties to arrive at mutual settlement even when arbitration is proceeding. In fact, even the Tribunal can make efforts to encourage mutual settlement. If parties settle the dispute by mutual agreement, the arbitration shall be terminated. However, if both parties and the Arbitral Tribunal agree, the settlement can be recorded in the form of an arbitral award on agreed terms. Such Arbitral Award shall have the same force as any other Arbitral Award [Section 30].

Arbitral award

Decision of Arbitral Tribunal is termed as 'Arbitral Award'. Arbitrator can decide the dispute ex aequo et bono (In justice and in good faith) if both the parties expressly authorise him to do so

[Section 28(2)]. The decision of Arbitral Tribunal will be by majority. The arbitral award shall be in writing and signed by the members of the tribunal [Section 29]. The award must be in writing and signed by the members of Arbitral Tribunal [Section 31(1)]. It must state the reasons for the award unless the parties have agreed that no reason for the award is to be given [Section 31(3)]. The award should be dated and place where it is made should be mentioned. Copy of award should be given to each party. Tribunal can make interim award also [Section 31(6)]. The Award or the final judgment of the arbitrator (or umpire) should be in writing on all matters referred to him. After the arbitrator has made and signed his Award, he must give notice to the parties and state the fees and charges payable.

Where an arbitrator has stated a special case, the Court will hear the parties and give its opinion, which shall be incorporated in the Award. After the costs and charges have been paid, the arbitrator shall file the Award in the Court on the request of any party. Unless the Court finds any ground to remit, modify or set aside an Award, it passes a judgment in terms of the Award and a decree shall follow. The Court may make an interim order, if one party is about to defeat any decree likely to be passed.

Courts have the power to review an Award by an arbitrator and modify, remit or set aside the Award.

XIII. Income Tax Act, 1961

In India, the Constitution of India is the parent law. All other laws should be enacted without exceeding the frame-work of the Constitution and subject to the norms laid down therein. The Constitution of India empowers the Central Government to levy tax on income. By virtue of this power and to achieve this objective, the Income Tax Act, 1961 was enacted in the place of the Income Tax Act, 1922 which was prevalent earlier. From an investor's point of view, this Act is relevant with respect to the following sections:

Section 22 to 25 relating to "Income from House Property". In addition Sections relating to Capital Gains Tax i.e., Sections 45 to 55 discussed in the "General Section of the book.

These sections are discussed at length in the Investor's Section.

The few important sections of Income Tax Act, 1961 that are applicable to builders, developers, architects, interior decorators or civil contractors are:

1. Section 44AA
2. Section 4AB
3. Section 44AD
4. Section 80IA
5. Section 80IB
6. Section 80IAB

These sections are discussed at length in Builder/Developer Section (refer Chapter 3.1).

XIV. The Wealth Tax Act, 1957

There are two direct taxes in India—income tax and wealth tax. Wealth tax Act is complex and real estate is subject to wealth tax. Valuation of real estate, the exemptions and deductions allowed, and so on make for an interesting study.

Wealth Tax is a tax on the value of wealth owned by a person, levied under the Wealth Tax Act. The tax is levied @ 1 per cent on the amount of wealth as on 31st March of every year, where such amount exceeds Rs 15,00,000. This is similar to the basic exemption limit of Rs 1,00,000 provided under the Income Tax Act.

Who pays wealth tax?

Wealth tax is levied on the net wealth of the person. Only the following three categories are included:

- Individuals

- Hindu undivided families
- Companies.

Other forms such as partnership firms, association of persons, local authorities, public charitable or religious trusts (except those mentioned under Section 21A) are not subject to wealth tax.

Exemption

The following categories of persons are exempted from wealth tax. They need not file returns under the wealth tax Act.

1. Any company registered under the Companies Act, 1956
2. Co-operative society
3. Social club
4. Political party
5. Mutual fund specified under Section 10 (23D) of the Income Tax Act.

What is the basis of charge?

March 31 every year is taken as the basis for wealth tax. Every person has to pay wealth tax on the net wealth held by him on this `valuation date'. On what is wealth tax payable? Net wealth of Rs 15 lakh is exempted from wealth tax and the person has to pay one per cent tax on net wealth exceeding that limit. Net wealth is arrived at by deducting the sum of debts owed by the person from the assets owned by him.

Meaning of net wealth

Wealth tax is charged on the net wealth of a person which means the difference between the taxable assets and the debts or liabilities owed by the person which are incurred in relation to these assets only. It is so provided because under the Wealth Tax Act only certain assets are taxable. These are as mentioned below.

Assets attracting Wealth Tax

1. Urban land

Land situated in urban area or cities only. Urban area has been explained as one falling within the jurisdiction of a municipality (a civic body) or a cantonment board and having population of at least ten thousand as per the latest census. It also includes notified areas falling within 8 km from such municipal limits. However, if construction on such urban land is not permissible due to existing laws of the State or the Civic Body or it is to be used for industrial activity only, then such land is exempt from Wealth Tax.

2. Building and land appurtenant thereto

Buildings and the land appurtenant (adjoining) thereto whether used for residence or commercial purposes, including guest houses. Even farmhouses located within 25 km of municipal limits are liable to wealth tax. However, the houses occupied for residence by employees including whole time executive directors whose annual salaries are less than two lakh rupees are exempt.

Similarly houses used for one's own business or owned by builders or dealers in houses, treated as stock-in-trade of such business, are exempt.

Any residential property that has been let out for a minimum period of three hundred days in the previous year. Any property in the nature of commercial establishment or complexes.

3. Yachts, boats, aircrafts, motor cars, etc.

Yachts, boats or even aircrafts meant for personal use. It means if any one of these are exploited commercially then they are exempt. However in case of motor cars, only those which are used in the business of hiring them out or those owned by car manufacturers or dealers and held by them as stock-in-trade of business are exempt.

4. Jewellery

Jewellery, i.e, ornaments made in any precious metals or precious or semi precious stones. However for a dealer in jewellery it becomes its stock in trade and is therefore not taxable.

5. Cash-in-hand

Cash in hand in excess of fifty thousand rupees in the case of Individual and HUFs. In the case of other assessees any unrecorded or unaccounted cash is chargeable to Wealth Tax without any exemption. This means, recorded cash is totally exempt, in case of persons other than Individuals and HUFs without any limit but in the case of Individuals and HUFs such cash in hand is exempt only to the extent of Rs 50,000.

Which are the assets chargeable to tax?

Both the nationality as well as the residential status must be considered to determine the chargeability to tax. Assets and debts are classified by their location—whether they are in India or outside.

Indian nationals

a) For those resident in India according to the Income Tax Act, chargeable to tax on assets, whether in India or outside, less debts located in India or outside.

b) For non-residents or resident but not ordinarily resident in India, chargeable to tax on all assets in India less debts in India.

Foreign nationals

Irrespective of residential status, they are chargeable to tax only on assets located in India, less debts located in India.

Hindu undivided families

The provisions applicable to an Indian national shall apply.

XV. The Co-operative Societies Act, 1912

Cooperative Societies Act is a Central Act. However, 'Cooperative Societies' is a State Subject (Entry 32 of List II of Seventh Schedule to Constitution, i.e. State List). Though the Act is still in force, it has been specifically repealed in almost all the States and those States have their own Cooperative Societies Act. Thus, practically, the Central Act is mainly of academic interest. As per preamble to the Act, the Act is to facilitate formation of cooperative societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means.

The statement of objects and reasons states as follows

(a) Cooperative Society can be established for purpose of credit, production or distribution.

(b) Agricultural credit societies must be with unlimited liability.

(c) Unlimited society is not best form of cooperation for agricultural commodities. However, the provision is continued as in several provinces (now States) such societies do exist and are working. It is not intended to give them undue encouragement, but to legalise their existence.

(d) Unlimited society can distribute profits with permission of State Government.

Registration of Society

State Government will appoint Registrar of Cooperative Societies. State Government can appoint persons to assist Registrar and confer on such persons all or any of powers of Registrar [Section 3]. Function of Registrar starts with registration of a society. He has powers of general supervision over society. Returns of Society are to be filed with Registrar. He can order inquiry or inspection against society. He can order dissolution of society.

Societies which may be registered

A society which has as its object the promotion of economic interests of its members in accordance with cooperative principles can be registered as a Society. Similarly, a society established with the object of facilitating operation of such a society can also be registered under the Act. The society can be registered with limited or unlimited liability. However, unless State Government otherwise directs, (1) Liability of a society of which a member is a registered society shall be limited. (2) Liability of a society of which object is to creation of funds to be lent to members, and of which majority of members are agriculturists and of which no member is a registered society shall be unlimited [Section 4]. Thus, a registered society can be member of another society, but liability of such other society must be limited, unless State Government otherwise directs.

Who can form a society

A society can be formed with at least 10 members of age above 18 years. If object of society is creation of funds to be lent to its members, all the members must be residing in same town, village or group of villages or all members should be of same tribe, class, caste or occupation, unless Registrar otherwise directs. The provision of minimum 10 members or residing in same town/village etc. is not applicable if a registered society is member of another society. The last word in name of society should be 'Limited'. If the Society is registered with limited liability [Section 6]. Registrar is empowered to decide whether a person is agriculturist or non-agriculturist or whether he is resident of same town/village or whether the members belong to same caste/ tribe etc. and his decision will be final [Section 7].

Restrictions on society with limited liability

If a society has limited liability, any individual member of such society cannot have share capital more than one-fifth of total

capital. An individual member cannot have interest in shares exceeding Rs 1,000. This restriction of 20% shares or Rs 1,000 shares value is not applicable to a registered society which is member of another society [Section 5]. Thus, if a registered society is member of another society, it can hold shares exceeding 20% or exceeding Rs 1,000 in value.

Application for registration (Section 8)

1. For purposes of registration an application to register shall be made to the Registrar.
2. The application shall be signed
   (a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1); and
   (b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.
3. The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Amendment of bye-laws

Any Amendment to bye-laws shall be registered with Registrar. If Registrar is satisfied that the amendment is not contrary to Act or rules, he will register the amendment. He will issue a certificate of registration along with copy of amendment certified by him, which is conclusive evidence that the amendment has been duly registered [Section 11].

Rights and liabilities of members

If liability of members is not limited by shares, each member shall have one vote irrespective of amount of his interest in the capital [Section 13(1)]. If liability of members of a registered society is limited by shares, each member will have as many votes as may be prescribed in bye-laws. [Section 13(2)]. If a registered society has invested in shares of other registered society, it can vote by appointing a proxy [Section 13(3)]. A member of registered society shall not exercise his rights as member, unless he has made payment to society in respect of membership or has acquired interest in society, as may be prescribed by rules or bye-laws [Section 12]. Thus, if there is any default in payment to society, the member cannot exercise his rights.

Management of society

Each society will be managed by Committee. Committee means the governing body of a registered society to whom the management of its affairs is entrusted [Section 2(b)]. Officer of society includes a Chairman, Secretary, treasurer, member of Committee or other person empowered under rules or bye-laws to give directions in regard to business of society. [Section 2(e)].

Registered Society is body corporate

A registered cooperative society is a body corporate with perpetual succession and common sea. (just like a company). It can hold property, enter into contracts, institute and defend suit and other legal proceedings and to do all things necessary for the purposes of its constitution [Section 18].

Priority claim of society dues from member

A registered society is entitled to priority to other creditors and enforce outstanding demand due to society from any member. However, the priority is subject to prior claims of (a) Government dues in respect of land revenue or (b) Dues of landlord in respect

of rent receivable by the landlord. The priority of society is in respect of following: (a) Supply of seed or manure or loan for purchase of seed or manure. The priority is upon the crops or other agricultural produce up to 18 months from date of supply of seed/manure or loan. (b) Supply of cattle or fodder of cattle, agricultural implements or machinery or raw materials or loan for these. The priority is upon the cattle/fodder/ machinery / raw materials supplied or any articles manufactured from raw materials supplied or purchased form loan given by society [Section 19].

Liability of past member

Liability of past members towards society as on the date he ceased to be member will continue for two years [Section 23].

Restrictions on loans

A registered society can give loans only to its members. However, it can give loan to another registered society with permission of Registrar [Section 29(1)]. A society with unlimited liability cannot lend money on security of movable property without sanction of registrar [Section 29(2)]. State Government, by issuing a general or special order, can prohibit or restrict lending of money on mortgage of immovable property by any registered society or class of registered society.

Inspection of affairs of society

Registrar can hold an enquiry or direct some person authorised by him to hold enquiry in following circumstances – (a) Of his own motion (b) Request of Collector (c) Application by majority of committee members of society or (d) At least one-third of members of society [Section 35(1)]. All officers and members of society shall furnish necessary information to registrar or person authorised by him [Section 35(2)].

Dissolution of society

Registrar, after inspection or inquiry, or on application received from 75% of members of society, may cancel the registration of society, if in his opinion, the Society should be dissolved. Any member can appeal against the order of Registrar within two months to State Government or other Revenue Authority authorised by State Government. If no appeal is filed within two months, the order of dissolution shall become effective. If appeal is filed, the order will become effective only after it is confirmed by appellate authority [Section 39].

Cancellation of registration of society (Section 40)

Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society it at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

Effect of cancellation of registration (Section 41)

Where the registration of a society is cancelled, the society shall cease to exist as a corporate body.

(a) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect;

(b) in the case of cancellation in. accordance with the provisions of section 40, from the date of the order.

Winding up (Section 42)

1. Where the registration of a society is cancelled under section 39 or section 40, the Registrar may appoint a competent person to be liquidator of the society.
2. A liquidator appointed under sub-section (1) shall have power

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office;

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(e) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society.

3. Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).

4. Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.

5. Orders made under this section shall, on application, be enforced as. follows:

(a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

6. Save in so far as is hereinbefore expressly provided, no, Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

Companies Act not applicable

Provisions of Companies Act are not applicable to registered cooperative society [Section 48].

XVI. The Multi-state Co-operative Societies Act, 2002

Since 'Cooperative Societies' is a State Subject (Entry 32 of List II of Seventh Schedule to Constitution, i.e. State List), the cooperative societies formed under State Acts have to restrict their activities to only one State. This hinders growth of cooperative societies. Hence, Multi-state Cooperative Societies Act was passed in 1942. It was later replaced by 1984 Act. This 1984 Act is now being replaced by 2002 Act. The 2002 Act has already been passed but has not yet been made effective. The 2002 Act makes special provision for registration and functions of Federal Cooperative Societies.

Object of the Act

As per preamble to the Act, the Act is consolidate and amend the law relating to cooperative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of cooperatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide financial autonomy and for matters connected therewith and incidental thereto.

Multi-State Cooperative Society can be formed under Multi State Cooperative Societies Act. Multi-State Cooperative Societies Act, 2002 has received President's assent. The Act will supersede 1984 Act when brought into force. Under the Act, there will be a Central Registrar overseeing and regulating multi-state cooperative societies. Under the Act, a quasi-judicial authority titled the Cooperative Disputes Settlement Authority will be set up to replace existing system of such settlement by Central Registrar. This is intended to ensure quicker and more judicious settlement of disputes.

The Act applies to all cooperative societies with objects not confined to one State. It includes societies which were incorporated under Cooperative Societies Act 1912 and earlier Muti-Cooperative Societies formed under 1942 or 1984 Act.

Which society can be registered

No multi-state cooperative society can be registered under the Act unless (a) its main objects are to serve interests of members in more than one State and (b) Its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles [section 5(1)]. The word 'limited' or its equivalent in any Indian language shall be affixed to the name of every multi-State cooperative society registered under the Act with limited liability [section 5(2)].

Cooperative principles

Cooperatives work on basic concept of 'mutual assistance' and 'one man one vote'. The bye-laws of multi-state cooperative society should provide for cooperative principles, as given in First Schedule to the Act.

Society is a body corporate

Every multi-state cooperative society is a body corporate with name under which it is registered. It will have common seal and

perpetual succession. It can acquire and dispose of property (movable as well as immovable), enter into contracts, institute and defend suits by the name it which it is registered [section 9(1)].

Federal cooperative

'Federal Cooperative' means a federation of cooperative societies registered under this Act and whose membership is available only to a cooperative society or a multi-state cooperative society [section 3(k)].

Registration of multi-state cooperative society

Central Government will appoint a Central Registrar of Cooperative Societies. He will register the multi-state cooperative society [section 4(1)]. Some of his powers can be delegated to other officers of Central or State Government, but powers of registration cannot be delegated. Powers in relation to a national cooperative society cannot be delegated to State Government [section 4(2)].

Bye-laws of society

Each multi-state cooperative society must have bye-laws for its internal management. The 'bye-laws' are comparable to 'Articles of Association of a company'.

Conversion, amalgamation or division of society

The Act makes provisions for conversion, amalgamation etc. in certain cases.

Duties, rights and liabilities of members

Cooperative Principle is based on the concept of mutual assistance. Hence, provisions have been made for rights, duties and liabilities of members.

Duty of every member

It is duty of every member of multi-state cooperative society to promote and protect interests and objects of the society [section 25(5)].

Voting by members

Every member, including member who is employee shall have one vote, irrespective of his shareholding. An employee is not entitled to vote in respect of elections to members of board or amendment to bye-laws. Chairperson will have casting vote in case of equality. If person other than individual are members (e.g. Government, other cooperative society, NCDC etc.) voting power to its nominee will be one vote only [section 31].

No voting by proxy

Voting must be done in person. Proxy is not permitted. A multi-state cooperative society or cooperative society which is a member can appoint its representative to vote on its behalf [section 32].

Management of society

Management of a multi-state cooperative society will be a three tier structure. General body will consist of all members. A smaller body consisting of delegates of members can be formed and some powers can be delegated to the small body. They will elect Board of Directors to exercise overall control over operations. Day to day control will be exercised by 'Chief Executive' who will be employee of the multi-state cooperative society.

Chairperson/President of society

A multi-state cooperative society can have Chairperson/President and Vice Chairperson/Vice President. [It appears that his election will be made by Board of Directors]. A person who is Minister in central or State Government cannot be elected to the post. A person can be elected as Chairperson/President only for two

consecutive terms, full or part. However, after a gap of one full term, he can again be elected as Chairperson/President [section 44]. Each full term is of five years.

Office bearer only in two societies

A person can be Chairperson/President or Vice Chairperson/Vice President of at the most two multi-state cooperative societies at a time [section 46].

Election of directors

Election of directors will be responsibility of existing Board [section 45(1)]. Only a person who is member of society can contest elections [section 45(7)]. Elections will be held at the time of general meeting and by secret ballot. Elected members are eligible for re-election, if bye-laws permit. Term of elected members shall be five years at a time. However, the Board will continue till successors are elected or nominated as per provisions of the Act and bye-laws [section 45(5)]. If Board does not hold elections, same will be held by Central Registrar [section 45(6)].

Powers and functions of Board

The Board of Directors may exercise all powers as may be necessary to carry out its functions under the Act [section 49(1)].

Chief Executive

Each multi-state cooperative society will have Chief Executive (by whatever name called) he will be full time employee. Chief Executive will be appointed by Board [section 51(1)]. He will be member of Board and of executive committee and other committees of Board [section 51(2)]. If Central/State Government holds 51% or more equity capital of multi-state cooperative society, his salary and service conditions will be as prescribed by rules [section 51(3)].

Privileges of multi-state cooperative society

Certain privileges are granted to multi-state cooperative society so that it can function effectively.

Winding up of society

Winding up can be ordered by Central Registrar after audit, inquiry or inspection, after giving opportunity of hearing to society [section 86(1)]. Winding up can also be ordered if number of members fall below 50 or where society has ceased to function or has not commenced business within 6 months [section 86(2)]. Cooperative Bank cannot be wound up without previous sanction of RBI [section 86(5)]. Cooperative Bank will be wound up if RBI so directs [section 87].



2.2

Legislations Administered by the Ministry of Urban Development

The Constitution of India has assigned the subjects pertaining to the urban areas to the State Legislates. In so far as the urban issues are concerned, the legislative powers of the Union are limited only to the following subject/areas:

- Delhi and other Union Territories
- Property of the Union
- A subject of the state list which two or more state legislatures authorise Union Parliament to legislate.
- Amendment of the Constitution of India.

In exercise of these legislative powers, the Parliament of India has enacted the following legislations which are administrated by the Ministry of Urban Development & Poverty Alleviation.

A. Constitution (Seventy-Fourth Amendment) Act 1992

This is a revolutionary piece of legislation by which Constitution of India was amended to incorporate a separate Chapter on urban

local bodies, which seeks to redefine their role, power, function and finances. The salient features of this Act are:

- Urban local bodies, to be known as Municipal Corporations, Municipal Councils and Nagar Panchayat depending on the population, shall be constituted through universal adult franchise in each notified urban area of the country.
- These shall be constituted for a period of five years and if dissolved earlier, an election to reconstitute it shall be completed before the expiration of a period of six months from the date of its dissolution.
- Not less than one-third of total number of seats in each urban local body shall be reserved for women.
- The Legislature of a State may by law entrust on these bodies such power and authority as may be necessary to enable them to function as institution of local self government, including those listed in the Twelfth Schedule.
- The Twelfth Schedule of the Constitution has listed the following functions of the urban local bodies:
    - Urban Planning including town planning.
    - Regulation of land-use and construction of buildings.
    - Planning for economic and social development.
    - Roads and bridges.
    - Water supply for domestic, industrial and commercial purposes.
    - Public health, sanitation, conservancy and solid waste management.
    - Fire services.
    - Urban forestry, protection of the environment and promotion of ecological aspects.
    - Safeguarding the interests of weaker Sections of society, including the handicapped and mentally retarded.
    - Slum improvement and upgradation.

- Urban poverty alleviation.
- Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- Promotion of cultural, educational and aesthetic aspects.
- Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
- Cattle pounds; prevention of cruelty to animals.
- Vital statistics including registration of births and deaths.
- Public amenities including street lighting, parking lots, bus stops and public conveniences.
- Regulation of slaughter houses and tanneries.
- In order that the urban local bodies can perform the functions assigned to them, the Legislature of a State shall assign them specific taxes, duties, tolls and levies and authorise them to impose, collect and appropriate the same.
- Each State shall also constitute a Finance Commission which shall review the financial position of the urban local bodies and recommend the principles which should govern the devolution of resources, including grant-in-aid from the Consolidated Fund of the State of these bodies.

✦ The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the urban local bodies shall vest in the State Election Commission.

✦ In each district a District Planning Committee shall be constituted to consolidate the plan prepared by the urban and rural local bodies.

✦ Similarly for each metropolitan area a Metropolitan Planning Committee shall be constituted to prepare a development plan for the metropolitan area a whole.

All the State Governments have either enacted new Municipal Law or amended the existing laws to conform these to the Constitution (74th Amendment) Act, 1992.

All the States (except Jharkhand and Pondichery) have conducted the election to the local bodies.

All the States (except Arunachal Pradesh) have constituted State Finance Commissions and most of the Commissions have submitted their reports to the State Governments, recommending significant devolution of resources to the urban local bodies. The national Eleventh Finance Commission has also recommended devolution of Rs 2000 crore as grant-in-aid from the Central Government to the urban local bodies.

Constitution (74th Amendment) Act 1992 has made the urban local bodies into vibrant self-governing institutions. This has ushered in a new era of urban governance and urban management in India.

B. Administration of Delhi Development Act, 1957

This Act replaces the Control of Building Operations Ordinance 1957 by which the DDA was constituted. The Act defines the constitution role, powers and functions of Delhi Development Authority. It further defines the development area of Delhi and stipulates that any development of land in this area shall be undertaken or carried out after obtaining the permission from DDA. The DDA shall prepare the Master Plan for Delhi and Zonal Plans which shall regulate the development of Delhi. The Act also authorizes DDA to levy betterment charges in respect of the increasing value of the property resulting from the execution of development.

C. The Urban Land (Ceiling and Regulation) Act, 1976

The Urban Land (Ceiling and Regulation) Act, 1976 came into force on 17 February 1976. The States of Andhra Pradesh,

Haryana, Gujarat, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal initially adopted the Act. Subsequently it was adopted by six more states namely Assam (25 March 1976), Bihar (1 April 1976), Madhya Pradesh (9 September 1976), Manipur (12 March 1976), Meghalaya (7 April 1976) and Rajasthan (9 March 1976). The Act was being implemented in the urban agglomeration having population of more than two lakhs as per the 1971 Census (64 urban agglomerations).

The Urban Land (Ceiling and Regulation) Act, 1976 was replaced by an Ordinance promulgated on 11 January 1999 after the State Governments of Haryana and Punjab passed a resolution for repeal of the Act. The Ordinance was replaced by Urban Land (Ceiling & Regulation) Repeal Act, 1999 on 22 March 1999. Initially the repeal Act was applicable in Haryana, Punjab and all the Union Territories. Subsequently, the Repeal Act has been adopted by the State Governments of Uttar Pradesh, Gujarat, Karnataka, Madhya Pradesh Rajasthan and Orissa. The State Government of Andhra Pradesh, Assam, Bihar, Maharashtra and West Bengal have not adopted the Urban Land (C & R) Repeal Act, 1999 so far.

D. The Urban Land (Ceiling & Regulation) Repeal Act, 1999

The Urban Land (Ceiling & Regulation) Act 1976 has been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. The Repeal Act has been notified on 23 March 1999. It shall come force in the Union Territories and the States of Punjab and Haryana where the State Legislatures have already approved the repeal.

E. Delhi Rent Act 1995

Delhi Rent Act was enacted on 22 August 1995 primarily with a

view to balance the interests of the landlords and the tenants. However, the Act could not be brought into force due to agitation by various groups. It was then decided to bring the Act into force after effecting amendments to some of its provisions. The Delhi Rent (Amendment) Bill, 1997 was introduced in the Rajya Sabha on 28 July 1997. The Bill was then referred to the Parliamentary Standing Committee on Urban and Rural Development for examination and report. The Parliamentary Standing Committee on Urban and Rural Development of the 13th Lok Sabha submitted its report to the Parliament on 21 December 2000. The Government considered the Report of the Committee and accepted all the recommendations of the Committee. Steps were initiated to move official amendments to the Amendment Bill but it could not be debated till the dissolution of the 13th Lok Sabha. After formation of the 14th Lok Sabha and the new Government, action has been initiated to place the matter before the Cabinet for pursuing the Amendment Bill further. There are quite a few states that have adopted model rent control act. They are Karnataka, Maharashtra, Madhya Pradesh, Punjab, etc.

F. Delhi Urban Art Commission Act, 1973

By this Act, Delhi Urban Art Commission was constituted with a view to preserving, developing and maintaining the aesthetic quality of urban and environment design in Delhi.

G. National Capital Region Planning Board Act, 1985

By this Act, the NCR Planning Board was constituted to regulate the growth and to prepare plans and policies for balanced and harmonized development of National Capital Region.

H. Delhi Apartment Ownership Act, 1986

Delhi Apartment Ownership Act, 1986 came into force from 1

December 1987. The Act was found to be ineffective as it lacked penal provisions. Suggestions for major amendments and revisions came from various quarters. After examining the matter in detail and taking into account various factors, it was decided by the Government to repeal the Delhi Apartment Ownership Act, 1986 and introduce the Delhi Apartment Ownership Bill in lieu thereof. The Delhi Apartment Ownership Bill, 2001 was introduced in the Lok Sabha on 24 July 2001. The Bill was, thereafter, referred to the Standing Committee on Urban and Rural Development for examination and report. The Committee has since submitted its report to the Parliament on 17 December 2002 suggesting some changes in the Bill. The matter has been considered by the Govt. and steps were taken to finalize the Amendments with the approval of the Cabinet and then place the matter before the Lok Sabha where the Bill was pending. However, in the meanwhile the XIIIth Lok Sabha was dissolved on 5 February 2004. With this, the Delhi Apartment Ownership Bill, 2001 introduced in the Lok Sabha on 24 July 2001 has since lapsed. After constitution of the XIVth Lok Sabha action has been initiated for placing the matter before the Cabinet. Maharashtra, Karnataka, Himachal Pradesh, West Bengal are few of those states that have legislation for apartment ownership.

I. The Requisitioning and Acquisition of Immovable Property Act, 1952

The Competent Authority of the Union likely to need any property for any public purpose can requisition the same by calling the Owner of property giving a fifteen days show-cause notices.

J. The Public Premises (Eviction of Unauthorized Occupants) Act, 1971

The Act provides for the eviction of unauthorized occupants from the public premises and for certain incidental matters. The Estate Officer, after making such inquiry as he deems expedient in the circumstances of a case, and for reasons to be recorded in writing, may make an order for the eviction of such person(s) who are in unauthorized occupation of public premises.



2.3

General Principles for Drafting of Agreements Relating to Real Estate Transactions

Principles of good drafting

Documentation is an art, which is acquired by learning its skill and experience. The principles of good drafting are as under:

Documents should be clear

Simple words should be used in drafting, so that there is no ambiguity. Technical words may be used in the document in such a way, that it conveys the intention of the executor. The legal, French and Latin terms should be used discreetly. The word with more than one connotation should never be used in a legal document.

Logical arrangement

It is necessary to sketch the draft document into a logical order after collecting the ideas, facts, the information necessary for

drafting etc. The ideas should be arranged in such a way that the final product should be clear.

Words should be used consistently

The same words, terms or expressions should not be used in more than one sense.

Legal requirement should be complied

A document that is void ab-initio has no existence in the eye of law. However, in drafting a document, the legal requirements of the transaction should be incorporated.

The document should be concise and brief

The draftsman should express himself clearly in the smallest possible number of words. Repetition and redundancy should be avoided.

The expression in the document should be direct

In a legal document the expression should be direct and nothing should be implicit that can be explicit.

Precaution to be taken in drafting a deed

The following precautions to be taken while drafting any document:

1. The document should be properly divided into paragraphs.
2. The punctuation should be done properly.
3. The word like 'less than' or 'more than' should be avoided. Instead the word like 'not exceeding' should be used.
4. The dates, sums and numbers should be stated in words or both in words or figure e.g., Rs 1000 (Rupees One Thousand).
5. The blank space in the document should be filled in before execution.

Parts of a Deed

The parts of deed are as follows:

Name of the Deed

The deed commences with its name e.g., 'THIS AGREEMENT' or 'THIS DEED OF PARTNERSHIP' or 'THIS DEED OF SALE'. The name given to the deed is not conclusive of the nature of the deed. The true nature of the deed has to be ascertained on reading the document.

Place and date

After the name of the deed, the place of the execution of the document is stated. Though the mentioning of the place is not necessary but as a matter of practice, the name of the place is stated e.g., 'THIS DEED OF SALE MADE AT DELHI'.

After the place, the date on which the document is executed, is stated e.g., 'THIS DEED OF SALE MADE AT BOMBAY ON THE TWENTY-FIFTH OF APRIL, TWO THOUSAND AND SIX'. Though giving a date to the document is not essential, dating becomes important for many purposes. Under the Indian Registration Act, 1908, the deed takes effect from the date of the execution. Any deed should be presented for registration within a period of four months from the date of execution. Similarly, the date is important for the purpose of Limitation Act. The date also becomes important in the case of deeds of transfer of immovable properties, in which the date of execution becomes relevant for the purpose of mutation.

However, the deed does not become invalid on the account of the fact that it does not contain the date. The date of execution can be proved by leading evidence. But, in view of its importance for various purposes, it should be ensured that the deed should be dated.

The date of the deed is the date on which the deed is executed by the party or parties to it. If different parties execute the deed

on different dates, the date on which the deed was last executed is taken as the date of the deed.

Parties and description

After the place and date, the names and description of the necessary parties to the deed are mentioned. Necessary parties to a deed depends on the nature of the deed. The full description of the parties such as parentage, occupation, domicile and full residential address should be given, so that there may not be any difficulty in identification of the parties. The description should be such, as is sufficient to identify the party to the deed.

a) Juridical persons

Many times, the party to the deed is not living person but may be any juridical person e.g., a company, an idol, corporation or an association. When any juridical person is a party to the deed, the names and description are written as under:

"ABC Ltd., a company registered under the Companies Act, 1956 and having a registered office at Delhi"

"Industrial Development Bank of Indian, statutory corporation incorporated under the Industrial Development Bank of India Act, 1964 and having its central office at Bombay"

b) Minor

Minors are not competent to contract. A contract by a minor is void ab-initio.

Hindu Minority and Guardianship Act, 1956 (sec 8) provides that the natural guardian of a Hindu minor shall not, without the previous permission of the Court:

i) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor; or

ii) lease any part of such property for a term exceeding five years or for a term exceeding more than one year beyond the date of which the minor will attain majority.

In other case i.e., Jews, Christians, etc., the guardian of the minor can transfer the minor's property with the Court's previous permission.

c) Persons of unsound mind

A person of unsound mind or a lunatic is not competent to contract. The Indian Contract Act, 1872 (sec12) provides that:

"A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is not capable of understanding it and of forming a rational judgment as to its effect upon his interests."

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person, who is usually of sound mind, but occasionally of unsound mind, may make a contract when he is of sound mind.

However, the manager of a lunatic can transfer the lunatic's property with the permission of the Court.

d) Trusts

As the trust property vests in trustees, the transfer of the trust property can be made by the trustees in their own names. The description of the trustee can be written as under:

"X Y and Z, trustees of the estate of A"

e) Partnership firm

Partnership Act restricts the authority of a partner. According to sec 19(2) of the Partnership Act, 1932 in absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do many acts including transfer of immovable property of the firm and acquire immovable property of the firm. All the partners should sign for acquiring or transfer

of immovable property The description of the Partnership firm can be written as under:

M/s _____, a partnership firm,

f) Insolvent

The property of the insolvent can be transferred by the Official Assignee or Receiver appointed by the Court. The Official Assignee or Receiver should be made party in own name and the fact of vesting of property due to insolvency of the owner should be referred to in recitals.

g) Government

The Constitution of India (Article 299) provides that all contracts made in exercise of the power of the Union and all assurances of the property vested in the Union are to be expressed in the name of the President of India. Those relating to a State should be made in the name of the Governor of that State. Such contracts and assurances of the property should be executed on behalf of the president or the Governor by such person and in such a manner as he may direct or authorize.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution, or for the purposes of any enactment relating to the Government of India. The provisions of Article 299 are mandatory and contracts not made in accordance with the provisions of the Article will be void.

Recital

Recitals state the facts on which the deed is based. It should be written in a logical and chronological order. It has to be drafted carefully. It ascertains the operative parts.

Recitals are of two kinds:

1. **Narrative Recital:** It relates to the history of the property and explains the devolution of title upon the transferor. If

the transferor is the absolute owner, then there may not be any necessity to put a recital. But, if the transferor is not the absolute owner of the property, then it should be explained in the recitals, that how he is transferring the property.

2. **Introductory Recital**: It explains the motive or intention of the parties to the execution of the deed. These recitals are put after the narrative recitals. It can be said that it connects the narrative recital to the rest of the deed.

Testatum

After recitals, the operative part of the deed commences with the testatum. The testatum is usually written in the following form.

"NOW THIS DEED WITNESSETH AS FOLLOWS"; or

"IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS"

"IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS"

Operative words

After the testatum, operative words follow, which express the nature of the transaction. The operative words should be clear and unambiguous. The operative words also include covenant on the part of the parties.

Examples:

In a Lease Deed, the lessor and lessee covenant to perform duties.

In a Sale Deed, the seller covenant that he has the title to the property being transferred and the purchaser will have peaceful possession of the property being transferred to him.

Parcels

After the operative words, the description of the property being transferred has to be given. The description of the property

should be given so that the property to be transferred may be identified. If the description of the property is not very long, it may be given at the end of the deed. However, inaccurate or insufficient description of the property in document does not invalidate the document.

The full description of the property in the deed is given under:

"All that the piece or parcel or plot of land measuring ____ sq. m. ____ sq. yards or thereabout bearing survey No. ____ of village ____ and city Survey No. ____ of the area of ____ city survey, situated in Taluka and Sub-Registration District ____ and District and Registration District ____ and within the ____ Municipal Corporation limits and bounded as follows:

On or towards the East ____ Plot No. ____ S. No. ____ belonging to Sri ____. On or towards the West ____ Plot No. ____ S. No. ____ belonging to Sri _____. On or towards the North _____ Plot No. ____ S. No. belonging to Sri ____. On or towards the West ____ Plot No. ____ S. No. ____ belonging to Sri ____.

Schedule of the Property

As the description of the property is generally very long, it is given in a Schedule appended to the deed and the words "and more particularly described in the schedule hereunder written"

Map

In the deed of transfer, the map of the property to be transferred is annexed, to identify the property properly. The map should be referred to in the parcel of the deed as under:

"The house delineated on the plan annexed hereto and thereon surrounded by red colored boundary line".

If the map is annexed to the deed, it is treated as part of the deed.

All Estate Clause

After the description of the property, all estate clauses expressing that the transferor conveyed all estate, interest, title, claim, rights, and demands whatsoever into or in the said property or any part thereof, is put.

This clause is slightly long and it is put as under:

"Together with all fences, trees, plants, shrubs, water course rights, liberties, privileges, easement, advantages, including all perspective rights and title acquired by adverse possession and appertaining thereto or with the same or any of them now or hereto occupied or enjoyed or known as part and parcel of them or appurtenant thereto and also together with all deeds and documents, writings, vouchers and other evidence of the title relating to the said demarcated portion or any part thereof AND ALL estate, title, interest, claim and demand of the vendor upon the said demarcated portion."

Exception and reservation

An exception is a part of the thing granted, which is in existence and reservation is a thing, not in existence, but created or reserved out of land granted. If the transferor intends to retain some part of the estate transferred, it should be specifically mentioned after the description of the property. If the exceptions are not specifically mentioned in the deed, all rights will be deemed to be transferred to the transferee.

Reservations are the rights reserved with the owner out of the thing granted e.g. right of rent, right of way or fishing right. In a lease deed, the lessor reserves the right of rent or right of re-entry with him.

Consideration

The consideration should be mentioned in the deed. The Indian Stamp Act, 1899 (sec 27), provides that the consideration should be fully and truly set forth in the deed and the omission to put

correct consideration is punishable with fine, which may extend to Rs 5000. However, the validity of the deed is not affected by not mentioning the consideration. The consideration need not be adequate, if the consent of the promisor was freely given.

Receipt

After the consideration, the acknowledgement of consideration by the transferor is also incorporated. The receipt of consideration is made within parenthesis in the deed. If part consideration is paid and the balance is being paid at the time of execution of deed, the fact should stated in the receipt clause. An illustration of testatum clause along with the consideration and receipt clause will be as under:

"NOW THE DEED WITNESSETH THAT IN PURSUANCE OF THE SAID AGREEMENT AND IN CONSIDERATION OF Rs 1, 000, 00 (Rupees One Lakh only) paid by the transferee to the transferor does hereby acknowledge"

Habendum

Habendum limits the granted estate and it mentions the liabilities or incidents subject to which the property is transferred. If the interest transferred forever or for life, it should be mentioned in habendum. This clause appears as under:

"TO HAVE AND TO HOLD FOREVER"

or

"TO HOLD THE SAME TO THE LESSEE FOR A TERM OF NINETY-NINE YEARS FROM THE DATE OF THESE PRESENTS"

Reddendum

In reddendum, the rent that is to be paid by the lessee is specified. It also specifies the time and mode of the payment of lease rent. This clause appears as under:

"PAYING THEREFORE Rs 5,000 (Five thousand) rent per month by the 7th day of the month of the following month, to that it relates"

Covenants

Covenant is an agreement by which the parties or some of them agree to do or not to do a specified thing or act. No particular form is necessary for making a covenant in the deed. The words used in the covenant should be clear. A covenant may also be implied, if by the instrument it is clear that the party to the deed shall be bound to do or not to do a certain act, though it is not expressively provided in the deed.

The covenant may be positive or negative. A positive covenant requires the covenanter to perform any act of positive nature, whereas negative covenant contemplates that one of the parties will abstain from doing some act. A covenant annexed to the land binds the land and it can be enforced against.

A covenant may be made by several persons jointly or severally. If two or more persons covenant to do something without any words of severance, the covenant will be regarded as joint covenant.

Delivery of the Title Deed

After the covenant clause, the clause regarding delivery of title deeds by the transferor to the transferee is incorporated. When the transferor transfers the property, he is required to deliver all the title deeds in the possession to the transferee.

The title deeds delivered to the transferee are mentioned in a separate schedule annexed to the deed. In case, the transferor does not give the original title deeds in the possession to the transferee an undertaking has to be given.

Testimonium

The testimonium is the concluding part of the deed. The testimonium states that the parties have signed the deed in witness of what is written therein. The testimonium is in the following form:

"IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR RESPECTIVE HANDS THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN."

In case, the company is a party to the deed, the testimonium clause will be as follows:

IN WITNESS WHEREOF THE VENDOR has caused it seal to be affixed to these presents and to a duplicate thereof, and the purchaser has hereunto set his hands the day, month and year first hereinabove written.

In case, the statutory authority is a party, the testimonium clause will be as under:

IN WITNESS WHEREOF THE LICENSOR AND LICENSEE have through their respective officials set their respective hands to these presents and on duplicate thereof, on the day, month and year first hereinabove written.

In case, the deed is executed by an attorney of the vendor, the testimonium clause will be as under:

IN WITNESS WHEREOF THE SAID SHRI ____ BY ____ HIS POWER OF ATTORNEY HAS SIGNED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

Execution

After testimonium, the deed is executed by the parties in the presence of witnesses. Execution of the document does not mean merely signing it. It should accompany the intention of the executant to give effect and operation to the document signed. Here the signature means to write one's name so as to make it appear that a person signing it is its author. When all the parties sign the deed, it is said to have been executed.

If a person is not able to write himself, he may put his mark on the document. The left thumb impression for male and right thumb for female should be obtained on the document in the presence of the witnesses. This is normal convention. The thumb impression should not be attested on the document. It may be attested on a separate piece of paper that may be kept with the document. The following words should be written below the thumb.

Left/right thumb impression of Shri/Smt ____.

If a person signs a document on behalf of an illiterate executant, at his request, it will be held that he has signed, under the authority of an illiterate executant.

A literate person cannot allege that he has executed the document without reading it.

If a company is a party to the deed, the seal of the company is required to be put on the deed, under the signature of the directors or officers of the company. When the company's seal is affixed on the deed, it is said to be executed by the company.

If the deed is executed by weak/disabled person, the person in whose favour transfer has been made should prove that the contents of the document were explained to such person and he/she has fully understood the same.

Attestation

When two or more witnesses, each of whom has seen the executant sign/affix their mark to the instrument, or seen some other person sign the instrument in the presence and by the direction of the executant, or received from the executant personal acknowledgement, then the instrument is said to be executed.

Attestation is necessary in bond, gift, mortgage, will and codicil and in some case of transfer of property. But, as a precautionary

measure, it is a practice to get the execution attested by at least two witnesses. The name and description of the attesting witnesses is also mentioned below the signature of the witness.

If the executant cannot read the deed himself, as he is illiterate or blind, the contents of the deed should be explained to the executant before he executes the deed. The deed should be explained to the pardanashin ladies. The attestation clause in such a case will be as under:

Signed and delivered by the said Shri ____ we having first truly and audibly read over to him the contents of the above-written deed, when it appears to us that he has understood the same and made his mark thereto in our presences:

Witness _____
Name _____
Address _____
Witness _____
Name _____
Address _____

Signed and delivered by the within named Shri ____, the same having been carefully read over to him (he being blind) by us, when it appears to us that he has perfectly understood the contents of this deed in our presence.

1. Witness _____
Name _____
Address _____
2. Witness _____
Name _____
Address _____

Error and omissions

If errors or omissions are corrected in the engrossment, the same should be initialed by the parties signing the deed. Alternatively, the corrections may be noted in a memorandum under the testimonium and a covenant added in a post script after the testimonium.

Endorsements and supplemental deeds

When after the execution of the deed, some additions or alterations to a deed are required to be made; the same can be done either by endorsement on the deed or by a 'supplemental deed'. If the writing is short, it can be done by endorsement on the deed.



2.4

What does the Law Say about Illegal Constructions and Unauthorised Layouts?

In recent decades, municipalities and governments in all parts of the world have struggled with illegal building. Urban development, in the modern sense, requires painstaking urban planning. One American judge described the planning process as bringing to bear "the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and other professions concerned with urban problems." Urban planning is not something unique to a single nation, but a burgeoning, worldwide trend. Likewise, the use of demolition as a tool to enforce the planning code is a routine enforcement measure widely used in India and elsewhere around the globe.

If urban planning is to have any chance of successful implementation, it must be accompanied by efforts to educate the public as to its importance. If people understand the reasons for urban planning, they will be far less likely to violate legal construction standards and will likewise make their objections

known when their neighbors build illegally. Even where efforts are undertaken to publicly explain the desirability of planning, some individuals will inevitably disregard the law for pecuniary or other benefits. In order to protect the interests of the public at large, and indeed the very future of the city, authorities must respond to such challenges, by fining offenders, demanding the removal of illegal structures, and, if nothing else can preserve the integrity of the planning scheme, demolishing illegal construction.

Global threat posed by illegal building

Urban areas in developing countries are collapsing due to population explosion, which results in anarchy as public services are unable to keep pace with the demands put upon them. As a result the cities of the developing world are becoming wastelands.

Due to rapid and uncontrolled growth, millions of these cities' inhabitants live in slums. It is now common for 30 to 60 per cent of an entire city's population to live in houses and neighborhoods that have been developed illegally. It is very rare for governments to furnish infrastructure and services essential for health and well-being—piped water, sewers, storm drainage, all-weather roads, public transit, electricity, health care—to those who build illegally. When the authorities lack the political and organizational will to dismantle illegal neighborhoods, they tolerate them and simply bulldoze others.

Housing in squatter settlements is illegal in two senses. First, land is occupied illegally and the site is developed without regard for zoning and subdivision regulations (i.e., concerning the permitted use of the land, permitted density, water supply, drainage, and access roads). Second, many individuals and businesses profit from the development of illegal communities or the needs of their inhabitants. Landowners, land developers, and businesses make money from buying and selling land illegally and, in some cases; extensive and highly profitable landlordism has developed.

A tolerant but passive reaction by the government has serious disadvantages. These include:

1. Absence of public services normally associated with housing, like water and sanitation;
2. The inhabitants' ineligibility for loans to buy, build, or improve their illegal structure or to expand their business situated in it, since the structure is not accepted as collateral; and
3. The scattering of illegal structures all over, making it very expensive to extend water, sewers, roads, and public transit.

The recent spate of demolitions of residential and commercial structures in cities like Delhi and Mumbai has dented the confidence of innocent purchasers of property who had invested their life savings in property only to find that it was illegal or that it could not be used for the purpose it was purchased for.

The urban population of India has rapidly increased in recent years. In 1961 about 79 million persons lived in urban areas of the country, by 2001, their number had gone up to over 285 million, an increase of over 350 percent in the last four decades, which will increase to over 400 million by the year 2011 and 533 million by the year 2021. In 1991 there were 23 metropolitan cities, which have increased to 35 in 2001. As a result, most urban settlements are characterized by shortfalls in housing and water supply, inadequate sewerage, traffic congestion, pollution, poverty and social unrest making urban governance a difficult task. Big cities like Delhi, Bangalore and Mumbai due to pressures of rapid urbanization have now become unlivable.

To stem the rot, the courts have stepped in and in many cases as seen in Delhi and Mumbai have ordered demolition of illegal structures or structures not adhering to the master-plan. However many property owners, tenants and consumers of urban services have become unwitting victims of court judgments, simply because they were misled by unscrupulous builders. It is not that these purchasers of property were not aware that they

were purchasing illegally built property or that the same was without authority of law. In most cases, they were misled to thinking that the official apathy and corruption which allowed the buildings to come up in the first place would continue. Thus they believed that they could continue to live in the illegal structures. None of them bargained for judicial activism in regard to the activities of the municipality.

Public Premises (Eviction of Unauthorised Occupants) Act, 1971

In the year 1971, the Government of India enacted a law which aimed at evicting totally unauthorized occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises. This law was called Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The provisions of this Act should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

According to Section 2(1) (c) of this Act, "premises" means:

Any land or any building or part of a building and includes,

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

Section 2 (2) (e) "public premises" means

1. any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the

commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1981), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

2. any premises belonging to, or taken on lease by, or on behalf of
   i. any company as defined in Section 3 of the Companies Act. 1956 (1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,
   ii. any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,
   iii. any University established or incorporated by any Central Act,
   iv. any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),
   v. any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),
   vi. the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-Section (6) of Section 80 of that Act;
   vii. any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
   viii. any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924) and;
3. in relation to the [National Capital Territory of Delhi],

i. any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee,

ii. any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;] [and] 1*

[iii. any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union territory.]

Meaning of temporary occupation

The term "temporary occupation", in relation to any public premises, means occupation by any person on the basis of an order of allotment made under the authority of the Central Government, a State Government, the Government of a Union territory or a statutory authority for a total period (including the extended period, if any) which is less than thirty days;

Meaning of unauthorised occupation

"Unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

Demolition of unauthorised constructions

Section 5B of this Act empowers the estate officers to order for demolition of such unauthorised structures or buildings on public premises. Section 5B says

"(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order.

Provided that no order under this sub-Section shall be made unless the person concerned has been given, by means of a notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-Section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Section 9.

(3) The estate officer shall cause every order made under sub- Section (1), or, as the case may be, under sub-Section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-Section

(1) or where an order of demolition made by the estate officer under that sub-Section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.

Power to seal unauthorised constructions

Section 5C empowers the estate officers to seal the unauthorized constructions. Section 5C says

(1) It shall be lawful for the estate officer, at any time, before or after making an order of demolition under Section 5B, to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-- (a) under an order made by the estate officer under sub-Section (2); or (b) under an order of the appellate officer made in an appeal under this Act.

Disposal of property left on public premises by unauthorised occupants

Section 6 empowers the estate officers to dispose of property left on public premises by unauthorised occupants.

(1) Where any persons have been evicted from any public premises under Section 5 [or where any building or other work has been demolished under Section 5B], the estate officer may, after giving fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(1A) Where any goods, materials, cattle or other animal have been removed from any public premises under Section 5A, the estate officer may, after giving fourteen days' notice to the persons owning such goods, materials, cattle or other animal and after publishing the notice in at least one newspaper having circulation in the locality, dispose of, by public auction, such goods, materials, cattle or other animal.

(1B) Notwithstanding anything contained in sub-Section (1) and (1A), the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay, and the estate officer may, after recording such evidence as he may think fit, cause such property to be sold or otherwise disposed of in such manner as he may think fit.

(2) Where any property is sold under sub-Section (1), the sale proceeds thereof shall, after deducting the expenses of the

sale and the amount, if any, due to the Central Government or the statutory authority on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the estate officer to be entitled to the same:

Provided that where the estate officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.

(2A) The expression "costs", referred to in sub-Section (2), shall include the cost of removal recoverable under Section 5A and the cost of demolition recoverable under Section 5B.

Offences and Penalties (Section 11)

(1) If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offence.

(2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees or with both.

(3) Any magistrate convicting a person under sub-Section (2) may make an order for evicting that person summarily

and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

Offences under Section 11 to be cognizable (Section 11A)

Offences under Section 11 to be cognizable. The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to an offence under Section 11 as if it were a cognizable offence.

RBI's Notification to banks regarding approving loans for illegal structures and buildings

In order to discourage construction of illegal buildings and unauthorized layout formation, the Reserve Bank of India has also given strict instructions to all the banks including co-operative banks to check thoroughly whether the loan being sought for is for constructing an unauthorized or illegal building or not. This instruction was given vide Notification No. RBI/2006-07/187 dated 22nd November 2006. The banks need to follow these instructions when they are approving the loan for construction of a building or for purchase of a constructed building/ property and for formation of colonies or layouts. Some of the requirements specified by this notification are:

i. In cases where the applicant owns a plot/land and approaches the banks/FIs for a credit facility to construct a house, a copy of the sanctioned plan by competent authority in the name of a person applying for such credit facility must be obtained by the banks/FIs before sanctioning the home loan.

ii. An affidavit-cum-undertaking must be obtained from the person applying for such credit facility that he shall not violate the sanctioned plan, construction shall be strictly as per the sanctioned plan and it shall be the sole responsibility of the executant to obtain completion certificate within 3 months of completion of construction,

failing which the bank shall have the power and the authority to recall the entire loan with interest, costs and other usual bank charges.

iii. An Architect appointed by the bank must also certify at various stages of construction of building that the construction of the building is strictly as per sanctioned plan and shall also certify at a particular point of time that the completion certificate of the building issued by the competent authority has been obtained.

iv. In cases where the applicant approaches the banks/FIs for a credit facility to purchase the built up house/flat, it should be mandatory for him to declare by way of an affidavit-cum-undertaking that the built up property has been constructed as per the sanctioned plan and/or building bye-laws and as far as possible has a completion certificate also.

v. An Architect appointed by the bank must also certify before disbursement of the loan that the built up property is strictly as per sanctioned plan and/or building bye-laws.

vi. No loan should be given in respect of those properties which fall in the category of unauthorized colonies unless and until they have been regularized and development and other charges paid.

vii. No loan should also be given in respect of properties meant for residential use, but which the applicant intends to use for commercial purposes and declares so while applying for loan.

Examples of Demolitions Worldwide: Western and Developing Countries

During the past decade, illegal building in Indian States has erupted into an urban planning problem of enormous proportions. The illegal construction often takes the form of complete

buildings, constructed on land that is not owned by the builder, such as that which is designated for public services (social services, community centers, schools, public parks, religious buildings, etc.), as well as streets and highways. Often the illegal structures are designed without the input of a licensed architect or engineer. Such buildings likely fail to meet standard safety codes, thereby presenting a danger to inhabitants, visitors, and neighbors.

Despite the staggering number of violations, the Indian Government has been extremely reluctant to demolish illegal structures. Only when no other options exist, the concerned Government Agency issues a demolition order that requires no fewer than five signatures, from the local inspector up to and including the commissioner.

In recent decades, municipalities and governments in all parts of the world have struggled with illegal building and constructions. Many use demolition and some, out of frustration with the endemic nature of the problem, promulgate ordinances to 'regularize' existing unlawful development. It is instructive to consider the following instances of illegal building occurring in many countries.

U.S.A.: A city had to pay a company thousands of dollars to tear down and haul away an illegally built second-story addition to a residence. The decision to demolish the illegal addition came at the end of a legal battle lasting more than two years, during which the homeowner ignored three court orders to stop building. In one of the court hearings, the judge ordered the homeowner to take the addition down within 30 days or serve 60 days in jail. He elected to go to jail.

Lebanon: The army used troops and bulldozers to demolish what were described as illegally built houses and shops in a shantytown on the southern outskirts of the capital city. Soldiers fired their rifles into the air to keep excited residents away from the demolition work. The demolished buildings belonged to Muslim war refugees, who were accused by an official of putting

up their structures on land belonging to the government and private citizens. Officials indicated that buildings were demolished in one day, but some indications suggest that the actual number could be much higher. An official claimed that he had warned those living in the shantytown that demolition was imminent.

China: The government's planning department announced a policy to clear all illegal squatters from hillsides and rooftops, claiming that it had given as much notice as possible of its plans. Demonstrators blocked rush-hour traffic for an hour in protest of the government's decision to demolish their illegal homes. A woman protester said, "The government has done nothing to help us. Where will we live when they demolish our home?" Twenty-two protesters, men and women, were dragged, kicking and screaming to police vans. As the vans drove away, the protestors could be heard banging on the doors, bellowing, "the police beat us, the police beat us." Families living in the flats claim that they have no place to go. One also claimed that he was a bona fide purchaser of his residence and that he regularly paid his property tax and utilities bills.

Thailand: City officials gave additional time to two department stores to demolish floors they had added illegally on top of their buildings. The stores were originally given permits to build four floors but subsequently added seven more floors despite official warnings. The Municipality brought lawsuits against them, but it took about a decade before the Supreme Court delivered its verdicts against the illegal additions. The stores were subsequently able to exploit illegal loopholes to avoid complying with the Supreme Court's decision for an additional five and eight years respectively.

UN forces in the autonomous province of Kosovo, Yugoslavia: The United Nations mission in Kosovo took on the illegal construction barons, seizing a building for demolition after a local official who tried to tighten building regulations was killed. One baron had continued building a five-story block on public land,

despite having received a demolition order. At least 2,500 unauthorized buildings shot up in Pristine in the 15 months since the end of the bombing in Yugoslavia. According to a UN official, local organized crime rings are behind the building boom.

Nigeria: The President ordered the demolition of all illegal structures in the Federal Capital Territory—to wit, those erected on sewage lines, green areas, and security zones. The illegal structures were blamed for 'severely distorting the master plan' for the city and constituting 'serious safety and security hazards.' As a consequence of the demolition, thousands became homeless.

Egypt: Nearly all of the 8,000 residents of a town were forcibly relocated, and all but 50 of their 1,500 homes demolished, in the government's efforts to attract tourists and open new sites to archaeologists.

Brazil: From its origins 70 or more years ago, an enormous urban slum known as a favela has created a variety of problems. According to the city's 10-year Master Plan, ratified in 1992, "a favela is an area predominantly of housing, characterized by the occupation of land by low-income populations, precarious infra-structure and public services, narrow and irregular layout of access ways, irregular shaped and sized plots and unregistered constructions, breaking with legal standards. Its residents are not legally entitled to reside there as ownership of the land is registered to the state government. The houses in which they live, built through their own labor or with the assistance of paid unskilled labor, violate building codes that dictate housing standards. The favela's layout, with no roads, narrow pathways, staircases of uneven tread and width, also break with the established legal norms. Property purchase and rental markets within the settlement are vigorous, yet such exchanges of land and housing have no legally recognized validity. Small commercial establishments are numerous, yet none are registered and none pay tax on the goods and services they sell. The settlement is 'protected' by a gang of drugs and arms dealers, who pedal their illegal wares and engage in sporadic gunfire with rival

gangs and the police." The thousands of residents live in fear that their houses will be demolished (as has happened in other favelas) and that they will be removed to housing on the edge of Rio.

These examples occurred in countries situated on nearly every continent and with widely varied political systems. To the best of this my knowledge, not a single human rights group, international body, or foreign government has criticized demolitions in any of these locales.

U.S. laws on demolitions

Governmental demolition of buildings is common in other countries such as the United States. For example, in slum clearance, growth management, zoning, urban renewal, or in cases of housing code enforcement, public agencies may even demolish privately owned buildings without paying compensation to the owners or alternatively order the owner to demolish the structure. The courts have upheld the constitutionality of statutes permitting building demolition. These statutes are so common that national code-drafting agencies, such as the Building Officials Conference of America and the American Public Health Association-U.S. Public Health Service, have drafted model demolition ordinances. The International Conference of Building Officials has also promulgated a provision of its Uniform Building Code that permits demolition when any of 17 conditions are found. There is even a Uniform Code for the Abatement of Dangerous Buildings, which specifically addresses the circumstances in which buildings can be destroyed.

The general rule in the United States is that while the government may regulate the use of privately-owned real property to a certain extent, if the regulation goes too far it will be recognized as a 'taking.' This relates to the U.S. Constitution's Fifth Amendment ("No person shall be … deprived of life, liberty, or property, without due process of law"), which specifies that private property cannot be taken or impaired without due

process, meaning a prior court order. In the United States, land use regulations or decisions to use the eminent domain (condemnation) power must be supported by a valid public purpose. This power is typically used to obtain land for various public facilities—roads, schools, parks, monuments, and public amenities, among others. Pursuant to the Fifth Amendment to the U.S. Constitution, condemnees receive compensation based on the value of the asset in the market, not including money for relocation costs, business losses, or psychological disruption. Courts seldom nullify such a taking, provided the landowner is compensated.

The various arenas of government have come to dominate land use control, particularly in urban and suburban areas. Measures that severely limit an owner's use of land but fall short of a taking are numerous indeed. In the words of Professor Richard H. Chused, author of a leading casebook on property law:

> *The scope of land use regulation by federal, state, and local governments is enormous. The federal government actually owns one-third of the land in the mainland United States, mostly in the western half of the country. In addition, Congress has adopted legislation on water pollution, flood controls, interstate land sales, real estate settlements, race and gender discrimination, mining, grazing, and timbering on federal lands, national parks, wildlife zones, Native American lands, and a host of other problems. State and local governments have passed an even longer list of land use measures, including zoning statutes, building codes, environmental regulations, consumer protection statutes, anti-discrimination laws, and historic preservation programs.*

In Europe and North America, urban planning originated in the early part of the twentieth century as a response to widespread dissatisfaction with the physical squalor and political corruption of emerging industrial cities. Since then, local authorities have typically furnished fire and police protection,

educational facilities, parks, public transportation, a network of roads, water, and sewage facilities. They have also considered aesthetics, social justice, employment opportunities, healthcare needs, entertainment preferences, economic growth, phased housing growth, conservation of energy resources, protection of the natural environment and preservation of historical sites. Indeed, they are responsible for the overall quality of life.

Conclusion

While poverty and culture undeniably play a role in illegal construction, its primary cause is the lucrative nature of illegal building for profit. This fact not only explains the general cause of the epidemic, but more specifically also serves as an important factor in the illegal building taking place in Indian States. In summation, illegal building severely mortgages the future of urban life worldwide. People who love their cities, regardless of their political views, ethnicity, or nationality, should unite to turn the tide against those who undermine their city's quality of life with illegal building. They should show zero tolerance for this dysfunctional scourge, wherever it manifests itself.



2.5

What are Building Bye-Laws and Master Plans?

All metropolitan cities have laws for design and construction of buildings. At the macro level, these laws (or building rules) specify the distances to be kept on all four sides of a building, between buildings, about height restrictions, ground coverage, total built up area, car parking requirements, width of internal roads etc. At the micro-level they specify the minimum spaces, heights, widths and areas to be provided for various types of rooms and enclosures.

These building rules of building bye-laws are not meant to be constraints imposed by the government to restrict good planning and design. They are made to ensure that a minimum standard is maintained in design of buildings and the spaces inside.

In most metropolitan cities, the Development Authorities publish an overall guideline for planned growth of the city. They are called Master Plans or different areas of the city and suggest development control guidelines for each area. This means that building rules can be different for different areas in a city. For example, a congested area in a city may have a lower permissible area than another area where the development is sparse; or an

area at the city center may have a higher car parking demand than the outskirts.

It is not unusual for different cities to have different building rules. Climatological factors, soil conditions, possibilities of earthquake, heritage zones, etc., also form important guidelines for drawing up building rules for a city. Consequently, one city may allow buildings of different plots to be joined with one another while another city may not allow that in their building rules. For example, cities in North India allow low buildings to be joined together to reduce the external surface area due to their extreme climatic conditions. This way, the buildings are able to retain the internal temperature to an optimum level. Northern Indian cities are also helped by the fact that their dry climatic conditions do not require cross ventilation. Therefore one or even two sides of a house can be without openings and conveniently joined with the next house. Whereas buildings in the hot-humid zones have to have cross ventilation and therefore, must have sufficient space between them.

Earthquake prone areas may have a restriction of only six floors for tall buildings and may allow wooden buildings, which is not permitted elsewhere. Areas with poor quality of soil may require certain precautions to be taken in the design and construction of foundations. Heritage zones in cities may require the new buildings to have special foundations so that the other buildings are not affected during construction. There may also be restrictions on the height, volume and elevation of the buildings to retain the character. The city of Jaipur has a restriction on color in the old city for all buildings.

It should be borne in mind that building rules are formed with a purpose and a broader vision to serve the city as a whole. One particular rule in a city may seem to be impractical or illogical from one point of view. Nevertheless, we have to accept it as an inherent constraint in the city together like its soil and climate.

What are Master-Plans?

Master plans have been in vogue for enabling orderly development of cities so that urban development was in accordance with a comprehensive plan. At present, hardly 20 percent of the urban centers have some sort of a Master Plan, which in many cases is just a policy document. It is estimated that there are about 1200 master plans prepared by various Agencies responsible for plan preparation but their implementation is not encouraging. The implementation of a master plan facilitates the orderly and planned development of cities in a sustainable manner, which would ultimately help in good governance.

Today, the master plan, (which was initially perceived to be a process rather than a conclusive statement) provides guidelines for the physical development of the city and guides people in locating their investments in the city. In short, Master Plan is a design for the physical, social, economic and political frame work for the city, which greatly improve the quality of Urban Governance also. Either way, in today's context, a master plan read with the Municipal rules is an important document to ascertain the legality of the structure.



2.6

Principles of Land Acquisition by Government

Who is Empowered to Acquire any Land not Belonging to Govt.?

As per the provisions of Land Acquisition Act, 1894 (Central Act) the Government is empowered to acquire any land, which is not the property of Government and which is required for public purpose or under the special circumstances described in Part-VII of the act, for a Company. The land, the interests of which is already vested in Government and in which no interests of private person exist, cannot form the subject of proceedings under the Land Acquisition Act. The transfer of such land from one department to another or to a local authority or to a Corporation owned or controlled by the State or Company should be arranged for by executing action.

Who is competent to acquire the land on behalf of the Govt.?

According to the provisions of Section-3(c) of the act, the Collector of district or a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the

functions of a Collector under the Land Acquisition Act can acquire land under that Act. Since Collector of the district is over-burdened with multifarious work it is usual to vest an officer with the powers of Collector under the Act. In case of large projects like Irrigation, Railways, etc., a Special Land Acquisition Officer is appointed to expedite the process of land acquisition for such projects.

Who is to file Requisition for Acquiring Land and the Pre-requisites for it?

When land is required for public purpose, the requiring authority should file requisition with the Collector with requisites viz., schedule of land, land plan, administrative approval, etc., indicating the purpose for acquisition. It is incumbent on the officer, who selects land for the requiring department, to endeavor to avoid buildings particularly religious buildings, tombs, graveyards, etc., the acquisition of which will entail unnecessary expenditure of Government and annoyance to owners or the members of any religion or section, if the object sought can be equally well attained by a slight alteration of the alignment or site chosen or any some other manner. It is the duty of the Collector to see that the interest of the Government, of the public and private individuals are duly considered and that the land to be acquired and so selected is to cause the minimum of the expenditure, annoyance and loss compatible with the attainment of the object for which the land is required.

What procedure is to be adopted after requisition of the land and who is competent to issue 4(1) verification?

Following receipt of the requisition, the Collector shall forward the draft notification along with necessary documents/papers to the Revenue Department, R.D.C. and the Administrative Department concerned. If the proposal is in order the Revenue Department issues the notification u/s 4(1) of the act endorsing

copies to all concerned. The notification so issued is required to be published in the Orissa Gazette and two Oriya dailies. Besides, the Collector should give public notice of the substance of the notification at convenient places of the locality in which the land proposed to be acquired is situated. The last of the dates is taken as the date of publication of notification u/s 4(1). Section 17(4) authorizes the local Government to dispense with the procedure laid down in Section 3-A and issue the declaration u/s 6 immediately after the publication of the notification u/s 4(1) without inviting or hearing objections. This procedure is adopted if the land is required for public purpose urgently. In other cases, Section 5-A of the Act entitles the persons interested in the land proposed to be acquired to prefer objections. The Collector shall hear the objections received within the statutory period of 30 days. Following completion of hearing the Collector will furnish his report to the Government in Revenue Department keeping the requiring officer, RDC and Administrative Department informed.

Issue and Publication of Declaration u/s 6(1)

The Collector is required to prepare and forward the draft declaration u/s 6(1), estimates and plan to the R.D.C. with copies to Administrative Department and others concerned. After receipt of the sanctioned estimates along with draft declaration papers from the Administrative Department, Revenue Department issues the declaration u/s 6(1) of the Act. The declaration so issued is required to be published in the same manner as in case of the notification, issued u/s 4(1).

Section 7 of the Act, what does it say?

After issue of declaration u/s 6(1), the requiring authority should deposit the estimated amount as sanctioned by the Government with the Collector for the purpose of disbursement of compensation to the persons interested in the land. Soon after the deposit of the estimated amount by the requiring authority, the Collector

intimates such facts to the Government with request to issue orders u/s 7. Following publication of declaration of u/s 6(1) and receipt of report from the Collector regarding placement of funds by the requiring authority, the Revenue Department issues orders u/s 7 directing the Collector to take over possession of the land after framing the award and disbursing the compensation to the persons interested.

Award by Collector u/s 11

On receipt of orders u/s 7, the Collector is required to cause public notice to be given at convenient places on or near the land to be taken, stating that the, Government intends to take possession of the land and that claims to compensation for all interest in such land may be made to him. The minimum time allowed in the notice for submission of claim petitions should not be less than 15 days from the date of publication of the notices. After the expiry of the stipulated period, the Collector shall proceed with the enquiry into the objections, if any, regarding measurement of the land and value of the land and make an award u/s 11 of the Land Acquisition Act.

What are the constituent of the award by the Collector u/s 11?

The award of Collector includes:

1. Market value of the land on the date of publication of notification u/s 4(1), damages if any, value of the structure if any, etc.
2. In addition to the market value of the land the Collector shall in every case award an amount calculated @ 12% per annum on such market value commencing on and from the date of publication of notification u/s 4(1) to the date of award of the Collector or the date of taken possession of the land, which ever is earlier.
3. In addition to the market value of the land, the Collector shall in every case award a sum of 30% on such market

value in consideration of the compulsory nature of acquisition.

The market value of the land is determined usually on the basis of the sale transactions made in the Local Sub-Registrar Office during the period of one year preceding the date of publication of notification u/s 4(1). If sale transactions are not available in respect of the village in which land is acquired, the sale transactions in respect of the neighbouring villages are taken into account. While fixing the land value, the speculative transactions are ignored. If buildings are acquired, the Public Works Department officials of the areas usually make the valuation.

Compensation received under protest u/s 18

Consequent upon framing of awards u/s 11 of the Act, the Collector disburses the compensation to the awardees. If the awardees receives the compensation under protest, he is entitled to file reference petition u/s 18 requiring the Collector to refer the matter to the court for determination of the compensation. Such application shall be made within the time limit indicated hereunder:

1. If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award.
2. In other cases, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-Section 12, Sub-Section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Further, interest @ 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereon which has not been paid into the Court before the date of such expiry by the same notification under Section 4, Sub-Section (1) and who are also aggrieved by the award of the Collector, may, notwithstanding that they had not made an application to the Collector under Section 18 within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

Any person who has not accepted the award under Sub-Section (1) of Section 28-A may, by written application to the Collector, require that the matter, be referred by the Collector for the determination of the Court and the provisions of Section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.



2.7

What are the Important Property Documents?

Some of the important property documents are:

1. Encumbrance Certificate
2. Khata
3. Tax paid receipts

I have attempted to explain the significance of each of these documents one after the other.

Meaning of Encumbrance Certificate

Certificate of encumbrance refers to the certificate in respect of charges created on a property. In case the property has been offered as a security for a loan or has been purchased from borrowed money, then a charge is created in the form of an encumbrance. The property may be mortgaged as a security for any debt or obligation.

In case of any transaction or sale or purchase of property, a nil-encumbrance certificate is a very important document. Nil-encumbrance certificate is also issued for the purpose of mortgaging the property for those seeking loans. The certificate

certifies that the property in question is not already mortgaged. If it is already mortgaged, the liability for the outstanding loan may also devolve on the new owner.

The encumbrance certificate is usually issued in the language in which the registers and records are maintained at the Sub-Registrar's office. However, an English translation can be obtained on payment of an additional fee.

The purchaser of the property generally obtains this certificate from the office of the Registrar. In order to obtain this certificate the following procedure needs to be followed:

- An application needs to be submitted on Form 2 (with Rs. 2 non-judicial stamp affixed) to the Tahsildar giving your complete residential address and the purpose for which the said certificate is required and attach a copy of ration card/any residence proof showing address duly attested. Also one should furnish details of ownership of immovable properties giving correct survey numbers and place where the property is situated. It is very important that the period, full description of the property, its measurements and boundaries are clearly mentioned in the application.
- The application should be submitted to the jurisdictional sub registrar's office under which the property falls. It is essential that the requisite fees have been paid. The fee is to be paid year wise, with any fraction of the year being taken as full year.
- The Tahsildar shall seek a report from Patwari whether there is any entry in favour of any person or legal body. In case there is no such entry and the report is favorable, then the certificate is issued after conducting detailed inquiry. The time taken may be anywhere between 15 to 30 days. The encumbrance certificate is issued in either Form 15 or Form 16.
- In case the property does not have any encumbrance during the period, Form 16 is issued. This is for nil encumbrances, i.e., no charge has been registered on the property.

- In case the property has any charges registered against it, then Form 15 is issued. Form 15 discloses the nature of charges created, documents registered in respect of the property, amounts secured, registered number of the document and the registration details and references, i.e., book numbers.
- This certificate is issued only for a particular period of time and does not cover any period prior to or following the period mentioned.
- This certificate is an extract of the register maintained by the Sub Registrar's office, which in turn is based on the documents registered with the registrar's office.

Transactions not captured

There are certain cases, where transactions are not registered:

- Leases for a period of less than one year need not be registered.
- The testamentary documents need not be registered.
- Cases where documents are not registered with the registrar's office.
- Cases of equitable mortgage where the borrower deposits the original documents pertaining to the property with the bank and not getting it registered with the registrar's office.

Thus, a purchaser has to rely on the attendant circumstances to protect his interests.

Application for Encumbrance Certificate/Certified Copy

1.	Name of the Applicant	
2.	Address & Telephone No. (if any)	

Details of Property

1.	Name of the village				
2.	Name of the street				
3.	Old survey no./Sub Div. no.	New survey no./Sub Div. no.	Block no.	Ward no.	T.S. no.
4.	Old door no.	New door no.	Plot no.	Flat no./Flat name	
5a.	Extent of the site		Total extent	Conveyed extent	Undivided share
5b.	Built up area				
6.	Boundaries: North South East West				
7.	Name of the declared owner				
	Father's name				
8.	Period of search No. of years		From	To	

In the case of certified copy furnish the following particulars also

9.	Name of the executant			
10.	Name of the claimant			
11.	Doc. No.	Year	Book & Vol. No.	Page no.

Note 1: As against column survey No. the Resurvey No. (R.S. No.) or the ground Survey No. (G.R. No) shall be entered. Block and ward refers only Survey Block and Ward. In the case of properties affected in partition Deed details from Column 3 to 8 to be given

separately. In the case of Town surveyed properties the corresponding previous O.S. No./G.R. No. shall also be furnished in the relevant column.

Note 2: In the case of Copies of wills and Authorities to adopt, copies can be issued only to the executant or in the case of death executant, to any person against the proof of the death of the executant.

Note 3: In the case of documents filed in Book IV such of powers of Attorney, etc., the copies can be issued only to the person executing or claiming through the documents.

Date:

Signature:

Here the applicant may furnish the previously registered Doc. No. and the year.

Meaning of Khata, Chitti, Adangal

These are basic documents called by different names in different places indicating the ownership of property as entered in the register of the Government authorities.

A Khata is an account of assessment of a property, recording details about your property such as size, location, built up area and so on for the purpose of payment of property tax. It is also a kind of identification of the person who is primarily liable for payment of property tax.

The Khata is one of the required documents in case you require a building license, trade license or loan from banks or any other financial institutions. It is mandatory for all property owners/ holders to pay property-tax, hence you need a khata.

A khata is an account of assessment of a property for the payment of tax. The khata does not confer ownership. However,

the title deed is the document through which a person derives a title or ownership of the said property.

Registration of a new khata

This is in case of a property which has not been assessed for property tax so far.

Transfer of khata

This is being considered when the title of the property is transferred from one person to another by way of sale, gift, will or in case of death of the property owner etc.

Bifurcation/clubbing of khata

Bifurcation when a property is divided into two or more parts. Clubbing is considered when more than one property is merged together-a modified khata has to be obtained in both the cases.

One can pay the property tax in two installments in a year. The property tax related to the first half year will have to be paid within 60 days from the date of commencement of the year, i.e., April 1 of every year. The second half year has to be paid within 60 days from the date of commencement of the second year, i.e., October 1 of every year. Payment of property tax beyond 60 days as mentioned above will attract a penalty of 5% per annum. But improvement expenses shall be paid at once in lump sum.

All the property owners can apply for the khata certificates after the payment of up-to-date property taxes and paying prescribed fee. The khata extract can be applied by anybody, which will be issued on payment of Rs. 100 per property for one extract. These khata certificates and extract can be applied at the office of the jurisdictional AROs, which will be issued within two days from the date of filing the application.

Whenever a person holds the title over the property, he can prefer the application for inclusion of his name in khata, furnishing the title documents.

Whenever the title documents are not furnished and the property is in possession of an occupant, with super structure, it will be assessed to property tax registering the khata as 'HOLDER' in the interest of Corporation revenue. This holder khata will be regularized on production of title deeds and payment of improvement charges.

GPA holder of the property with super structure can also apply for khata where the khata will be registered as 'HOLDER' and taxes will be collected from GPA holder.

Obtaining a Khata

Khata certificate: A Khata certificate can be obtained by the owner of a property on payment of Rs 25, subject to the condition that property tax has been paid, in any of the citizen service centers or in the 30 revenue range offices.

Khata extract: Khata extract of any property may be obtained by anybody on payment of Rs. 100.

Khata registration: Applications for Khata registration may be filed in any of the citizen service centers or any of the 30 revenue offices along with documents mentioned in the Sarala Khata Scheme Book. Documents include sale deed, mother deed, National Savings Certificate of Rs 200, and sketch showing the site details. Mandatory fees: two per cent of stamp paper (which depends on the value of property), and betterment charges, for example, a 30 × 40 site commands Rs 13,000.

Khata transfer: Applications for Khata transfer may be filed in any of the citizen service centres along with documents mentioned in the Sarala Khata Scheme Book. Documents include the same as for Khata registration along with tax receipts of previous years. Even here citizens pay two percent of the stamp paper value.

The Sarala Khata Scheme Book gives all the details about the services of the Revenue Department, documents to be filed, fees to be paid, schedule of time for the services and also the rates for

assessment of property tax under the self-assessment scheme. This book is available on payment of Rs 20 in the citizen service centers and also in the 30 revenue range offices.

Meaning of Tax Paid Receipts

Property taxes which are due to the government or municipality are a first charge on the property and, therefore, the purchaser needs to enquire in government and municipal offices to ascertain whether all taxes have been paid up to date. The owner should also possess the latest tax paid receipts, which the purchaser can inspect. Besides, the purchaser should also enquire in various departments of the municipality to ascertain whether any notices or requisitions relating to the property have been issued and are outstanding and not yet complied with.

While inspecting the property tax receipt, it can be noted that there are two columns in the tax receipt. Make sure that the name entered in the owner's column is correct. The second column will be for the name of the one who paid the tax. Sometimes the owner may not have the tax receipt with him, in such cases, contact the village office with the survey number of the land and confirm the original owner of the land. If you are buying a house along with the property, then the house tax receipt should also be checked. Also ensure that the electricity and water bills are up-to-date and if there any is balance payment to be made, ensure that it is made by the seller.



2.8

Know All about Stamp Duty and Registration

All about Stamp Duty

Stamping of housing documents is an essential part of the housing registration process. Stamp duty is required to be paid to the Government. The rates of stamp duty payable are specified by the Stamp Act-Central as well as State Acts-which specify the rates of duty for different documents.

The Constitution of India has provided provisions for levying taxes Tax is levied in the form of stamps on instruments recording transactions. This form of taxation has been found to be convenient for collection and supervision. The Stamp Act is a fiscal statute dealing with tax on transactions. Article 246 and the 7th schedule is relevant in regard to the legislative power to levy stamp duties. Article 265, 268 and 269(e) are relevant mainly on distribution of revenue.

Stamp duty can be of two types:

1. Stamp duty on home loans.
2. Stamp duty on property to be registered.

Most of the State Governments have introduced stamp duty on home loans. However, the State Government of Karnataka has decided to impose stamp duty on home loans only recently. The Government of Karnataka has introduced stamp duty of 0.5 per cent on the property loan component. The new provisions will be effective retrospectively from April 1, 2006. As such, the stamp duty will be payable even if the loan amount has already been sanctioned by a bank.

Stamp duty for your home

Stamp duty is a tax paid to the State Government. It is payable on instruments such as an affidavit, an agreement, an indemnity bond, etc., and not on transactions.

Why it is imperative to pay stamp duty

Payment of proper Stamp Duty on instruments bestows legality on them and such instruments are eligible to be given as evidence in Courts.

The purchaser bears the cost of the stamps. In the absence of an agreement to the contrary, the expense for purchasing stamps is borne by the purchaser. The stamps are to be purchased in the name of one of executors to the Instrument.

Rates of stamp duty

The Stamp Duty is payable on the agreement value of the property or the market value which ever is higher. Stamp duty rates on instruments relating to transfer of immovable property vary from place to place. The rates are specified in the Bombay Stamp Act, 1958. In some cases, a concession is given on the stamp duty payable.

Difference between Stamp Duty and Registration charges

Stamp duty is a tax levied by the State Government and stamp duty rates vary from State to State. Stamp Duty Department is

constituted for collecting the revenue due to the Government.

Registration charges are collected for keeping the records of the documents. The Indian Registration Act, 1908 is a Central Act which is a common for all the States of India.

How the market value of the property is determined

The market value of an immovable property is the value at which the seller is willing to sell and the buyer is willing to buy.

How the Stamp authorities determine the market value of a property

The Stamp Authorities have fixed values of properties for different localities based on the information accumulated by them.

The Sub-Registrar of the area in whose jurisdiction the property is located is contacted for determining the market value of the property.

Non-acceptance by parties of market value arrived at by Stamp Authorities

It is not binding on the parties executing the documents to accept the market value indicated by the Sub-Registrar.

The parties can ask the Sub-Registrar to refer their case to the Collector of the District for determination of true market value and it is binding on the Sub-Registrar to do so when asked by the parties.

Adding value to the flat for more number of floors

The stamp authorities increase the value of the flat based on the number of floors the building has. Higher the number of floors, larger is the increment in the value. The area of balcony has to be included while calculating the area of flat.

Area on which stamp duty rates are fixed

Stamp duty rates are fixed on built-up area basis. 20% is added to carpet area to arrive at the built up area and 20% is added to the built-up area to arrive at the super built-up area.

Linking registration fees with stamp duty

When parties register their document the Sub-Registrar charges a fixed fee based as a percentage of the consideration value subject to a maximum limit. The Sub-Registrar will issue a notice telling the parties to pay the difference in Stamp duty if the duty has not been paid as per the valuation booklet prepared by the Deputy Director of Town Planning and valuation.

The prescribed area rates are available with the Sub-Registrar's Office and if an attempt is made parties are shown the rates. However I would like to state that each property has its own merits and demerits depending upon its situation, surroundings etc. Thus the rates cannot be generalized.

Differences in value of buildings in the same locality [a better and newer building as compared to a dilapidated structure]

It is possible that a more up market or prestigious building is a particular locality may fetch a higher rate than a neighboring building. In this case, if there is a dispute in the market rates, the matter should be referred to the town-planning department.

Valuation in case of transfer of residential flats by landlords to tenants based on a certain number of months' rent

In the case of properties which are transferred subject to tenancy the objections should be made to the stamp authorities so that the same may be considered. It is a general view that properties, where there are genuine tenancy litigation normally fetch less than the market value. The Stamp Authorities will value the property at 108 months rent plus construction cost or the agreement value whichever is higher. The authorities also insist

for electricity bill, rent receipts, etc., to prove the tenancy or the agreement value which ever is higher.

Whether valuation done for wealth tax purposes is considered for stamp duty

For payment of wealth tax, the valuation is linked with Municipal Property Tax and there are licensed valuers whose valuation report is acceptable to the department. The stamp duty authorities don't consider this valuation and stamp duty is levied on the fair market value of the property as decided by the Stamp Authorities.

Whether stamp duty will have to be paid if there is a deed of family settlement and a flat is transferred amongst family members

Yes. As per the provisions of Bombay Stamp Act, Stamp Duty will have to be paid on a deed of Family Settlement.

Whether stamp duty will have to be paid if the flat is gifted by a donor

Yes. Stamp Duty will have to be paid if the flat is gifted by a donor.

Consequences of under valuation of document

If the collector has reason to believe that lower stamp duty has been paid, he can take coercive measures after giving reasonably opportunity to the opposite party of been heard. He can charge a penalty for the period of default.

Instrument executed on stamps not bearing the name of one of the executors

Such instruments are treated as improperly stamped and cannot be used as evidence for any purpose. Also, these instruments are sent to the Collector of Stamps for recovery of proper stamp duty.

Timing and mode of payment of stamp duty

The Stamp Duty is payable on instruments before or at the time of execution or on the next working day following the day of execution. The stamp duty can be paid by account payee cheque, demand draft or pay order. If it is paid by cheque the documents are delivered after the encashment of the cheque. In case the stamp duty has been paid by pay order, demand draft than the documents are returned within a short period of time.

Whether stamp duty can be paid in installments since cost of the flat is also being paid in installments

Stamp Duty cannot be paid in installments.

Whether one has to pay stamp duty in case of death of a member of a Co-operative Housing Society and the flat being transferred to the legal heir of the member

Stamp Duty has not to be paid when there is transmission of shares. Therefore when the flat is transmitted in the name of the legal heir the question of payment of stamp duty will not arise.

Meaning of adjudication of instruments

Adjudication means determining the chargeability of stamp duty on instruments. The Authority to be approached is the Collector of Stamps appointed in each District. Application for adjudication should be accompanied by a true copy or an abstract of the instrument and also with such affidavit or other evidence as may be necessary to prove that all facts affecting the charge ability of the instrument have been truly set forth in the instrument along with a payment of the adjudication fee. Adjudication can be done both for signed as well as unsigned documents.

Whether chargeability of stamp duty by the Collector of stamps in adjudication is final

The chargeability of stamp duty on the instrument as determined

by the Collector of Stamps is not final. The person affected by the order of the Collector of Stamps can go in appeal to the Chief Controlling Revenue Authority. Though there is no time limit prescribed for the filing of an appeal, it will be desirable to file the appeal at the earliest to avoid complications.

Process of adjudication of stamp duty

The parties are required to file the original instrument (signed or unsigned) with the stamp duty officials and pay a prescribed adjudication fee. The duty is levied in the agreement value or the market value whichever is higher. The application has to be submitted to the authorities along with the original instrument and two xerox copies.

Information in Form II of the Bombay Stamp [determination of true market value of the property] Rules 1981 in the form of affidavit on a stamp paper of Rs.20 duly notarized.

Meaning of impounding (confiscation) of instruments

A person authorized to receive stamped documents, has the right to confiscate the instrument if he feels that insufficient stamp duty has been paid on the instrument. This confiscated document is required to be forwarded to the Collector of Stamps for recovery of deficit stamp duty in addition to penalty for deficit payment.

All about Registration of Property

The following are the advantages of registration.

1. The title gets additionally secured.
2. Loans are given only on registered immovable properties.
3. Seller may become un-cooperative if registration is done much later.
4. Even if you lose your property documents, you can obtain certified true copies of the documents from the registering authorities and establish your bonafide to the property.

Time within which one should register the documents

Documents must be registered within 4 months of execution. An extension of another 4 months is given if the documents have not been registered within the first 4 months by making an application to the sub Registrar and paying a penalty. One needs to also mention reasons for delay in registration.

Situation if one has not registered within the 4 months stated above

In this case, one needs to prepare a Deed of Confirmation signed by all the parties and should have the original documents attached to it.

Precautions to be taken before registering a document

1. Obtain the Income tax Clearance certificate of the seller if the property value exceeds the sum specified by the latest/relevant Finance Act.
2. Documents should be given a clearance from the collector regarding payment of proper stamp duty.
3. Formalities of the Urban Land Ceiling and Registration Act should be complied with.

Witnesses necessary for registering documents

Two witnesses have to necessarily be present for completion of the registration formalities. Witnesses have the duty of identifying persons executing the document. However, if the parties produce their passports, the need for witnesses is removed.

Necessity of registering a will

Registration of a will is optional. However, registration of a will enhances its authenticity.

Status if one of the signatories is not willing to be present at the Sub Registrar's office for registration formalities

The parties wanting to register need to make an application to the Sub Registrar of Assurances under the Indian Registration Act, 1908. The Sub Registrar of Assurances will issue summons on the parties not willing to be present, and after giving an opportunity to the party, will go ahead with the registration formalities. The Sub Registrar will make a noting in the document about absence of the party and deliver the document to the party applying for registration.

Registration fees payable

Registration fees are based as a percentage of market value of the property or a fixed sum, whichever is less.

Documents to be compulsorily registered

The Indian Registration Act, 1908 requires the following documents to be compulsorily registered:

1. An immovable property given as a gift.
2. Transacting of an immovable property with a value of Rs. 100 and above.
3. Leasing of an immovable property for a specified term [some State Government exempt registration of leases in specified districts for a specified period of time].
4. Transfer of a property by a court decree of the value of Rs. 100 and above.

Situation if all signatories of the document cannot go together for registration formalities

In this case, registration process can be initiated by parties able to go. The other parties can go at a later date. However, all parties must complete registration formalities within the specified period of time.

Registration of documents when flat is purchased from a builder

In this case, both the builder and purchaser are the signatories to the document. In case the builder is unable to go with the purchaser for registration formalities, the purchaser must ensure that the builder has completed registration formalities and submit a copy of the registered document to the builder.

Situation if the Sub Registrar refuses to register the document

An appeal should be filed with the Registrar within whose jurisdiction the Sub Registrar is operating. The Registrar will issue summons to the parties involved and solve the matter. The Registrar works like a Civil Court and enjoys powers under the Indian Registration Act, 1908.

Situation if the Registrar refuses to register the document

The aggrieved parties can then approach the Civil Court within whose jurisdiction the Registrar functions for resolving matters.

Reasons for refusal of registration

Documents are not registered in the following circumstances:

1. Document is opposed to public policy.
2. Parties have not complied with the formalities laid down by the Registration Act or the registering authority.
3. The survey number of the property is not mentioned in the document.
4. The language in which the document is executed is not acceptable to the registering authority.

Consequences of not registering documents, which have to be compulsorily registered

In this case, the purchaser's title will be defective. Also, an unregistered document cannot be used as evidence in any court.

Advantages of making additional copies of agreement on stamp paper

The advantages are:

1. In case of loss of the document you will have another signed agreement on a stamp paper.
2. If you are proposing to obtain loan you can submit the original copies and can quicken the loan sanctioning formalities. (Of course, it is presumed that you want take loan from two different banks for the same property).
3. At the time of selling your premises you can give the signed copy to another party. (And still retain the agreement with you also).

Method of measuring area for registration purposes

The Registering Authorities require the area to be measured on 'built up' basis.

Information required by the Registering Authorities before registration

The following information is required before registration:

1. Built up area of the premises.
2. Number of floors.
3. The City Survey number for the city of Mumbai or suburbs in Mumbai.
4. The ward.
5. The village/Taluka.

Method of payment of registration fee

Registration fee has to compulsorily be paid in cash.



2.9

Documents Compulsorily Registerable and Optionally Registerable

Registration of any document acts as notice to the public. But the registration of all the documents is not compulsory. The transfers of Property Act 1882, the Indian Registration Act 1902 have made the registration of certain documents compulsory, and others optional.

Section 54 of Transfer of Property Act 1882, stipulates that sale of immovable property value of which is one hundred rupees or more should be registered. If the value of immovable property is less than one hundred rupees, the registration of sale deed is not mandatory. But this is for academic interest only, since, the value of any immovable property will be generally more than one hundred rupees. Even the value is less than one hundred rupees; it is advisable that the deed be registered.

In case of lease, Section 107 of Transfer of Property Act 1882, prescribes that, lease of immovable property 'from year to year' or for a term exceeding one year or reserving a yearly rent must be done only by registration. The phrase from year to year, refers to a continuous lease from year to year, that is, where the landlord have no option to terminate the lease at the end of the year without notice.

Similarly the phrase, 'reserving yearly rents' means that the lease has no definite period, but the annual rent is determined. The word yearly means that the lease should run year after year or at least more than a year. In general any lease in excess of year and above should be registered.

Section 17 of Indian Registration Act 1902, deals with the documents, which require registration compulsorily.

1. **A document of gift of immovable property:** Gift as everybody knows, is given in consideration of love and affection and no monetary consideration is involved. So any gift deed irrespective of the value of the gifted property needs registration.
2. **All non-testamentary documents:**
   a) which create interest, right, title in immovable property the value of which is more than one hundred rupees;
   b) which extinguishes (cancels) any right, interest title in the immovable property value of which is one hundred rupees or more for present or future;
   c) which declare, assign, limit or restrict the interest, title, right in immovable property, value of which is one hundred rupees or more.
3. All non-testamentary documents which acknowledge the receipt or payment of any consideration on account of the transactions pertaining to right, title, interest in the immovable property.
4. All non-testamentary documents transferring or assigning any decree or order, award of a court, which affect the interest, rights and title in a immovable property the value of which is one hundred rupees and above.

The documents may create, extinguish, assign, declare, limit or restrict the interest, right title in the immovable property for the present or for future, but if the value of such immovable property is one hundred rupees or more, the deed to be registered.

Though all types of mortgages need registrations, the mortgages created by depositing of title deeds, called as equitable mortgage, is not compulsorily registerable. Mostly, banks and financial institutions use this mode of mortgages. However memorandum of deposit of title deed should be registered.

Testamentary means, relating to the WILL and non-testamentary means documents not connected with WILL. The WILL is a document, which states that who has to succeed to the assets, properties of the person, who writes the WILL (testator) after his death. WILL is not compulsorily registerable, but it is advisable to get it registered.

Indian Registration Act empowers the State Government to exempt the registration of any document of lease the period of which does not exceed five years and annual rent does not exceed fifty rupees.

What happens when the document, which is compulsorily registerable, is not registered

The important point is, what is the effect, if the document, which is compulsorily registerable, is not registered, Section 49 of Indian Registration Act deals with this situation. It states clearly that such non-registered documents do not convey transfer legally valid title to the transferee and such documents are not admitted as evidence of any transaction affecting the property referred in the document. Thus, the purchaser will not get legally valid title by an unregistered sale deed.

However, it also provides an exception, that such unregistered documents may be received as evidence in a suit for a specific performance under Specific Relief Act or as evidence of part performance of the contract as per Section 53A of Transfer of Property Act 1882 or in any other related transaction, not required to be affected by a registered instrument. It is always advisable to register any document connected with immovable property as it creates a permanent record, which are reflected in

encumbrance certificates. Further such registered documents have higher value of evidence than unregistered documents.

Section 18 of the Indian Registration Act, 1908 enlists the documents which are optionally registerable.

Documents of which registration is optional

Any of the following documents may be registered under this Act, namely:

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

(cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.



2.10

Power of Attorney and its Significance

Power of Attorney means the power or authority given to a person (agent) by an individual (principal) to act on his behalf or on behalf of a group of individuals in business matters or any other matter.

It plays a vital role in transferring the lawful ownership of immovable property like land, building, and water source, from one person to another. The person who holds the power is called the Power of Attorney Holder. He is employed by the principal to take care of his dealings with third persons.

A person competent to contract can execute a Power of Attorney. He can appoint one person or several persons to act on his behalf. Where several persons are appointed as attorneys, it is advisable to mention as to how they will act—jointly or independently. If this is not mentioned, then they are at liberty to act jointly.

Power of Attorney, generally speaking, is of two types. Power of Attorney for a single specific purpose is known as 'Special Power of Attorney' and the one involving more than one work or transaction is called 'General Power of Attorney'.

The duration of special power of attorney may be for a particular period or for an indefinite period until the task is completed.

A General Power of Attorney may continue to be in force until it is revoked or by death of either party. A registered Power of Attorney can be revoked by a Cancellation Deed.

Though, in general, a Power of Attorney is revocable, it cannot be done so in matters pertaining to debt security till the debt is cleared even though the debtor is not alive. It can be revoked if the principal becomes of unsound mind or he is declared insolvent. It cannot be revoked if it is made irrevocable. However it should be registered by paying applicable stamp duty. Power of Attorney attracts various provisions of The India Stamp Act, Powers of Attorney Act, Registration Act, The Indian Contract Act, and Indian partnership Act, and the Indian Evidence Act.

A Power of Attorney is divided into ten categories according to the stamp duty payable.

A Special Power of Attorney is given for a court case, for appointing one attorney in place of another, for collection of debts and for admitting execution and a General Power of Attorney is given for selling shares, to execute a Sale Deed, to prepare a layout and sell plots, to raise money through mortgage of property, to recover rents and many other acts.

A Power of Attorney need not be registered except in the case of an immovable property is involved. According to the Registration Act, if a Power of Attorney gives power to present documents for registration, then it must be executed before and authenticated by the Registrar or the Sub-Registrar. If the Registration Act is not in force at a place where the Executant lives, then a Magistrate's authentication is necessary.

If the Power of Attorney is registered outside India, a Notary Public and Court Judge, Magistrate of that country, or Indian Consul or Vice-Consul or a representative of Central Government must authenticate it.

A Power of Attorney is executed in the form of a legal document generally in the first person and begins either as "Know all men by these presents that I _____" or "By the power of attorney I _____", or "This Power of Attorney made and executed on this _____".

After a brief introduction, the operative part is brought in. Thereafter, the specific powers given to the person are mentioned in separate paragraphs. After these a general clause is added empowering the attorney to do such lawful acts and deeds, as he deems fit and proper in the performance of his duties.

It is the duty of the agent, the Power of Attorney holder, to act honestly and faithfully on behalf of his principal, the giver. He is legally bound to perform the tasks according to the wishes of the principal. If the agent acts otherwise and the principal suffers any loss, he must compensate the principal. He is bound to keep all accounts in a proper manner and produce it to the principal and demand. An agent possessing authority to carry on business has authority to do every lawful thing necessary for the purpose. Being a legal document, a Power of Attorney must be strictly interpreted and understood. Therefore special care must be taken while drafting General Power of Attorney.

Some important points on Power of Attorney

1. Stamp duty payable depends on the nature of power given.
2. General power of attorney is a document by which one person appoints another person to represent him/her and act on behalf of himself to manage, attend or carry out certain works like management, sale of property and dealings in the court, etc. Any person who has attained age of majority, of sound mind and is competent to contract can execute power of attorney in favour of another person who has attained age of majority, of sound mind and is competent to contract.

3. Powers of Attorneys attract stamp duty and needs to be attested. The person who gives power of attorney is called the Executant and who receives is called the GPA Holder. Power of attorneys creating interest on immovable property need registration.
4. If the deed of power of attorney mentions that power of attorney is executed after having received full value of the property and it is irrevocable, such power of attorney is called irrevocable power of attorney. It cannot be revoked unilaterally until the action is completed.
5. At the time of executing General Power of Attorney if the executant is not residing in India, he may execute it in the country where he resides before a Notary Public or Indian Consul or Vice Consul or a Judge or in Court or before a representative of the Central Government.
6. It is optional to register a General Power of Attorney. There are two types of Power of Attorneys. One is General Power of Attorney and the other Special Power of Attorney. When 'power' is given in respect of a particular act pertaining to one transaction it is called Special Power of Attorney. When 'power' is given in respect of a number of acts in a number of transactions it is called General Power of Attorney. However, it is always advisable to hold a registered GPA while registering an immovable property in order to give better title to the property.



2.11

Some Important Aspects of Lease of Immovable Property

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, Lessee, Premium and Rent

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

How are leases made?

A lease of immovable property from year to year, or for any term exceeding one-year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument binds both lessor and the lessee.

Essential Elements

The essential elements of a lease are as follows:

Parties: The parties to a lease are the lessor and the lessee. The lessor is also called the landlord and the lessee the tenant.

Subject matter of lease: The subject matter of lease must be immovable property. The word "immovable property" may not be only house, land but also benefits to arise out of land, right to collect fruit of a garden, right to extract coal or minerals, hats, rights of ferries, fisheries or market dues. The contract for right for grazing is not lease. A mining lease is lease and not a sale of minerals.

Duration of lease: The right to enjoy the property must be transferred for a certain time, express or implied or in perpetuity. The lease should commence either in the present or on some date in future or on the happening of some contingency, which is bound to happen. Though the lease can commence from a past day, but that is for the purpose of computation of lease period, as the interest of the lessee begins from the date of execution. No interest passes to the lessee before execution. In India, the lease may be in perpetuity.

Consideration: The consideration for lease is either premium or rent, which is the price paid or promised in consideration of the demise. The premium is the consideration paid of being let in possession, such as Salami, even if it is to be paid in installments.

Sub-lease: A lessee can transfer the whole or any part of his interest in the property by sub-lease. However, this right is subject to the contract to the contrary and he can be restrained by the contract from transferring his lease by sub-letting. The lessee can create sub-leases for different parts of the demised premises. The sub-lessee gets the rights, subject to the covenants, terms and conditions in the lease deed.

Rights and liabilities of lessor and lessee

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

Rights and liabilities of the lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Rights and liabilities of the lessee

(d) If during the continuance of the lease any accession is made to the property, such accession shall be deemed to be comprised in the lease

(e) If by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

PROVIDED that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) If the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor

(h) The lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under

the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee

(k) The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest;

(l) The lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit

any other act which is destructive or permanently injurious thereto;

(p) He must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

How does a lease end?

A lease of immovable property determines:

(a) By efflux of the time limited thereby,

(b) Where such time is limited conditionally on the happening of some event-by the happening of such event,

(c) Where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,

(d) In case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,

(e) By express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,

(f) By implied surrender,

(g) By forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,

(h) On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Holding over-extended possession

If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased.



2.12

Differences between Lease and License

Leave and Licence and Lease/Tenancy Agreement are two entirely different kinds of document which have different legal implications and effect.

The Lease is defined u/s. 105 of the Transfer of Property Act, which reads as under:

"105. Lease defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

A Licence is defined u/s. 52 of the Indian Easements Act, 1882. The said Section 52 reads as under:

"Where one person grants to another, or to a definite number of other persons, right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful and such right does not

amount to an easement or an interest in property, the right is called Licence".

Thus Lease and Licence are defined under two different statutes.

The essential distinction between a Lease and a Licence is that in a Lease, there is transfer of interest in the property while in the case of licence, there is no such transfer although the Licensee acquires only a personal right to occupy the property. This principle has been confirmed by number of High Courts and Supreme Court judgements (AIR 1968 S.C. 175 (178), AIR 1989 S.C. 1816 (1990), Second Law Report 381, etc.).

Grant of license

License is, therefore, a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement. Both lease and easement create an interest in the property. License is only a permission to do something on an immovable property like occupation, or enjoying fruit thereof, or using it for some other purpose.

A license is notionally created where a person is granted the right to use the premises without becoming entitled to the exclusive possession of them or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no legal interest.

If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control.

The definition in Section 52 referred to above does not refer to exclusive possession.

A license is a personal right given to the licensee and, therefore, Section 56 of the Easements Act, 1882 provides that license cannot be transferred by the licensee or exercised by his servants and agents.

Distinction between Lease and License

In spite of the statutory provisions governing grant of a license the distinction between a **Lease** and a **License** is very fine resulting in spate of controversy and litigation therefore, the intention of the parties are the real test for ascertaining character of a document. Honble Supreme Court of India in *Khalil Ahmed Bashir Ahmed v. Tufelhussain Samasbhai,* AIR 1988 SC 185, their Lordships laid down the propositions as well established

1. to ascertain whether document creates a license or lease, the substance of the document must be preferred to the form;
2. the real test is the intention of the parties whether they intended to create a lease or a license;
3. if the document creates an interest in the property, it is lease; but, if it only permits another to make use of the property of which the legal possession continues with the owner, it is a license; and
4. if under the document a party gets exclusive possession of the property, *prima facie* he is considered to be a lessee,

The other difference between lease and license:

i. A lease creates an interest in the property while a license passes no interest in the property and merely makes an action lawful, which without it would have been unlawful.
ii. A lease gives the tenant a right to exclusive possession while a license confers no such right on the licensee.
iii. A lease is assignable, but a license is generally non-transferable.
iv. A lease unlike a license is not revocable.
v. A lease is not determined by the grantor making an assignment or its subject-matter, but a license is determined in such a case.
vi. A lessee can bring an action for trespass, but a licensee cannot sue in his own name.

vii. A lease in some cases require registration but a license does not.

viii. A leasehold creates a heritable right

ix. A license is determined by the death of the grantor, while a lease is not.

U/s. 56 of the Easements Act, a Licence is personal and the Licence cannot be transferred by the Licensee, whereas Lease, except in the case where Rent Control Act is applicable, is transferable. Under Section 108(B)(j) of the Transfer of Property Act, the Lessee is not only entitled to transfer his leasehold right but can also mortgage or sub-lease the whole or any part of his interest in the property, whereas the Licensee cannot transfer or mortgage or grant sub-license to any person. The Licensee cannot sue a stranger in his own name, whereas the Lessee is entitled to sue a stranger on his own name. The License is revocable by the Licensor under Section 60 of the Easements unless it falls within two exceptions mentioned in that Section, the Lease is not by the Lessor. The licence comes to an end when the Licensor makes an assignment of his interest in the property, whereas a lease continue to be valid and binding on the Assignee of the Lessor when the Lessor assigns and transfers his interest in the property which is called a transfer of "reversionary right".

The basic test to distinguish a Lease from Licence is the intention of the parties. Now let me take the example of Maharashtra. U/s. 7 of Maharashtra Rent Control Act, 1999, the licence and tenancy are separately defined. The licence is defined under the Rent Act u/s. 7(5), and the tenancy is defined u/s. 7(15) of the said Act. Explanation B of Section 24 the said Rent Act, states that an Agreement of Licence in writing shall be conclusive evidence of the facts stated therein. In view of Explanation (B) to Section 24, once it has been mentioned in an Agreement that same is Leave and Licence Agreement, then it is a conclusive evidence of the fact that it is a Licence and not a Lease and that intention of the parties is to have a licence and not a lease. In view of the said provision, now it is not open for anybody much

less Stamp Authority to contend when Agreement is of Leave and Licence that the same is Lease. In case of licence for residential premises, Owner/Licensor is entitled and has to proceed u/s. 24 of the said Act, whereas in tenancy agreement for recovery of possession, the Lessor is entitled to initiate ejectment proceedings under Chapter IV of the Rent Act and under Section 33 of the said Act has to file a suit in the Court of Small Causes at Mumbai. Therefore, there are two different provisions under the Rent Act in respect of the recovery of possession by the Licensor and by the Landlord/Lessor. There are other various provisions under the Rent Act where distinction is made between the Agreement of Tenancy and the License.

In case of recovery of possession by the Lessor or Landlord to which provisions of said Maharashtra Rent Control Act applies, will have to file a suit for ejectment in Small Causes Court only. Whereas in case of licence of a residential premises, the proceedings are to be taken u/s. 24 before the Competent Authority.

In view of Explanation B to Section 24 of the Rent Act, once the document states that it is a licence granted by the Licensor to the Licensee, it is conclusive proof that it is a licence and that it was the intention of the parties that it has to be Licence and not Lease. Such document will be covered by the Easements Act, the Licensee will not be entitled to transfer, mortgage, grant sub-licence. The licence, on the death of Licensee, will come to an end. It is submitted that in such circumstances, the licence being personal permission, it is not open for Stamp Authorities to say that even though Agreement is of Leave and Licence but it could be construed as a Lease. It is respectfully submitted that Stamp Authority in view of specific provision of Explanation 24 of Rent Act cannot treat a Licence as Lease on the ground that document is not licence but in fact it is lease.

The interest and right of a lessee or tenant are heritable under the Transfer of Property Act as also under the Bombay Rent Act. But the right to use premises is not heritable in case of Leave and

Licence. On the death of a Licensee, his heirs will not inherit a right as a Licensee to use the premises. Therefore, considering the definition of the Lease and Licence, both are different under all relevant Acts. Both Agreements have different meanings, legal effects and consequences. It is abundantly clear that lease and/or tenancy agreement is distinct from Leave and Licence Agreement. One cannot treat a Leave and Licence Agreement as a Lease and claim stamp duty as per Article 36 of Schedule I of Bombay Stamp Act.



2.13

Partnership Deed in Real Estate Business

A partnership is a strategic alliance or relationship between two or more people. Successful partnerships are often based on trust, equality, and mutual understanding and obligations. Partnerships can be formal, where each party's roles and obligations are spelled out in a written agreement, or informal, where the roles and obligations are assumed or agreed to verbally. You may be able to choose your partner or, as is often the case, your partner may be assigned to you.

Working with a partner is, of course, fraught with pitfalls. A partnership that has gone sour can cause bitter feelings and spoil a business deal. It is important for both parties to be open-minded and accepting of each other's differences. There must be a willingness to learn and adapt. Both partners must be willing to exchange their technical knowledge and to relate as equals in a shared future.

Before a partnership is formed, a "partnership deed" should be prepared. This partnership deed may be oral or in writing. However it is wise to make sure that the partnership deed is in writing so that future conflicts may be resolved. More about the partnership deed shall be explained ahead.

To understand all the characteristics of a partnership consider the following:

1. Two or more members:
2. At least two members are required to start a partnership business. But the number of members should not exceed 10 in case of "banking business" and 20 in case of "other business". If the number of members exceeds this maximum limit, then that business is not called as a partnership business legally.

Partnership Deed

Whenever you think of starting a partnership business, there must be an agreement between all the partners. This agreement must contain:

- The amount of initial capital contributed by each partner
- Profit or loss sharing ratio for each partner
- Salary or commission payable to the partners, if any
- Duration of business, if any
- Name and address of the partners and the firm
- Duties and powers of each partner;
- Nature and place of business; and
- Any other terms and conditions to run the business
- Retirement or death of a partner should not affect the partner. In the case of death of a partner, the legal heir will take place of the partner and in the case of retirement, his accounts will be settled within a stipulated period of time.
- On dissolution of the project, the outgoings of the firm will be discharged first. The capital contributed by the partners will be refunded next. Then, the partners, in proportion to their capital ratio, will share the residue.
- It is always better to have an arbitration clause in case of any dispute in matters of partnership or the project. It

should be referred to and settled under the provisions of the Arbitration Act. The award of the arbitrator is final and binding.

- ✦ It is always better to add a clause which says that the provisions of the Indian Partnership Act, 1932 will be applicable wherever necessary.
- ✦ Finally, the partnership deed should be adequately stamped and all the concerned partners should sign the deed in the presence of two witnesses.
- ✦ The deed should be registered under the Indian Partnership Act, 1932 on Form No. 5 and submitted to the Registrar of Firms.



2.14

Cooperative Societies and the Laws Governing them

Who can become members of a cooperative society in India?

Persons who may become members of a Cooperative society at State level (as per the State Act):

(a) an individual competent to Contract, attained majority and is of sound mind and belongs to a class of persons if any for whom the society is formed as per its bye-laws;

(b) a society registered or deemed to be registered under the Cooperative Societies Act;

(c) the Government;

No individual shall be eligible for admission as a member of a federal society

Persons who may become members of a Multi-State Cooperative Society: (As per Multi-State/cooperative Societies Act, 2002).

(a) an individual, competent to contract under section 11 of the Indian contract Act, 1972.

(b) any multi-state Cooperative society or any Cooperative society.

(c) the Central Government
(d) a State Government
(e) National Cooperative Development Corporation (NCDC)
(f) any other Corporation armed or controlled by the Government.

No individual person shall be eligible for admission as a member of a national Cooperative society or a federal Cooperative

For details on the procedures for forming a cooperative society, see the section on "What are the steps/checklist for forming a cooperative society?"

What are the steps/checklist for forming a cooperative society?

Steps involved for forming a Cooperative Society under a state act:

(i) Prescribed application duly filled in shall be made to the Registrar of Cooperative societies;
(ii) the application shall be accompanied by four copies of the proposed Bye-laws of the society;
(iii) Where all the applicants are individuals, the number of applicants shall not be less than ten;
(iv) the application shall be signed by every one of such applicants if the applicants are individuals;
(v) if the applicant is a society, by a member duly authorised by such society;

To Form a Multi-State Cooperative Society

(i) An application for registration of a Multi-State Cooperative society shall be made in the prescribed form;
(ii) the application shall be signed by;

(a) In the case of a multi-state Cooperative society of which all the members are individuals, by at least fifty persons from each of the states concerned.

(b) In case the members are Cooperative Societies, by duly authorised representatives on behalf of at least five such societies as are not registered in the same state;

(c) In case the members are other Multi-State Cooperative Societies and other Cooperative Societies, by duly authorised representatives of each of such societies;

(d) If the members are cooperative societies or multi-state Cooperative societies and individuals, by at least (i) fifty persons, being individuals from each of the two states or more and; (ii) one Cooperative society each from two states or more or one Multi-state Cooperative society.

(e) The application shall be accompanied by four copies of the proposed Bye-laws.

(f) (i) Name of the proposed multi-state cooperative society;
(ii) Head Quarters and address to be registered;
(iii) Area of operation;
(iv) Main objectives
(v) a certificate from the Bank
(vi) Stating credit balance there in favour of the proposed Multi-State Cooperative Society.

The relevant application forms can be obtained from the Office of Registrar of Cooperatives nearest to you.

Which are the laws that regulate cooperative societies in India?

Laws regulating Cooperative Societies in India are:

(a) State Cooperative Societies Acts of individual states

(b) Multi-State Cooperative Societies Act, 2002 for the multi-state Cooperative societies with area of operation in more than one State.

What is 'Multi-State Cooperative Act'?

A multi-state Cooperative Society means a society registered or deemed to be registered under the Multi-State Cooperative Societies Act, 2002 and includes a national Cooperative society or a Federal Cooperative.

Broad differences between a cooperative and a company

S. No	Item	Cooperative Society	Company
1	Object	Interest of members and community	Self interest either of management or the share-holders
2	Number of members	Minimum number of members should be 50 for a multistate co-operative society from each state in case of individual membership In case societies are members of a Multi State Cooperative Society, two societies from different states should sign the application of registration of the society If a Multi State Cooperative So-ciety is a member then the multi-state cooperative and a society should sign the application of registration	In a public limited company, minimum number of members should be 7 and in a private limited company minimum number of members should be 2
3	Management	Chairperson is elected by the Board of Directors from among themselves. The Managing Director/Chief executive is ap-pointed by the Board of Directors	Usually, Chairperson/ Managing Director are persons with maximum number of shares in the company
4	Share Capital	The shares of cooperative society are not issued to general public by advertisement and can be issued any time. Shares can be withdrawn member/society as prescribed by rules in their byelaws.	Shares are issued to general public or by invitation. In a company shares cannot be with-drawn by a shareholder.

S. No	Item	Cooperative Society	Company
5	Types of shares	Only equity shares are available	Equity and preferential shares may be issued
6	Voting Power	Member of a cooperative society have right of only one vote, irrespective of the number of shares held of any denomination	Voting rights depend directly on the holding of shares
7	Distribution of Profits	Minimum 25% of net profits should be transferred to the General reserve and the maximum dividend cannot exceed 20%	No restrictions on a company
8	Taxes	Cooperatives are exempt from few taxes in some states like stamp duty. Tax rates also vary	No exemptions provided
9	Workers participation	Provision for workers participation in the management through a representative exists	No such provision for workers
10	MRTP Act	Not applicable to Multi State Societies	Applicable
11	Control	The Central registrar of Cooperatives advises in the affairs of a multi state society	Companies are governed by the Company Registrar of the states where its registered office is located



3.1

Taxation Aspects for a Builder/Developer

Properties kept as Stock in Trade

Gain on transfer of properties kept as stock in trade is taxable as profit from business. If the property has been converted from capital assets to stock in trade, the gain arising from such conversion shall be chargeable to income tax as the income of the previous year in which such stock in trade is sold or otherwise transferred. The fair market value of the property on the date of the conversion shall be deemed as the consideration received.

But if there is any rental income, it will always be taxable as "Income from House Property".

Properties kept as Investments

Gain on transfer of properties kept as investment is taxable as Capital Gains. Transfer of property under gift, will or irrevocable trust is not taxable. Any other form of transfer will be taxable as Capital Gains in the hands of transferor.

According to section 2(47) of Income Tax Act, "Transfer" in relation to a capital asset includes:

i. The sale, exchange or relinquishment of the asset; or
ii. The extinguishment of any rights therein; or
iii. The compulsory acquisition thereof under any law; or
iv. In a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
iva. The maturity or redemption of a zero coupon bond; or
v. Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882; or
vi. Any transaction (whether by way of becoming a member of, or acquiring shares in a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation

For the purposes of sub-clauses (v) and (vi), immovable property shall have the same meaning as in clause (d) of section 269 UA.

Sub-Clauses (iv) to (vi) of section 2(47) of the I. T. Act regarding the definition of Transfer do not really relate to transfer in the general sense as explained above. These clauses were added to bring to charge certain acts which were used to avoid or postpone the payment of capital gain tax.

The first three meanings at (i) to (iii) above refer to the transfer as generally understood. The words Sale, Exchange, Relinquishment or extinguishment are not defined or explained in the Income-Tax Act, but are so explained in the Transfer of Property Act.

The few important sections of Income Tax Act, 1961 that are applicable to builders, developers, architects, interior decorators or civil contractors are:

- Section 44AA
- Section 4AB
- Section 44AD
- Section 80IA
- Section 80IB
- Section 80IAB

The provisions of these Sections are discussed at length below:

Section 80IA, 80IB and 80IAB of Income Tax Act 1961 and Real Estate Developers

Section 80IA

Sections 80-IA and 80-IB were substituted for section 80-IA by the Finance Act, 1999, w.e.f. 1 April 2000. Prior to its substitution, section 80-IA, as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1 April 1991 and later on amended by the Finance Act,1992, 1993, 1994 ,1995 ,1996 ,1997, Income-tax (Amendment) Act, 1998 and Finance (No. 2) Act, 1998 prevailed.

80IA enumerates about deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, which has started operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

It also applies to those undertakings which are engaged in the development, operation and/or maintenance of Industrial parks or Special economic Zones notified by the Central Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March 2006.

Both these areas are covered in the sphere of Real Estate. These deductions are a step from the government to boost the

sector on the compliance with certain conditions as provided in the section. It deals with the enterprises engaged in infra-structure activities such as roads including toll roads, bridges or rail systems; a highway project including housing or other activities being an integral part of the highway project; a port, airport, inland waterway or inland port provided the enterprise is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act; which has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and marinating a new infrastructure facility.

The deduction in case of infrastructure undertakings has been provided to be an amount equal to hundred per cent of the profits and gains derived from eligible business for ten consecutive assessment years, out of fifteen assessment years in case of a port, airport, inland waterway or inland port and twenty years in other cases specified therein.

The section also provides via 80IA (6) for instances where housing or other activities are an integral part of the highway project and the profits of which are computed on prescribed basis. It is further provided in the provision that such profits shall not be liable to tax where the profits have been transferred to a special reserve account and the same is actually utilized for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; otherwise the amounts remaining unutilized shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

The provisions in the section offer a welcoming gesture to the enterprises in the field of real estate business. It stands to support the progress of the country and provide encouragement to

the builders and developers to contribute to the agenda of progress as envisaged by the government.

Section 80IB

Section 80IB deals with deductions in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

It provides for a deduction of an amount equal to such percentage and for such number of assessment years as specified in the section. Various construction activities are covered in the section like multiplex theaters, convention centers, housing projects and hospitals with separate provisions applicable to them.

Hotels

As prescribed in 80IB (7) and having regarded to the need for development of infrastructure for tourism, in addition to certain hilly or rural areas or places of pilgrimage, government has specified by notification in the Official Gazette certain places, where it wants to carry out development programs. To promote its intention, the government has provided for a deduction of fifty per cent of the profits and gains derived from the business of such hotels for a period of ten consecutive years beginning from the initial assessment year; but to avail this deduction, such hotels should comply with certain requirements as laid down and should also have started functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001. For certain categories of hotels this provision provides for a deduction of thirty per cent and for those hotels as are located in municipal limits of Calcutta, Chennai, Delhi or Mumbai, which has started functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001, there is no deduction.

Through this section the Government intends to promote infrastructure in undeveloped areas such as villages, hilly regions and places of pilgrimage. Though the benefit is not on the building of such hotels but even when the benefit is derived on the business being done by these hotels, the construction of these gets a push hence contributing to overall Infrastructure development. So we can say that indirectly this provision helps to provide a strong footing to this development objective of the government.

Multiplex theaters

Government has provided to allow 50% of deduction for a period of five years from the profits of the business of building, owning and operating a multiplex theater of prescribed norms under section 80IB (7A) but this incentive is again restricted to cities other than Delhi, Chennai, Kolkata and Mumbai, the condition was that such multiplex theater was to be constructed during 1st April 2002 to 31st March 2005. The deduction is available from the year the multiplex theater started its commercial production.

It is expected that such Multiplex theaters in addition to encouraging the entertainment industry would also lead to economic growth by promoting consumption at multiple points. But in the current preposition the stopple on these Income Tax provisions are not in the favour of the entertainment and employment. The period which ended on 31 March 2005, should not only be extended but the metros should also be covered in the list. The journey has just begun, there is a long way ahead and government co-operation is much required.

Convention centres

Similarly, in case of a business of building, owning and operating a convention centre, 50% of deduction for a period of five consecutive years beginning from the initial assessment year has been prescribed, provided such convention centre is constructed at any time during the period beginning on the 1st day of April,

2002 and ending on the 31st day of March, 2005; and it fulfills other requirements as provided for in the Section 80IB (7B).

Housing projects

Housing for all has been a big concern for the government. Government has taken various commendable steps in this regard from time to time Section 80IB (10) has also been one major step to promote this objective wherein an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall avail a deduction of 100% of profits. But to avail this deduction the project should be on the size of a plot of land which has a minimum area of one acre; also such undertaking should have commenced development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008; and in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority.

It is also provided that such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority. Further it is required that the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and the built-up area of the shops and other commercial establishments included in the housing project should not exceed

five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.

In the cases of development of slum areas the government has taken other steps. We see that lot of effort has been put by the governments in the achievement of its purpose.

Hospitals

Under Section 80IA (11B) deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent of the profits and gains of such business for a period of five consecutive assessment years provided such hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008. On the fulfillment of certain other conditions like the hospital should have at least one hundred beds for patients or the construction of the hospital is in accordance with the regulations prescribed by the local authority etc.

Again the thrust is not on just improving healthcare facilities but also on development of infrastructure.

Section 80IB (10)

Deductions allowable from profit on sale of housing projects:

Sec 80IB (10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,

(a) Such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,

i. In a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

ii. In a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation

For the purposes of this clause:

i. In a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

ii. The date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) The project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these

cities and one thousand and five hundred square feet at any other place; and

(d) The built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.

Section 80IAB

Section 80IAB deals with deductions in respect of profits and gains from industrial undertakings or enterprises engaged in development of Special Economic Zone.

- An undertaking which develops a special Economic Zone notified on or after 1.4.2005 will not be eligible to claim deduction under section 80-IA but will now be claiming deduction under new section 80IAB.
- This deduction is available to an assessee, being a Developer whose gross total income, includes any profit and gains derived by an undertaking or an enterprise from any business of developing a special Economic Zone, notified on or after 1.4.2005 under Special Economic Zones Act, 2005

Quantum of Deduction

- A deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years.
- The assessee has the option of claiming the said deduction for any 10 consecutive assessment years out of 15 years beginning from the year in which a SEZ has been notified by the Central Government.

Transfer of Undertaking

- If a taxpayer who develops a special economic zone on or

after April 1, 2005 ("transferor") transfers the operation/ maintenance of such zone to another developer ("transferee"), then deduction shall be allowed to the transferee for the remaining period of 10 years as if the operation and maintenance were not so transferred.

- ✦ Similar rule will be applicable in the case of amalgamation of an Indian company which has developed a special economic zone with another Indian company.

Section 44AA

Maintenance of accounts by certain persons carrying on profession or business.

44AA (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,

(i) If his income from business or profession exceeds one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year; or

(ii) Where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed ten lakh rupees during such previous year; or

(iii) Where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD or section 44AE or section 44AF or section 44BB or section 44BBB as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year, keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]

Tax Audit under Section 44AB

The introduction of tax audit by section 44AB and the widening of the scope of tax audit report with the notified Forms No.3CA, 3CB and 3CD would certainly improve the quality of tax audit which will help the Department to achieve its objective of accepting the tax returns. This would result in the proper maintenance of books of account by the assesses with adequate details. Further, the quality of the returns filed with the Department will significantly improve, thus enabling the Department to ensure better compliance with the tax laws.

The introduction of the revised Forms No. 3CA, 3CB and 3CD under Rule 6G, read with section 44AB of the Income-tax Act, 1961, has added a new dimension to the gamut of tax audit. The requirements of the new forms have widened the scope of tax audit which has necessitated the revision of the existing Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961.

Realizing the enormous responsibility placed on the members of the profession by the revised forms, the Fiscal Laws Committee decided that the Guidance Note on Tax Audit should be revised at the earliest. For this purpose, the Committee constituted a number of study groups under the convenorship of members of the Central Council in different regions, so that the Committee could get the benefit of their valuable suggestions.

Section 44AB has been introduced in the Income-tax Act, 1961, by the Finance Act, 1984. This section provides for audit of accounts of assesses having total sales, turnover or gross receipts exceeding the specified limits of Rs.40 lakh for business and Rs.10 lakh for profession. New Rule 6G, inserted in the Income-tax Rules, prescribes the Forms of Audit report for the above purpose. The requirements for the above audit will apply to accounts relating to previous year relevant to assessment year 1985-86 and subsequent years.

Audit of accounts in the corporate sector has been made compulsory by legislation over a period of years. Realizing the importance of audit, in recent years, this requirement is being extended to non-corporate sector also.

The Income-tax Act already provides for audit of accounts of Public Charitable Trusts and non-corporate assessee establishing new industrial undertakings. Section 142(2A) gave wide powers to the tax authorities to get the accounts in certain specified circumstances audited by a chartered accountant. The new provision introduced by section 44AB has considerably widened the scope of audit.

Considering the fact that the scope of audit under the tax laws has considerably widened after the introduction of section 44AB, the Taxation Committee has prepared this Guidance Note on Tax Audit for the use of our members. In this guidance note an attempt has been made to explain the scope of Tax Audit requirements. It has been emphasised that in any audit assignment the general principles of audit have to be followed. The members accepting these assignments will have to use their professional skill and expertise while expressing their opinion on the financial statements and other particulars required to be stated.

Presumptive tax under Section 44AD

The Estimated Income Method of assessment for certain categories of businesses is prevalent in several countries. The Tax Reforms Committee in India had also recommended gradual introduction of the Estimated Income Method in certain areas to facilitate better tax compliance. It had also been noted that in a number of businesses the assessees do not maintain books of accounts or the books of accounts maintained are irregular and incomplete. Certain businesses have been identified where Estimated Income Method of assessment has been provided with a view to facilitate better tax compliance. The businesses identified are as under.

1. Special provision for Profits or Gains of business of Civil Construction.
2. Special provision for Profits or Gains of business of Goods Carriages.
3. Special provision for Profits or Gains of retail business.

Section 44AD Special Provision for Profits or Gains of Business of Civil Construction

The details of this provision are contained in new Section 44AD of the Income-tax Act introduced with effect from 1.4.94. The section

was introduced with a view to providing for a method of estimating income from the business of civil construction or supply of labour for civil construction work. The new section is applicable to all assessees whose gross receipts from the above-mentioned business do not exceed Rs 40 lakh and who declare the Profit or Gains from such business at less than 8% of their Gross receipts. The Gross receipts are the amount received from the clients for the contract and do not include the value of material supplied by the client. The income from the above-mentioned business will be estimated at 8 per cent of the gross receipts paid or payable to an assessee.

The expression "civil construction" will include the construction or repair of buildings, dams, bridges or other structures, or of roads or canals. It will also include the execution of any other works contract. It will, thus, include work related to electrical fittings, plumbing job, landscaping work, etc.

The rate of 8 per cent is comprehensive. All deductions under sections 30 to 38 including depreciation, will be deemed to have been already allowed and no further deduction will be allowed under these sections. In the block of assets of the assessee, the written down value will be calculated, where necessary, as if depreciation as applicable has been allowed. In the case of firms, the Finance Act 1997 has with retrospective effect from 1 April 1994 permitted deduction in respect of the salary and interest paid by the firms to the partners from the income deemed under this section subject to the conditions and limits specified in clause (b) of section 40.

The assessees who file the return, estimating income at 8 per cent. of gross receipts, or a higher income, will neither be required to maintain books of account under the provisions of section 44AA, nor required to get accounts audited under the provisions of section 44AB, in respect of their income from the business of civil construction. However, even such an assessee has to comply with the requirements of both sections 44AA and 44AB in respect his businesses which are not covered by this scheme. For

instance, a person may have gross receipts of Rs 30 lakh from civil construction business and of Rs 25 lakh from trading in scrap and Rs 10 lakh from garment manufacture. Although his total gross receipts are Rs 65 lakh, he will not be required to have his accounts audited, since his gross receipts after excluding those from the business of civil construction are still less than Rs 40 lakh, the limit provided in section 44AB.

The income from the business of civil construction, estimated in accordance with this provision, will be aggregated with other incomes of the assessee, from any other business or under other heads of income, in accordance with the normal provisions of the Income-tax Act. Accordingly, all deductions under Chapter VIA and rebate under Chapter VIII will be available to the assessee, if the conditions therein are fulfilled.



3.2

Service Tax on Builder/Developer

There has been much of a debate on whether builders and developers are liable to service tax.

The Central Board of Excise and Customs vide Circular No. **80/10/2004** ST dt. September 17, 2004 had clarified that "**Estate Builders"** (i.e. who get such construction done) are not covered under the ambit of these services. It is only the **hired contractors** engaged by these builders who are to be taxed. In other words Service Tax is leviable only on those contractors who are engaged in construction of new residential complexes, or completion and finishing services in relation to such complexes or repair, alteration/renovation or restoration of similar services in relation to residential complexes.

However In a recent decision of Supreme Court in case of **M/s. Raheja Development Corporation Vs State of Karnataka [2005 NTC (Vol 27)-243** the Hon'ble Court has clarified "that the activities undertaken by builders for construction of flat/building for or on behalf of the prospective customers for consideration in cash or deferred payment is covered under the works contract and not under sale."

Considering the above decision, The Mumbai DGST has issued a letter to the board saying that if the construction is undertaken by the builder for prospective customer under an agreement for

sale and after construction, the rights in property have been transferred to the said prospective purchasers, the activity will amount to "**work contract**" or taxable service covered under the Service Tax and not sale.

The specific exclusion of Estate Builders in the case of "Commercial or Industrial Construction Service", through a circular dated September 17, 2004, appears to have been considered on account of sale of commercial complex by estate builders as a final outcome. Divergent practices have been reported throughout the country and in most of the cases, builders are avoiding registration in view of CBEC Circular No.80/10/2004 ST dated September 17, 2004. Further, there is wide gap between the amount charged by builders from their customers for such work contract (sale) and the amount on which contractors are discharging their Service tax liability. The various miscellaneous charges like cost of the land, development charges, maintenance charges, etc. are not included in the taxable value of services provided by the assessee.

Further the department has also raised a view that Circular No.80/10/2004-ST dated September 17, 2004, has no applicability with reference to "Construction of Complex Services" which was brought under service tax net only w.e.f. June16, 2005, as an independent service.

In our view the stand taken by the circular is correct and builders and estate developers are not chargeable to tax simply because they are not providing any service but are selling properties. The above letter of the department seems to be bad in law. The act brings to tax provision of service and not sale of property. The department cannot extend the scope of the act to enhance revenue.

If you want to enter into a contract, the contract should not state that the land is being developed for the purchaser for a consideration and you will not attract service tax liability.

Certain questions have been raised regarding the services:

1. What if the builder or developer builds a residential complex with the services of his own employees?

Now if the residential complex has 13 or more residential units and a contractor is engaged, the contractor shall be liable to pay the service tax under construction of complex services. If the builder or developer uses his own employees for the work, there is no service provider and service receiver, hence no tax shall be levied.

2. What if an individual house or bungalow is constructed?

Individual houses or bungalows are not covered by the definition of residential complex.

3. What if a person builds a commercial complex for letting it out on rent or sale?

Commercial complexes are not covered under the exemption given to residential complexes for personal use.

4. Who can avail the cenvat credit?

If the construction services are undertaken by the contractor, Cenvat credit will be available to the contractor and not the developer.



3.3

Builder/Developer's Agreements

Construction Agreement between Owner and a Developer

The present Construction Agreement is executed on this the _____ day of _____ 2006 at Hyderabad by and between Mr. _____ S/o _____ aged about _____ years and resident of _____ hereinafter referred to as the "Owner"

And

Mr. _____ S/o _____ aged about _____ years and resident of _____ hereinafter referred to as the "Developer". (Unless it be repugnant to the context, the expressions 'Owner' and 'Developer' shall include their respective heirs, executors, attorneys, legatees, administrators and all persons claiming title through each of them).

Whereas the 'Owner' is in de-facto and de-jure owner-in-possession of the property No. _____, admeasuring _____ sq. yards and bounded as under:

East:

West:

North:

South:

And whereas owner gets his title of ownership by virtue of _____, executed by Mr. _____ in favour of the owner on _____ which is duly registered before _____ in Volume No. _____ Book No. _____ Document No. _____ at pages _____ to _____.

And whereas the said property continues to be wholly under the physical possession of the owner. (Note: If whole of property is not with the owner, then give full description of the portions of property and the persons in possession thereof and their respective title to be in their respective possessions).

And whereas owner continues to hold the absolute title of the property till date and the same has not been encumbered in any manner like sale, mortgage, long-lease, bank loan or otherwise.

And whereas the owner till date has not entered into any type of construction agreement on any earlier date with any third party.

And whereas the owner seeks to develop the property after demolishing the old structure, for which the owner has no ready funds or the expertise. Therefore, the owner has approached the developer in this respect, who is an accomplished and renowned builder and has agreed to develop the property at his own expense and with his expertise, know-how and experience.

And whereas the owner and builder have agreed to enter into the present construction-agreement on the terms and conditions, which are enumerated as under:

Now the present construction agreement witnesseth as under:

1. Owners grant exclusive right to the Developer to develop the said property after getting the building plans sanctioned from the sanctioning authority.
2. That all costs and expenses to be incurred in the paper-work and otherwise, for getting the plans sanctioned and for making applications for other purposes like installation of water connection, electricity connection, telephone connection, lifts, and for all other similar purposes shall be entirely borne by the developer. Owner shall execute a

'Power of Attorney' in favour of the Developer or any of his nominees for the purposes of representing the owner before statutory and public authorities in this respect.

3. That the entire super-structure shall be in accordance with the sanctioned plan and the permissible compoundable deviation, of which the developer has the special knowledge and the owner has none. The nature of material used for each component of the super structure is detailed in the schedule attached herewith.

   (a) The all applications submitted on behalf of or in the name of the builder shall be with full prior information and consent of the owner.

   (b) In exchange of Owners granting exclusive rights of development to the Developer under this Agreement, the Developer has agreed to pay a sum of Rs _____ (Rupees _____ in words) to the owner.

   (c) Simultaneously with payment of agreed consideration by the developer to the builder, the owner shall deliver the *de-facto* physical possession of the property to the developer for the purposes of the development, under an irrevocable license.

   (d) The super-structure built by the developer with his own funds on the land-property owned by the 'Owner' shall be distributed as under:

   Basement with entire constructed floor area shall go to _____.

   Ground Floor with entire constructed floor area shall go to _____.

   First Floor with entire constructed floor area shall go to _____.

   Second Floor with entire constructed floor area shall go to _____.

   Third Floor with entire constructed floor area shall go to _____.

4. The tentative schedule for completing the construction of super-structure shall be _____ months from the construction of the entire super-structure under the present agreement. If the construction is not completed within this specified time, then the developer shall pay to the owner, damages at the rate of Rs. _____ per month.
5. The development rights granted herein by the owner in favour of the developer are not transferable or sharable by the developer with any third party.
6. Owner shall have absolute right to retain the originals of the title deeds of the property with himself. However owner agrees to permit the advocate of the developer to examine and scrutinize all the title deeds relating to the said property, in the presence of the advocate of the owner.
7. The developer shall have absolute right to dispose of or appropriate the portion of the super-structure falling in his share and appropriate the sale-proceeds thereof. The owner shall remain duty-bound to execute the title documents in favour of the developer or his nominee in respect of the portion of the superstructure falling in the share of the developer. However the developer must hand-over the portion of the super-structure falling in the share of the owner, complete in all respects to the owner, before the owner is called upon to execute the title documents in favour of the developer or his nominee.
8. All the title-deed in favour of all third parties, who may be nominees of the owner or the developer, with regard to their respective shares, shall be tripartite in nature, in which both owner and developer shall be the signatories. Developer alone shall be responsible for defects and irregularities in the construction of the super-structure for the services of development agreed to be rendered by him under this agreement.

9. Owners shall procure the requisite Certificate under the Income Tax Act, 1961 for effectively vesting the portions of the super-structure of the said property in favour of the third parties who may be the nominees of the Developer or the developer himself.
10. The Owner shall be liable to pay all assessments, outgoings, taxes, etc. payable in respect of the said property up to the date of execution of the present construction agreement. Thereafter, the same shall be paid and borne by the Developer alone till the apportionment of the super-structure is completed in all respect as agreed in the present construction agreement. Thereafter, the respective owners of the respective part of the super-structure themselves shall be responsible for the same from the respective dates of their coming to acquire their respective shares of super-structure.
11. All disputes and differences that may arise between the parties hereto relating to or in connection with the matter of the present construction agreement or between the parties or their representatives shall be referred to the sole and final arbitration of Mr. _____ or failing him Mr. _____ as the sole Arbitrator whose decision shall be final and binding on both the parties.
12. All disputes and differences that may arise between the parties hereto relating to or in connection with the matter of the present construction agreement or between the parties or their representatives shall be subject to the jurisdiction of the court located at the place of the property.
13. All out-of-pocket expenses of and incidental to this agreement including stamp duty and registration charges shall be borne and paid by the Developer alone. The parties shall bear and pay their respective Advocates' professional fees.

14. All disputes or differences relating to the specifications, designs, drawings and as to quality of workmanship or material used in the work or as to any other question arising out of or relating to the contract, design, drawings, specifications, orders or otherwise in connection with the agreement or the carrying out of the works, whether during the progress of the work or after the completion or abandonment thereof shall be referred to the arbitral tribunal as per the following terms and condition:

(a) Each party shall appoint one arbitrator.

(b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

(c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

(d) The Arbitration proceedings shall take place at _____, Delhi.

(e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

(f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

(g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

(h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

(i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

(j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

(k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

(l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

(m) The fees of the reference to Arbitral Tribunal shall be Rs. _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

(n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

(o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

(p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

In witness whereof the parties to the present construction agreement have set their respective hands on this the _____ day of _____ 2005 at Hyderabad.

Witnesses:

1. (Owner)

2. (Developer)

Note: The schedule to be attached with the present Construction Agreement must specify in detail the nature of material that is to be used for each component of the super-structure.



4.1

Various Issues Concerning Real Estate Agent

One of the most complex and significant financial events in peoples' lives is the purchase or sale of a home or investment property. Because of this complexity and significance, people typically seek the help of real estate brokers and sales agents when buying or selling real estate.

Real estate brokers and sales agents have a thorough knowledge of the real estate market in their communities. They know which neighborhoods will best fit clients' needs and budgets. They are familiar with local zoning and tax laws and know where to obtain financing. Agents and brokers also act as intermediaries in price negotiations between buyers and sellers.

Real estate agents usually are independent sales workers who provide their services to a bigger firm on a contract basis. In return, the firm pays the agent a portion of the commission earned from the agent's sale of the property. Agents are independent businesspeople who sell real estate owned by others; they also may rent or manage properties for a fee. When selling real estate, brokers arrange for title searches and for meetings between buyers and sellers during which the details of the transactions are agreed upon and the new owners take possession

of the property. An agent may help to arrange favorable financing from a lender for the prospective buyer; often, this makes the difference between success and failure in closing a sale. In some cases, brokers and agents assume primary responsibility for closing sales; in others, lawyers or lenders do.

Besides making sales, agents must have properties to sell. Consequently, they spend a significant amount of time obtaining listings—agreements by owners to place properties for sale with the firm. When listing a property for sale, agents and brokers compare the listed property with similar properties that recently sold, in order to determine a competitive market price for the property. Once the property is sold, both the agent who sold it and the agent who obtained the listing receive a portion of the commission.

Most real estate brokers and sales agents sell residential property. A small number—usually employed in large or specialized firms—sell commercial, industrial, agricultural, or other types of real estate. Every specialty requires knowledge of that particular type of property and clientele. Selling or leasing business property requires an understanding of leasing practices, business trends, and the location of the property. Agents who sell or lease industrial properties must know about the region's transportation, utilities, and labor supply. Whatever the type of property, the agent or broker must know how to meet the client's particular requirements.

Before showing residential properties to potential buyers, agents meet with them to get a feeling for the type of home the buyers would like. In this pre-sale meeting, the agent determines how much the buyers can afford to spend. In some cases, agents and brokers use computers to give buyers a virtual tour of properties in which they are interested. With a computer, buyers can view interior and exterior images or floor plans without leaving the real estate office.

Agents may meet several times with prospective buyers to discuss and visit available properties. Agents identify and

emphasize the most pertinent selling points. To a young family looking for a house, they may emphasize the convenient floor plan, the area's low crime rate, and the proximity to schools and shopping centers. To a potential investor, they may point out the advantages of owning a rental property and the ease of finding a renter. If bargaining over price becomes necessary, agents must follow their client's instructions carefully and may have to present counteroffers in order to get the best possible price.

Once both parties have signed the contract, the real estate broker or agent must make sure that all special terms of the contract are met before the closing date. For example, the agent must make sure that the mandated and agreed-upon inspections, including that of repairs, take place.

Personality Traits and Qualification Required to become an Agent

Any one can become a broker. It is easy for any one to enter the field as there are no specific qualifications needed for becoming a broker. This aspect makes it a highly competitive field. Personality traits are equally as important as one's academic background. Brokers look for applicants who possess a pleasant personality, are honest, and present a neat appearance. Maturity, good judgment, trustworthiness, and enthusiasm for the job are required in order to encourage prospective customers in this highly competitive field. Agents should be well organized, be detail oriented, and have a good memory for names, faces, and business particulars.

Qualities of a good broker can be enumerated as under:

1. A good broker should know about the various available accommodations and should be able to suit availability with a client's needs.
2. The broker should be able to pinpoint strength and weaknesses of any area or accommodation truthfully and

in case is unaware of the specifications of any property, must be truthful about it.

3. A good broker must know what the buyer wants, needs, or can buy.
4. A broker should also be able to predict a client's growing needs.

Information needs to be provided with regards to:

- Stamp Duty,
- Registration,
- Loans, and the different housing finance companies,
- Repayment Schedules, and
- Any builder-specific queries.

Brokers must also know who the sellers are, or what they can sell. A thorough knowledge of buying and selling a flat, or premises, is quite essential.

Most brokers are very particular of a builder. They deal only in properties of one particular builder. This is a good practice as the buyer might also have preference about a builder. The broker dealing with a builder will have more thorough and exhaustive information about him and his properties.

Broker should also provide information on the following matters to its client:

- The type of the building;
- The quality of the builder;
- The specifications esp. carpet area, common space, etc.;
- The rates;
- The payment schedules;
- The delivery period and
- Any other amenities such as pool, club house, gym, etc.

Those interested in jobs as real estate agents often begin in their own communities. Their knowledge of local neighborhoods is a clear advantage. Most real estate firms are relatively small; indeed, some are one-person businesses. By contrast, some large

real estate firms have several hundred agents operating out of numerous branch offices. Many brokers have franchise agreements with national or regional real estate organizations. Under this type of arrangement, the broker pays a fee in exchange for the privilege of using the more widely known name of the parent organization. Although franchised brokers often receive help in training sales staff and running their offices, they bear the ultimate responsibility for the success or failure of their firms.

Real estate brokers and sales agents are older, on average, than most other workers. Historically, many homemakers and retired persons were attracted to real estate sales by the flexible and part-time work schedules characteristic of the field. These individuals could enter, leave, and later return to the occupation, depending on the strength of the real estate market, their family responsibilities, or other personal circumstances. Recently, however, the attractiveness of part-time real estate work has declined, as increasingly complex legal and technological requirements are raising startup costs associated with becoming an agent.

This occupation is relatively easy to enter and is attractive because of its flexible working conditions; the high interest in, and familiarity with, local real estate markets that entrants often have; and the potential for high earnings. Therefore, although gaining a job as a real estate agent or broker may be relatively easy, beginning agents and brokers may face competition from their well-established, more experienced counterparts in obtaining listings and in closing an adequate number of sales. Well-trained, ambitious people who enjoy selling—particularly those with extensive social and business connections in their communities—should have the best chance for success.

Employment of real estate brokers and sales agents often is sensitive to swings in the economy, especially interest rates. During periods of declining economic activity and increasing interest rates, the volume of sales and the resulting demand for sales workers falls. As a result, the earnings of agents and

brokers decline, and many work fewer hours or leave the occupation altogether.

An Agent's Income

Commissions on sales are the main source of earnings of real estate agents and brokers. The rate of commission varies according to whatever the agent and broker agree on, the type of property, and its value. Commissions may be divided among several agents and brokers. When the property is sold, the broker or agent who obtained the listing usually shares the commission with the broker or agent who made the sale and with the firm that employs each of them.

Let us see how much an agent is actually paid. The standard practice, or an unwritten rule, is 2% of the entire transaction amount. However, larger deals are more likely to be settled at less than 2%. Unfortunately, there is no definition of what constitutes a 'large' deal. But most professional brokers will make it clear from the beginning, that they would be entitled to their brokerage, either on the percentage basis, or a fixed amount basis.

On leases, leave and licenses, the brokerage is an amount equivalent to 2 months' rent. For long leases, say more than 3 years, it is 2% of the deposit amount. For a shorter period, it could be as less as 15 days' rent and 1% of the deposit amount. Here, too, it can be negotiated in favour of the buyers. It is advisable to fix the brokerage amount in the beginning stage itself, in a manner that is acceptable to both, the client and the broker.

Over and above the agreed amount, Service Tax @ 12.24% of the brokerage amount is also payable. This goes to the Government of India. For example, brokerage is 2 months rents. Rent as agreed upon is Rs 15,000 per month. The brokerage comes to Rs 30,000. The broker then adds 12.24% service tax and bills the client Rs 33,600. This 3672 which is service tax is remitted to the Government.

Income usually increases as an agent gains experience, but individual motivation, economic conditions, and the type and location of the property also affect earnings. Sales workers who are active in community organizations and in local real estate associations can broaden their contacts and increase their earnings. A beginner's earnings often are irregular, because a few weeks or even months may go by without a sale. The beginner, therefore, should have enough money to live for about 6 months or until commissions increase. After all selling expensive items such as homes requires maturity, tact, and a sense of responsibility.

Cases where buyers/sellers try and bypass the agents to avoid payment of commission

There are innumerable instances where the broker shows a property to a prospective buyer and the buyer is reluctant about the property. After rejecting the property offer, the buyer goes behind the broker's back and directly interacts with the seller. This saves them both brokerages which they will otherwise need to pay the broker.

This is a very tricky situation. The broker is entitled to the brokerage but is refused that because the deal is struck directly between the buyer and seller. In these cases, brokers should ensure that their dues are given. These are rightfully theirs.

Contract between a Broker and a Client

Client should be asked to discuss and sign a 'contract' with the broker. This contract includes the terms of sale for the property, (such as the asking price), brokerage arrangements (such as what the broker will do for the client and how much will be paid to the broker), and the expiration date of the contract. It should be made sure that the services and terms that are important are written into the contract. It should necessarily contain a clause that if a property is introduced by a broker to the client, even if the buyer

and seller get in a direct deal afterwards, will fetch commission to the broker. This will safeguard the interests of the brokers' in case either of the parties wants to by-pass the broker later on.

There are two basic kinds of contracts which can be entered into with a broker. They are:

1. An exclusive right-to-sell- contract.
2. An exclusive agency contract.

Exclusive right-to-sell contract

In an exclusive right-to-sell contract, client agrees to pay the broker a commission no matter who finds the buyer even if the seller finds the buyer independently of a broker. This contract is preferred by most brokers. If a seller knows specific people who may be interested in buying the property, he may want to include a special 'reserve clause' in this type of contract. This reserve clause would allow him to sell the property to any specifically-named person and would require the seller to owe either no commission or a reduced commission.

In an exclusive right-to-sell contract, the broker usually benefits regardless of who finds the buyer. However, the seller still may be able to negotiate a contract that is more favorable. For example, he may try to negotiate a lower commission, more extensive advertising, or other special term and services in return for the agreement to sign an exclusive right-to-sell contract. You should be sure to have the negotiated terms written into the contract.

Exclusive agency contract

In an exclusive agency contract, the seller agrees to pay the broker a commission if that broker, or any broker, finds the buyer. However, if he himself locates the buyer, without a broker's help, he owes no commission, or, perhaps, a reduced commission.

Because an exclusive agency contract does not guarantee a broker a commission if the house is sold, some brokers may not be willing to enter into an exclusive agency contract or may not provide with as much service under this type of contact. But some brokers may agree to the terms without cutting back on services. That is why it is important to shop for a broker who will meet the needs of the client, this helps him also as he is assured that he will not be cheated upon in terms of remuneration.

What information should be included in a contract?

The asking price of the property will be included in any contract entered into. It should be carefully set. A price too high may turn away potential buyers.

During the term of your contract, prices can be lowered. If, however, the price is raised without broker's consent and then the seller receives an offer at the original asking price, he will owe a commission whether or not the seller accepts the offer. That is because his broker will have fulfilled his or her contractual obligation to find a buyer who is willing to pay the price specified in the contract.

All contracts must specify a beginning and ending date. While brokers prefer as much time as possible to locate a buyer, client may wish to limit the contract period to 90 days, for example. He also may want to reserve the right to cancel the contract upon reasonable notice. These options allows a client to hire a new broker if, for example, he is dissatisfied with the services the broker is rendering. This clause can be put keeping in mind interests of the brokers also.

Conclusion

Though just about anyone can become a real estate agent, the burden lies on the agents to prove that they deserve respect in the society. Brokers are looked down upon in Indian society because of the disorganized manner of their functioning. It is the general misconception in the minds of the people that an agent's job is

just introducing a buyer and seller. It is in the hands of the agents to prove that their job involves much more than introducing a buyer and a seller. They can disprove this misconception by taking proactive steps in understanding the client's needs advising them about the financial options that can be adopted, keeping them way from legal hassles, etc.



4.2

Service Tax on Real Estate Agent Services

Section 65 (105)(v) of the Finance Act, 1994 includes the services provided or to be provided by a real estate agent in relation to real estate in the ambit of taxable services. These services are taxable from October 16, 1998. This section discusses these taxable services in relation to their scope and taxability. The general aspects of service tax discussed in a separate section of this book are applicable.

First let us find out who is a real estate agent and real estate consultant and what conditions they need to fulfill to be taxed under the services ambit.

Real estate agent

According to Section 65 (88) of the Finance Act, 1994 real estate means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of any real estate and includes a real estate consultant.

Essentials for a person to be a real estate agent

1. Any person engaged in rendering service in relation to

2. sale, purchase, leasing or renting
3. of any real estate
4. it includes a real estate consultant.

Real estate consultant

According to Section 65 (89) of Finance Act 1994, a real estate consultant is a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate.

As it is amply clear from the above the definition is very wide and anything and everything done in relation to real-estate by a consultant or agent can be brought to the tax net. It is very difficult to think of an activity which may fall outside the above definitions.

Real estate agent services will also include services provided in addition to the traditional services, to real estate developers and promoters in respect of evaluation of proposed real estate scheme /project by conducting techno-commercial studies, providing feasibility reports and by even helping in marketing real estate projects. **(CBEC Circular F. No B-11/3/98-TRU dated October 07, 1998).**

Definition of real estate

Real estate can be defined to mean land with anything permanently affixed to land. According to the Compact Oxford Dictionary, 'real estate' means real property and land.

Taxable Service

Section 65(105)(v) of the Finance Act defines the taxable service as any service provided or to be provided to a client by a real estate agent in relation to real estate.

Thus, the services provided to a client would be covered. Services provided by an employee to its employer would not be covered as he is not a separate person. In case of group companies, service rendered by one group company to other would however be covered as they are separate legal entities.

Now let us examine one important question that arises in relation to taxing the services of a real estate agent.

What if the real estate agent outsources some of the functions and pays amount by way of sub brokerage?

The phrase 'in any manner' in the definition of a real estate consultant implies that the manner in which the service is provided is not relevant at all and it can relate to:

1. The place of rendering or providing the service or
2. the person providing the service (directly the service provider without the help of anybody else, or his staff, agents or contractors), or
3. the mode of providing the service (direct, or through post, courier, e-mail, fax or similar means of communication).

Further, the phrase 'either directly or indirectly' would cover sub-agents or sub-contractors employed by the service provider.

In all such cases, the real estate consultant who is providing the service directly to the client would be liable to pay service tax, and not the sub-agent or sub-contractor.

Value of taxable service

Value of taxable service shall be gross amount charged by the service provider for such services provided or to be provided by him without claiming any abatement towards administrative /office expenses incurred for providing such service

As per the Service Tax (Determination of Value) Rules, 2006. Notification No.12/2006-Service Tax dated April 19, 2006, the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is

immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

Illustration: X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent

General exemptions

- Threshold exemption of rupees four lakhs.
- Services provided to United Nations or an International Organisation declared by the Central Government.
- Export of service without payment of service tax.
- Services provided to a developer of a Special Economic Zone or to a unit of a Special Economic Zone.

What is threshold exemption of rupees four lakhs?

Notification No. 6/2005-ST, dated March 1, 2005 exempts taxable services of aggregate value not exceeding Rs 4 lakh. This exemption applies to value of taxable services receivable on or after April 1, 2005. This exemption shall not apply to

- taxable services provided by a person under a brand name or trade name of another person
- persons other than service providers notified by the Central Government for payment of service tax.

What is 'brand name or trade name?

'Brand name' or 'trade name' means a brand name or a trade name, whether registered or not, that is to say, a name or a mark,

such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person.

This exemption is linked to previous year's turnover. Part 2 clause (viii) of the said notification states that the aggregate value of taxable services rendered by a provider of taxable service from one or more premises should not exceed rupees four lakhs in the preceding financial year in order to be eligible for exemption. "Aggregate value of services" for calculating previous year's turnover is not defined. However, part B to the Explanation to the notification defines "aggregate value not exceeding four lakhs rupees" and excludes payments received towards the taxable service which are exempt from the whole of service tax leviable thereon. Thus, we may presume that for the purpose of calculating aggregate value of services for the preceding financial year, we exclude services that are exempt due to any general or specific exemption.

Where a person commences providing taxable service in a particular financial year, the aggregate value of taxable services provided in the preceding financial year should be taken as 'Nil' and exemption benefit made available to him for that financial year.

Further there are certain conditions to be fulfilled for availing the exemption:

1. The exemption is optional. Once the option is exercised, it cannot be changed during a financial year.
2. The service provider shall not avail CENVAT Credit on any input services used for providing the taxable service or capital goods received in his premises during the period.
3. The service provider shall on starting to avail of this exemption, pay CENVAT credit taken on stock in hand or in process.

4. The exemption applies to all taxable services from all premises in aggregate and such aggregate should not exceed Rs 4 lakh.

Export of service without payment of tax

- Export of taxable service means service provided in relation to immovable property situated outside India. Even if a service is partly performed outside India, it shall be considered to have been performed outside India.
- Such service is delivered outside India and used outside India; and
- Payment for such service provided outside India is received by the service provider in convertible foreign exchange

Tax liability

The service provider is liable to service tax @12% of the value of the taxable service plus 2% education cess thereon.

Procedural Requirements

Registration requirements

A real estate agent liable to pay service tax is required to obtain registration in Form ST-1 (form is attached below) within 30 days of the date of commencement of such service.

A real estate agent whose aggregate value of taxable service in a financial year exceeds rupees four lakhs is required to obtain registration in Form ST-1 prescribed within 30 days from the date on which aggregate value of taxable services in the financial year exceeds Rs 4 lakh.

Where a real estate agent is providing services from more than one premised and has a centralized billing system or centralized accounting systems, he can register such premises where the centralized billing systems or centralized accounting systems are

located. Where there is no centralized billing system or centralized accounting system, all premises have to be registered.

Any change in the information furnished in Form ST-1 has to be intimated within 30 days of the change. On transfer of business, the transferee has to obtain a fresh registration. On ceasing to provide taxable service, the construction contractor should immediately surrender the registration certificate.

The registration number obtained has to be mentioned on all invoices issued.

Payment of service tax

The due date for payment of service tax is 5th of the month immediately following the quarter for which the service relates for individuals, proprietary firms or partnership firms and 5th of the month immediately following the month to which the service relates.

Quarter for this purpose means April to June, July to September, October to December and January to March.

Form ST-1

[Application form for registration under Section 69 of the Finance Act, 1994 (32 of 1994)]

(Please tick appropriate box below)

☐ New Registration

☐ **Amendments** to information declared by the existing Registrant.

Registration Number in case of existing Registrant seeking Amendment _____

1. (a) Name of applicant

(b) Address of the applicant

2. Details of Permanent Account Number (PAN) of the applicant

(a) Whether PAN has been issued by the Income Tax Department

Yes No

(b) If Yes, the PAN

(c) Name of the applicant (as appearing in PAN)

3. (a) Constitution of applicant (Tick as applicable

Proprietorship

Partnership

Registered Public Limited Company

Registered Private Limited Company

Registered Trust

Society/Cooperative society

(vii) Others

☐

(b) Name, Address and Phone Number of Proprietor/Partner/Director

(i) Name

(ii) Address

(iii) Phone Number

4. Category of Registrant (*Please tick appropriate box*)

(a) Person liable to pay service tax

(i) Service provider

(ii) Service recipient ☐

(b) Other person/class of persons

(i) Input service distributor ☐

(ii) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds three lakh rupees

5. (a) Nature of Registration (Tick as applicable) ☐

(i) Registration of a single premise

(ii) Centralized Registration for more than one premises ☐

(b) Address of Premises for which Registration is sought

(i) Name of Premises / Building

(ii) Flat/Door/Block No.

(iii) Road/Street/Lane

(iv) Village / Area / Lane

(v) Block/Taluk/Sub-Division/Town

(vi) Post office

(vii) City/District

(viii) State/Union Territory

(ix) PIN

(x) Telephone Nos.:

(xi) Fax No.

(xii) E-mail Address

(c) In case of application for Centralized Registration, furnish address of **all** the premises from where taxable services are provided or intended to be provided (FORMAT AS PER 5(b) ABOVE)

(d) In case of application for Input Service Distributor, furnish address of **all** the premises to which credit of input services is distributed or intended to be distributed (FORMAT AS PER 5(b) ABOVE)

6. Address of the premises or office paying service tax under centralised billing or centralised accounting under sub-rule (2) and (3A) of rule 4 of the Service Tax Rules, 1994.

Address

7. Description of taxable services provided or to be provided by applicant

S.No	Description of service	Relevant clause of section 65 of the Finance Act, 1994, to be indicated, if possible
(1)	(2)	(3)

8. Name, Designation and Address of the **Authorized Signatory /Signatories:**

Declaration

I, _____hereby declare that the information given in this application form is true, correct and complete in every respect and that I am authorized to sign on behalf of the Registrant.

(a) For new Registration:

I would like to receive the Registration Certificate by mail/by hand/e-mail

(b) For amendments to information pertaining to existing Registrant:

Date from which amendments are made: _____

(Original existing Registration Certificate is required to be enclosed)

(Signature of the applicant/
authorized person with stamp)

Date:

Place:

Acknowledgement

(To be given in the event Registration Certificate is not issued at the time of receipt of application for Registration)

I hereby acknowledge the receipt of your Application Form

(a) For new Registration

(As desired, the New Registration Certificate will be sent by E-MAIL/ mail/handed over to you in person on_____)

(b) For amendments to information in existing Registration

(I hereby acknowledge receipt of original existing Registration Certificate)

Signature of the Officer of Central Excise
(with Name & Official Seal)

Date :



4.3

Real Estate Agent Agreements

An Agent's agreements can be for the following reasons:

1. When a prospective buyer approaches an agent with an intention of purchasing a property (Please check "agreement between a broker and a prospective purchaser" for the draft agreement).
2. When seller or owner of a property approaches the broker to sell his property (Please check "agreement for appointment of a broker sell a house" for the draft agreement).
3. When the builder of an apartment approaches a broker for selling the flats that are being constructed (Please check "agreement between a builder and a broker for selling the flats to be constructed" for the draft agreement).

Agreement between a Broker and a Prospective Purchaser

This Agreement is made on this the _____ day of _____ 2007 at _____ by and between: Mr. A S/o _____ aged about _____ years, resident of _____ hereinafter called 'the broker' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his heirs, legal representatives, executors and administrators) of the ONE PART

AND

Mr. B S/o _____, aged about _____ years, resident of _____ hereinafter called 'the prospective purchaser' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his heirs, legal representatives, executors and administrators) of the OTHER PART.

Whereas the Broker comes into an understanding with the prospective purchaser hereunder in a written agreement who wish to purchase a property on his name and for that purpose he requires his services.

And whereas the broker, who is a reputed broker dealing in real estate in the area has shown his willingness to show him and take reasonable care and caution in finding a house for the prospective purchaser.

And whereas the prospective purchaser has agreed to appoint the broker on payment for the purchase of property on the terms and conditions as hereinafter appearing.

NOW THIS AGREEMENT WITNESSES AS UNDER:

1. The broker hereby gives his assent to the prospective purchaser that he will show him properties of which he can purchase one, if the same is as per his requirements, for a consideration.
2. The prospective purchaser hereby assert the broker that if the property shown to him is clear, marketable and free from encumbrances and to his requirements he will purchase the same only through him after paying all the necessary expenditure and brokerage costs before entering into any kind of agreement with the respective owner of the property/the seller.
3. The broker hereby undertakes that after the receipt of brokerage commission/costs from the purchaser, he shall take steps to the delivery of the abstract of title showing that the seller is real owner of the property and the property is free from mortgage, lien, charge or any such encumbrance.

4. The broker hereby undertakes that on receipt of his entire commission in respect of the property; make the seller execute the agreement between the purchaser and the seller.
5. The broker hereby agrees that he shall be able to find the property for the prospective purchaser within a period of one month from the date of these presents.
6. The broker hereby asserts that he will exercise reasonable care and diligence in the property and deal with the transaction in good faith.
7. The broker hereby agrees to present all written offers, notices and other communications in a timely manner with regard to the property whichever the prospective purchaser agrees to purchase.
8. The broker hereby agrees to disclose the material facts known to him about the seller which are not apparent or readily ascertainable to the prospective purchaser.
9. The prospective purchaser shall not make any additional offers to purchase the property directly with the seller without the interference or the knowledge of the broker.
10. The above agreement for brokerage will last for a period of one month, the period within which the broker affirms to find a house for the prospective purchaser.

    The following list shall be maintained by the broker along with the prospective purchaser (with their attestation).

    (a) The period of stay at the site and the day/time at which the property was shown.

    (b) The description of the property [copy of plan].

    (c) The price quoted by the mutual parties and related terms.

    (d) Names of the persons accompanied the prospective purchaser.

11. The broker hereby asserts that he shall also provide an Advocate to seek expert opinion on the title of the property and shall provide the services for the execution of

Agreement/Registration as desired by the prospective purchaser.

12. The brokerage cost is hereby fixed at [Rs _____] [or] _____% of the purchase price which shall be paid by the prospective purchaser to the broker before entering into any agreement with the seller, however, subject to a fixed sum of Rs _____ towards minimal costs of the agreed services. These minimal costs are not applicable if any transaction materializes out of these services.
13. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
14. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, the dispute shall be referred to the arbitral tribunal as per the following terms and condition:
    (a) Each party shall appoint one arbitrator.
    (b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
    (c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
    (d) The Arbitration proceedings shall take place at _____, Delhi.
    (e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the

Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

(f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

(g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

(h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

(i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

(j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

(k) The provisions of the Indian Arbitration & Conciliation Act, 1996, shall apply to this reference.

(l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

(m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

(n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

(o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

(p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

(q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN THE WITNESS WHEREOF the parties have set their hands on this _____ day of _____ 2007.

Signed and delivered by 'A' S/o_____

Signed and delivered by 'B' S/o_____

WITNESSES:

1.

2.

Agreement for Appointment of a Broker for Selling a House

THIS AGREEMENT made at _____ on this _____ day of _____ 2000 between A S/o. B resident of _____ hereinafter called 'the owner' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his heirs, legal representatives, executors and administrators) of the ONE PART and C S/o D resident of _____ hereinafter called 'the broker' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his heirs, legal representatives, executors and administrators) of the OTHER PART.

WHEREAS the owner is the absolute owner of the property described in the Schedule hereunder written and he wants to sell the same and for that purpose he requires the services of a broker.

AND WHEREAS the broker, who is a reputed broker dealing in real estate in the area has shown his willingness to sell the said property.

AND WHEREAS the owner has agreed to appoint the broker for the sale of his property described in the Schedule hereto on the terms and conditions as hereinafter appearing.

NOW THIS AGREEMENT WITNESSES AS UNDER:

1. The owner authorises the broker to sell the property for a consideration of Rs _____ out of which the purchaser shall pay Rs _____ in advance as earnest money and the balance of Rs _____ shall be paid within a period of three months at the time of registration of the conveyance deed.
2. The owner hereby represents and warrants that the details of the property as described in the Schedule hereunder written are true and the title of the owner to the said property is clear, marketable and free from encumbrances.

3. The owner hereby undertakes that after the receipt of earnest money from the purchaser, he shall deliver the abstract of title showing that he is the owner of the property and the property is free from mortgage, lien, charge or any encumbrance.
4. The owner hereby agrees that on receipt of entire consideration in respect of the property, he shall execute conveyance deed in favour of the purchaser.
5. The broker hereby agrees that he shall be able to sell the property within a period of one month from the date of these presents.
6. The owner shall pay to the broker the commission at the rate of 2% of the consideration, which shall be payable at the time of execution of the conveyance deed of the property.
7. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
8. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, the dispute shall be referred to the arbitral tribunal as per the following terms and condition:
   (a) Each party shall appoint one arbitrator.
   (b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
   (c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
   (d) The Arbitration proceedings shall take place at _____, Delhi.

(e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

(f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

(g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

(h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

(i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

(j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

(k) The provisions of the Indian Arbitration & Conciliation Act, 1996, shall apply to this reference.

(l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

(m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

(n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

(o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

(p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

(q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN THE WITNESS WHEREOF the parties have hereunto set their hands, the day, month and year first above written.

Schedule of the above property

Signed and delivered by A s/o B, the within named owner

Signed and delivered by C s/o D, the within named broker

WITNESSES;

1.

2.

Agreement between Builder and a Broker

For Selling the Flats to be Constructed

THIS AGREEMENT made at _____ on this _____ day of _____, 2000, between ABC Construction Co. Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at _____ hereinafter called 'the Builder' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the ONE PART; and Shri XYZ son of Late Shri _____ resident of _____ hereinafter called 'the Broker' (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his heirs, legal representatives, executors and administrators) of the OTHER PART.

WHEREAS THE builder is constructing residential flats at _____ more particularly described in the Schedule hereunder written; and wants to sell those flats and for the said purpose the services of the brokers are required.

AND WHEREAS the broker has approached the builder and expressed his consent to act as broker for the sale of the flats on the terms and conditions mutually agreed upon.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The builder appoints the broker for selling the flats being constructed by him, more particularly described in the Schedule hereunder written at the price and on the terms and conditions laid down in Annexure 1 to this agreement
2. The broker will be entitled to the commission at the rate of 5 per cent on the cost of the flats booked by him.
3. The builder hereby represents and warrants that he is having clear and marketable title to the flats, free from any encumbrance, charge, lien, mortgage or attachment. The builder also represents and warrants that the material used in the flats is of best quality.

4. The builder hereby gives the period of six- months hereof for the sale of the flats described in the Schedule hereunder written and he shall not be authorised to sell the flats after the period of six months.
5. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
6. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, the dispute shall be referred to the arbitral tribunal as per the following terms and condition:
   (a) Each party shall appoint one arbitrator.
   (b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI
   (c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
   (d) The Arbitration proceedings shall take place at _____, Delhi.
   (e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.
   (f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

(g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

(h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

(i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

(j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

(k) The provisions of the Indian Arbitration & Conciliation Act, 1996, shall apply to this reference.

(l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribuna would be at liberty to proceed with the reference *ex-parte*.

(m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

(n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

(o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be

challenged on any ground except collusion, fraud or an error apparent on the face of the award.

(p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

(q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties have set their respective hands to these presents on the date, month and year hereinabove written.

Schedule
Annexure 1

Signed and delivered by ABC Construction Co. Ltd.
through the hands of Shri _____
Managing Director

Signed and delivered by XYZ

WITNESSES;
1.

2.



4.4

Accounting for Brokerage

Brokerage commissions

In consideration of the brokerage successfully finding a satisfactory buyer for the property, a broker anticipates receiving a fee for the services the brokerage has provided. Usually, the payment of a commission to the brokerage is contingent upon finding a satisfactory buyer for the real estate for sale, the successful negotiation of a purchase contract between a satisfactory buyer and seller, or the settlement of the transaction and the exchange of money between buyer and seller.

Commissions are usually negotiable between seller and broker. The commission could also be paid as flat fee or some combination of flat fee and percentage, particularly in the case of lower-priced properties.

Accounting method

When an agent does earn a commission, it often comes several months after he has expended his time and money with no guarantee of closing the sale. Realtors drill a lot of dry wells.

The brokers can account for the commission and other charges using Accounting Standard 9—Revenue Recognition which states

> In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service.

Out of the commission received from the seller, the broker will typically pay any expenses incurred to do the work of trying to sell the listed properties, such as advertisements, etc. This should be recognised as expense.



4.5

TDS on Brokerage

Under the Income Tax Act, the following are the three main modes of collecting taxes:

1. Payment by deduction of tax at source.
2. Direct payment of tax:
   (a) Advance payment of tax,
   (b) Payment as a result of self-assessment under Section 140A,
   (c) Payment as a result of regular assessment under Section 143 or Section 144,
   (d) Payment in any other special manner.
3. Collection of Income Tax.

Payment by deduction of tax at source or by advance payment of tax are mentioned under Section 190. The levy of tax by direct payment is provided by Section 191 only when the tax is not deductible at source and where the tax has not in fact been deducted at source in accordance with the provisions of the Act.

The following types of incomes are mainly subject to deduction of tax at source:

(a) Salaries—Section 192.
(b) Interest on securities—Section 193.
(c) Dividend—Section 194.

(d) Other interest—Section 194A.
(e) Winnings from lottery or crossword puzzle—Section 194B.
(f) Winning from horse race—Section 194BB.
(g) Payment to resident contractors and sub-contractors—Section 194C.
(h) Insurance commission—Section 194D.
(i) Payments to non-resident sportsmen or sports associations—Section 194E.
(j) Payments in respect of deposits under the N.S.S.—Section 194EE.
(k) Payments on account of repurchase of units by Mutual Fund or UTI—Section 194F.
(l) Commission, etc., on the sale of lottery tickets—Section 194G.
(m) **Commission or brokerage—Section 194H**.
(n) Rent exceeding Rs 1,20,000—Section 194I.
(o) Fees for professional or technical services—Section 194J.
(p) Income from UTI units and Mutual Funds—Section 194K
(q) Other sums payable to non-residents and non-Indian companies only—Section 195.
(r) Income from units—Section 196B.
(s) Income from foreign currency bonds or shares of Indian company—Section 196 C.
(t) Income of foreign institutional investors from Securities—Section 196D.

TDS on Commission or Brokerage—New Section 194H

The Finance Act, 2001 inserted a new Section 194H from 1 June 2001. Under this section, the person responsible (not being an individual or a HUF) for paying any income by way of commission or brokerage for services rendered (not being professional services) or any services in the course of buying or selling of goods or in

relation to any transaction relating to any asset, valuable article or thing (not being securities), shall deduct income-tax thereon at the rate of ten pen cent. However, no such deduction will be made where the amount of payment or the aggregate amount of payments, in a financial year, does not exceed two thousand five hundred rupees. The new section would not apply when payments are made by individuals or Hindu undivided families. TDS on Brokerage/Commission from 1 June 2002 will be @ 5%.

With effect from 1 June, 2002, individuals and HUF covered under Section 44AB(a) and (b) i.e. whose gross turnover of the business in the immediately preceding financial years exceeds Rs 40,00,000 (or receipts from the profession Rs 10,00,000) are also required to deduct tax at source.

The Government's efforts to improve tax collections through tax deduction at source (TDS) are increasing by the day, and the scope for TDS expanding by the year. There's good reason for that: TDS is the best medium of collecting tax without much of a hassle, since the responsibility to deduct tax is not on the government, but on citizen-payers. What's more, the government doesn't even have to pay any remuneration to these 'involuntary volunteers' who deduct tax at source. It is, therefore, not surprising that the tax department accords a lot of importance to TDS as a source of generating revenue and to administering the TDS provisions more vigorously.

Casting a wider net. In 2001, brokerage and commission payments were brought within the TDS net; in 2002, it was the turn of dividend distributions. However, an individual or a Hindu Undivided Family (HUF) was always spared the obligation to deduct tax while making payments in most cases. This exemption was based on the well-established principles that people with little or no infrastructure shouldn't be called upon to undertake government work.

However, with effect from 1 June 2002, specified individuals and HUFs have been saddled with the responsibility of deducting and depositing tax on payments made by them. These specified

individuals and HUFs are those whose total sales, gross receipts or turnover from business exceed Rs 40 lakh or, where they are in profession, their gross receipts exceed Rs 10 lakh as specified under Section 44AB during the financial year immediately preceeding the financial year in which the sums of money liable for TDS are credited or paid.

In other words, individuals and HUFs who were liable to get their books of accounts audited under Section 44AB (Tax Audit) for the year ended 31 March 2002 will also, with effect from 1 June 2002, be liable to deduct and pay tax to the government under the various TDS provisions.

TDS Chart

Chart showing the TDS rates for various section of the Income-Tax Act 1961 TDS chart for the year 1 April 2006 to 31 March 2007.

Section of Act	Nature of Payment in Brief	Rate for Non Company%	Rate for Company%	Date within which TDS has to be remitted	Qtrly. Return Form No.
192	Salaries	Average rate		Within the 7th of the next month	24Q
193	Interest on Securities > Rs 2,500.00	10	20	Within the 7th of the next month	26Q
194A	Interest other than Interest on Securities exceeding Rs 5,000	10	20	Within the 7th of the next month	26Q
194B	Lottery/Crossword Puzzle exceeding Rs 5,000	30	30	Within the 7th of the next month	26Q
194BB	Winning from Horse Race exceeding Rs 2,500	30	30	Within the 7th of the next month	26Q
194C(1)	Contracts exceeding Rs 20,000	2	2	Within the 7th of the next month	26Q

Section of Act	Nature of Payment in Brief	Rate for Non Company%	Rate for Company%	Date within which TDS has to be remitted	Qtrly. Return Form No.
194C(2)	Sub-Contracts/Advertise-ments exceeding Rs 20,000	1	1	Within the 7th of the next month	26Q
194D	Insurance Commission exceeding Rs 5,000	10	20	Within the 7th of the next month	26Q
194EE	Refund of NSS exceeding Rs 2,500	20	-	On the day of deduction itself	26Q
194F	Repurchase of Units by MF/UTI	20	-	Within the 7th of the next month	26Q
194G	Commission on Sale of Lottery Tickets exceeding Rs 1,000	10	10	Within the 7th of the next month	26Q
194H	Commission or Brokerage exceeding Rs 2,500	5	5	Within the 7th of the next month	26Q
194I	Rent paid for a. Land b. Buildings c. Land appurtenant to building (including factory building) d. Plant & Machinery e. Equipment f. Furniture & Fittings Rs 1,20,000 p.a.	15 (Individual & HUF) 20 (Others)	20	Within the 7th of the next month	26Q
194J	Professional/Technical Charges/Royalty and non Compete Fees exceeding Rs 20,000	5	5	Within the 7th of the next month	26Q
194LA	Compensation on acquisition of immovable property exceeding Rs 1,00,000 w.e.f. 01/10/2004	10	10	Within the 7th of the next month	26Q
195/196B/ 196C/196D 196E	Payment to Non-Residents	Rates in force	Rates in force	Within the 7th of the next month	--

Notes

1. Where income referred in Sections 193, 194A, 194C, 194D, 194G, 194H, 194I and 194J is credited to account of payee as on date up to which accounts are made, TDS has to be deposited in Government Account within 2 months from the end of the month in which the date falls.
2. Where the aggregate of the amounts paid/credited or likely to be paid/credited exceeds Rs 50,000 during the financial year, TDS has to be made. Also where any sum credited/paid or likely to be credited/paid to Contactor or Sub-contractor exceeds Rs 20,000, TDS is to be made.
3. An Individual or a Hindu Undivided Family whose total sales, gross receipts or turnover from business or profession carried on by him exceeds the monetary limits under Clause (a) or (b) of Sec.44AB during the preceding financial year shall also be liable to deduct tax u/s.194A, 194C, 194H, 194I and 194J.

Section 194H has been reproduced here:

Commission or brokerage

194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the

account of, or to, the payee, does not exceed two thousand five hundred rupees.

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.

Explanation: For the purposes of this section,

(i) 'commission or brokerage' includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(ii) the expression 'professional services' means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(iii) the expression 'securities' shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;

(iv) where any income is credited to any account, whether called 'Suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

TDS provisions

The provisions under which specified individuals and HUFs are liable to deduct tax at source are:

Section 194H. For commission or brokerage (apart from brokerage on securities) in excess of Rs 2,500 per person per year at 5.25 per cent.

The rates that have been specified are the prescribed rates of income tax for TDS and include surcharge at the rate of 5 per cent. In addition, the specified individuals and HUFs are obligated to deduct tax under Section 192 in respect of salaries paid to employees and payments to Non-residents under Section 195. Importantly, the specified individuals and HUFs are liable in the case of payments to sub-contractors only where they are contractors themselves.

TDS obligations

TAN number. Every person who is liable to deduct tax at source (deductors) will have to get a TAN Number by making an application using Form 49B within the prescribed time, failing which there is a penalty.

Tax deduction: The deductor has to deduct tax at source in accordance with the specified provisions at the prescribed rates at the time of credit of the sums of money liable for deduction or at the time of payment of these sums, whichever is earlier.

Tax payment: The deductor has to pay the tax that has been deducted during a month by the 7th of the following month. Failure to pay TDS by the due date will attract interest at 1.25 per cent per month for the period of delay.

Issue of TDS certificate: The deductor has to issue a TDS certificate using Form 16/16A by the end of the following month in which the tax is deducted, and where the payment is credited to the account of the payee at the end of the year, within seven days of two months from the end of the year. A consolidated yearly TDS certificate can be issued only if the payee so requests

within one month from the end of the year. Failure to issue the TDS certificate within the prescribed time attracts a penalty of at least Rs 100 per day for the period of the delay; the maximum penalty being subject to the amount of the tax deducted at source. If the deductor has the payee's Permanent Account Number (PAN), this must be mentioned on the TDS Certificate, failing which there is a penalty of Rs 10,000.

Forms of TDS

With the simplification reforms in TDS Returns, there is only one form i.e., Form No. 26Q that needs to be submitted quarterly for all the incomes be it, interest income, commission, rental income or technical fees or payments to sub-contractors.

Earlier, a number of forms were used for filing TDS Returns annually, like Form 26A for interest (under Section 194A); Form 26I for commission or brokerage (Section 194H); Form 26J for rent (Section 194I); Form 26K for professional or technical fees (Section 194J); Form 26C for payments to sub-contractors (Section 194C).

Taxpayer's privilege

A person whose income/receipts are subject to TDS can apply to the TDS Officer and get a certificate for lower deduction of tax at source in case of salaries, interest on securities, dividend, interest other than 'interest on securities', insurance commission, commission or brokerage, rent, income from units, payment of compensation on acquisition of a capital asset, and payments to non-residents. The application has to be made in the prescribed form in response to which the 'Certificate of lower TDS' will be issued by the TDS Officer.



5.1

Who can Invest in Real Estate

1. Any person who is Indian Citizen residing in India can invest/acquire/transfer real estate without any permission from the Reserve Bank of India.
2. All persons, whether resident in India or outside India, who are citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan require prior permission of the Reserve Bank for acquiring or transferring any immovable property in India.
3. A person resident outside India, who has been permitted by the Reserve Bank to establish a branch or office or place of business in India (excluding a Liaison Office) in order to acquire immovable property in India which is necessary for or incidental to the activity. However, in such cases a declaration, in prescribed form is required to be filed with the Reserve Bank, within 90 days of the acquisition of immovable property.
4. An Indian citizen resident outside India does not require any permission to transfer any immovable property, to a citizen of India who is resident in India.
5. An Indian citizen resident outside India does not require any permission to transfer any immovable property to a person:

a) is a citizen of India resident outside India;

b) is a person of Indian origin resident outside India.

6. A person of Indian origin resident outside India does not require any permission to acquire any immovable property other than agricultural land/farmhouse/plantation property in India by purchase, from out of funds:

   a) Received in India by way of inward remittance through banking channel from any place outside India.

   b) Held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank under the Act.

7. A person of Indian origin resident outside India does not require any permission to acquire any immovable property in India other than agricultural land/farmhouse/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India.

8. A person of Indian origin resident outside India does not require any permission to acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India.

9. A person of Indian origin resident outside India does not require any permission to transfer any immovable property in India other than agricultural land/farmhouse/plantation property, by way of sale to a person resident in India.

10. A person of Indian origin resident outside India does not require any permission to transfer agricultural land/farm-house/plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India.

11. A person of Indian origin resident outside India does not require any permission to transfer residential or commercial property in India by way of gift to a person resident in India or to person resident outside India who is a citizen of India or to a person of India origin resident outside India.
12. Repatriation outside India, including credit to RFC, NRE or FCNR account, of sale proceeds of any immovable property situated in India, requires prior permission of the Reserve Bank except in circumstances stated in paragraph 13 below.
13. The event of sale of immovable property, other than agricultural land/farmhouse/plantation property in India by a person resident outside India, who is a citizen of India, or a person of Indian origin, the authorized dealer may allow repatriation of the sale proceeds outside India, provided all the following conditions are satisfied.
    a) The immovable property was acquired by the seller in accordance with the provisions of the Exchange Control Rules/Regulations/Law in force at the time of acquisition, or the provisions of the Regulations framed under the Foreign Exchange Management Act, 1999.
    b) The sale takes place after three years from the date of acquisition of such immovable property or from the date of payment of final installment of consideration for its acquisition, whichever is later.
    c) The amount to be repatriated does not exceed:
        i) The amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in foreign currency non-resident account.
        ii) The foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in non-resident external account for acquisition of the property.

iii) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

14. All requests for acquisition of agricultural land/plantation/ property/farm house by any person resident outside India or foreign nationals may be made to the Chief General Manager, Reserve Bank of India, Central Office, Exchange Control, Department, Foreign Investment Division (III), Mumbai 400001.

15. The NRIs/PIOs can freely rent out their immovable property in India without seeking any permission from the Reserve Bank. The rental income being a current account transaction is freely reportable outside India.

Prohibition on direct investment outside India

No Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business except after taking prior permission from RBI.

'Real estate business' means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/ commercial premises, roads or bridges.

(Notification No. FEMA 120/ RB-2004 dated: July 7, 2004)



5.2

Acquisition and Transfer of Immovable Property in India by a Person Resident Outside India

Investing in immovable properties in India is not a Herculean task for the NRIs anymore. We have come a long way from the days of FERA (Foreign Exchange Regulation Act) regime, when buying or selling of immovable property was governed by the citizenship of a person. According to an estimate, about 25 million NRIs are looking at home country for potential investment opportunities in real estate. The FDI under automatic route in real estate development has also augmented the confidence of overseas Indians to forge strategic alliances with global realty giants for testing select markets across the country. Before we go into the details of the law governing NRI investment in real estate, let us first understand the basic definitions.

Concept of NRI/PIO under FEMA

Who is a NRI?

Section 2 of the Foreign Exchange Management Act, 1999

(FEMA) deals with various definitions. It defines a person resident in India and a person resident outside India. However, it does not define the term non-resident nor it does define the term Non Resident Indian (NRI).

However, Notification No. 5/2000-RB (dealing with various kinds of bank accounts) defines the term Non Resident Indian (NRI) to mean a person resident outside India who is either a citizen of India or is a person of Indian origin. In short, the definition of the term NRI is contextual and can have slightly different connotations for FEMA/Income Tax/Acquisition of Immovable Property etc.

A Non-Resident Indian is termed as a 'person resident outside India'. The non-resident Indians are classified into three categories

(1) Non-resident Indian Nationals.
(2) Non-resident Indians of Indian Origin/Persons of Indian Origin.
(3) Overseas Corporate Bodies (OCB).

Non-Resident Indian National (NRI)

An Indian citizen who stays abroad for employment/carrying on business, to pursue a vocation outside India or under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident (persons posted in U.N. organisations and officials deputed abroad by Central/State Governments and Public Sector undertakings on temporary assignments are also treated as non-residents). Non-resident foreign citizens of Indian origin are treated on par with non-resident Indian citizens (NRIs) for the purpose of certain facilities.

Clause 2(w) of FEMA 1999 indicates that 'a person resident outside India' means a person who is not resident in India.

Clause 2(v) of FEMA 1999 defines a 'resident' as follows:

1. A person residing in India for more than 182 days during the preceding FY but does not include
   - (A) a person who has gone out of India or who stays outside India, in either case
     - (i) or on taking up employment or who stays outside India, or
     - (ii) for carrying on outside India a business or vocation India, or
     - (iii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period:
   - (B) a person who has come to or stays in India in either case, otherwise than
     - (i) for taking up employment in India, or
     - (ii) for carrying on in India a business or vocation in India, or
     - (iii) for any other purpose, in such circumstances an would indicate his intention to stay in India for an uncertain period.
2. Any person or body corporate registered or incorporated in India.
3. An office, branch or agency in India owned or controlled by a person resident outside India.
4. an office, branch or agency outside India owned or controlled by a person resident in India.

Person of Indian Origin (PIO)

For the purposes of availing of the facilities of opening and maintenance of bank accounts and investments in shares/ securities in India, Person of Indian Origin means a citizen of any country other than Pakistan or Bangladesh if,

(i) he at any time, held an Indian passport

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1995)

(iii) the person is a spouse of an Indian citizen.

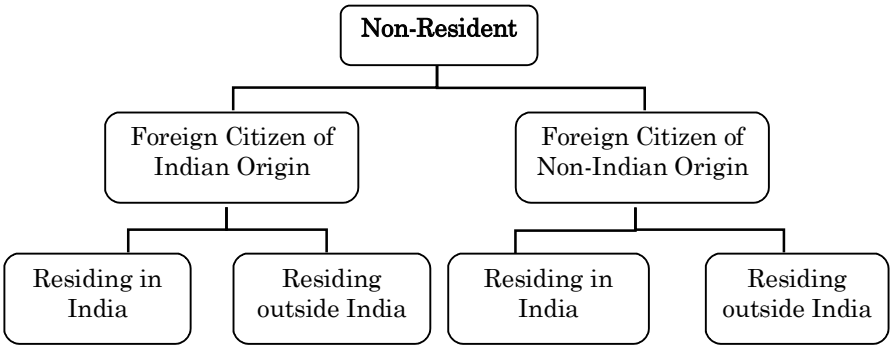
For investments in immovable properties, Person of Indian Origin means an individual (not being a citizen of Pakistan or Bangladesh or Afghanistan or Bhutan or Sri Lanka or Nepal or China or Iran)

(i) who at any time, held an Indian passport

(ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Further, a non-resident can be classified into the following six categories:

A person who is a non-resident can belong to the following categories:



Overseas Corporate Bodies (OCB)

Overseas Corporate Bodies (OCBs) are bodies predominantly owned by individuals of Indian nationality or origin resident outside India and include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India, as also overseas

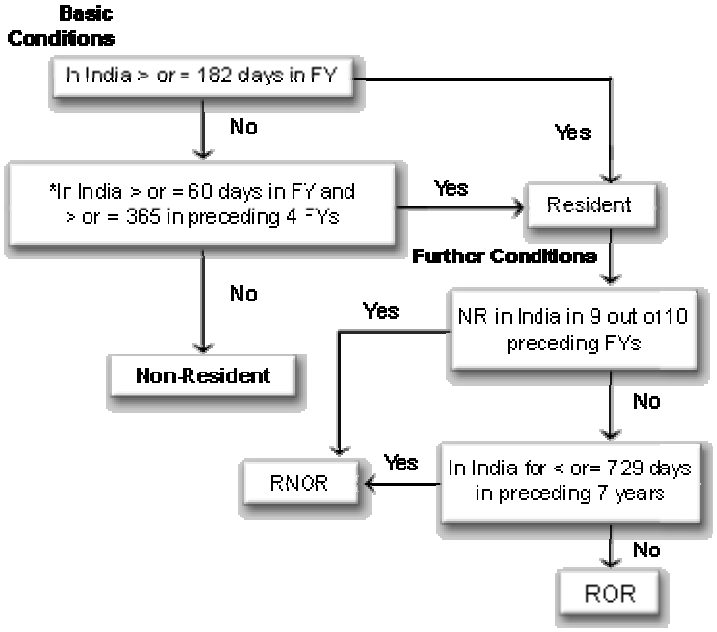
trusts in which at least 60% of the beneficial interest is irrevocably held by such persons. Such ownership interest should be actually held by them and not in the capacity as nominees. The various facilities granted to NRIs are also available with certain exceptions to OCBs as long as the ownership/beneficial interest held in them by NRIs continue to be at least 60%.

Income Tax complications

For the purposes of levy of tax, the Income Tax Act in India has classified the status of an individual assessee into three viz.,

1. Resident and ordinarily resident (ROR).
2. Resident but not ordinarily resident (RNOR).
3. Non-resident (NR).

The residential status of an **Individual** is determined based on the number of days of **stay** in India. Financial year (FY) is April to March.



*Not applicable to a resident going outside India for employment, a resident who leaves India as a member of crew of an Indian ship, an Indian citizen or person of Indian origin who is abroad and comes to India for a visit i.e. if such a person stays in India for less than 182 days, he would be a non-resident.

In the case of a ROR, his global income is taxed in India. Normally a **returning Indian** would be assessed as RNOR on his return to India.

In the case of a **Non-resident**, only the income earned or received in India is taxed in India. Accordingly, income earned outside India would not be taxable in India.

India has contracted Double Tax Avoidance Agreements (DTAAs) with various countries. Taxability of the NRI's Indian income would be decided as per the provisions of these DTAAs. Most of these DTAAs contain provisions for lower rates of tax in case of incomes like dividend, royalties, fees for technical services etc. Provisions of some DTAAs provide interesting opportunities for efficient tax planning.

Legal Framework Governing Acquisition of Immovable Property in India by NRIs

1. The Foreign Exchange Management Act, 1999 is the one that regulates foreign investment in India. Under this umbrella Act, Foreign Exchange Management (Acquisition and Transfer of Immovable Properties) Regulations, 2000 has been enacted vide Notification No. FEMA 21/2000-RB dated 3rd May 2000. These Regulations provide the guidelines for acquisition and transfer of immovable properties by NRIs.
2. Income Tax Act, 1961.
3. Income Tax Rules, 1962.
4. Wealth Tax Act, 1957.
5. Gift Tax Act, 1958.
6. Transfer of Property Act, 1882.

7. Notifications/Circulars by RBI
   (a) A.P (DIR) Series Circular No. 93 dated June 9, 2003.
   (b) A.P (DIR) Series Circular No. 43 dated December 8, 2003.
   (c) Master Circular No./02/2006–07dated July 1, 2006.
   (d) A.P (DIR) Series Circular No. 5 dated August 16, 2006.

FERA vs FEMA

The difference between FERA and FEMA is not just a mere change of one word, from 'Regulation' to 'Management'. To understand the differences between the two statutes, we need to know the underlying principles that governed FERA. FERA was introduced at a time when forex reserves were real low. As such, it was believed that all foreign exchange earned by Indians rightfully belonged to the Government of India and had to be collected and relinquished to the Reserve Bank of India promptly.

When FEMA was enacted on June 1, 2000, there was a general misunderstanding among the NRIs that all restrictions and controls relating to foreign exchange transactions have been eliminated and that foreign exchange dealings would be allowed to be freely made after the introduction of FEMA. This is not so. It is, of course, true that there is a great change in the perspective of FEMA in comparison with FERA. But certain reasonable restrictions still exist in FEMA with regard to foreign exchange transactions so as to facilitate them in a regulated manner. Under FEMA, various notifications and provisions of the RBI Exchange Control Manual have been put together in the form of separate regulations for different types of exchange transactions with a view to making them available easily to NRIs and other persons and also to provide transparency to the RBI rules and regulations. For example, the various types of accounts like NRE Account, FCNR Account, NRO Account, etc. were regulated through Exchange Control Manual and Notifications in this regard. Now, the FEMA (Deposit) Regulations deal with the

maintenance and operation of such accounts in crystal clear manner. Similar is the case with reference to other various aspects of foreign exchange.

The primary change that the FEMA has brought in is that FEMA is a civil law, whereas the FERA was a criminal law. Under the FEMA no prosecution would be imposed for violation of operating provisions, likewise, arrest and imprisonment would not be resorted to except in the solitary case where the person, alleged to have violated the provisions of the FEMA, audaciously decides not to pay the penalty imposed under Section 13 of the FEMA. In the same manner unrestrained enormous powers of Directorate of Enforcement have been chopped down to a considerable extent. Even the word 'offence' is conspicuous by its absence in the concrete provisions of FEMA.

The provisions of FERA were draconian in nature. These provisions empowered the Enforcement Directorate to arrest any person, search any premises, seize documents and start proceedings against any person for contravention of FERA or for preparations of contravention of FERA. The violation under FERA was treated as criminal offence and the burden of proof was on the guilty.

FEMA has reduced the austerity of exchange control by removing/mitigating the effect of these provisions. The contravention has been treated as civil offence. Primarily, for an offence, the accused cannot be arrested. He can be arrested only for non-payment of the penalty imposed for contravention. Specific provision has been made by fixing a time limit of twenty-four hours for bringing the arrested person before the Adjudicating Authority. Similarly, in respect of appeals filed before the Appellate Tribunal**,** a period of 180 days has been specified for final disposal of the appeals. No such time limit was laid down under FERA. The powers of Enforcement Directorate have been substantially reduced and new provisions for Adjudicating Authority and Compounding of cases have been introduced.

FEMA contains 49 sections in total. Of these, only seven sections, namely, Sections 3 to 9 deal with certain acts to be done or not to be done in connection with transactions involving foreign exchange, foreign security, etc. There are various sections from 16 to 35 relating only to adjudication and appeal. Further, one of the most important and distinguishing features of FEMA is that there is a provision for compounding of penalty as contained in Section 15 of FEMA, which was not available under FERA.

Whereas FERA contained 81 sections (some were deleted in the 1993 amendment of the Act) of which 32 sections related to operational part and the rest covered penal provisions, authority and powers of Enforcement Directorate, etc. Out of the 49 sections of FEMA, 12 sections cover operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc. What was a full section under FERA seems to have been reduced to a sub-clause under FEMA in some cases.

For example,

1. Section 13 of FERA provided for restrictions on import of foreign currency and foreign securities. Now this restriction is provided through a sub-clause 6(3)(g).
2. Section 25 of FERA provided for restrictions on Indian residents holding immovable properties outside India. Now the restriction is under sub-clause 6(4).

FERA regulated not just the foreign exchange transactions but all financial transactions with the non-residents. FERA violation was treated as a crime. FERA primarily banned all transactions except those which were generally or specifically permitted by RBI. Whereas under FEMA, all current account transactions in forex like expenses which are not for capital purposes, are permitted except to that extent which is notified by the Central Government.

The Foreign Exchange Management Act, 1999 (FEMA) contains only the concrete and procedural aspects of Foreign Exchange Regulations. The detailed provisions in regard to various aspects connected with Foreign Exchange Regulations are

found in Rules, Regulations and Notifications under FEMA issued or disseminated by the Government of India or RBI. Thus, the Government of India, in exercise of the powers conferred on it under Section 46 of FEMA, has made various sets of Rules, namely:

1. Foreign Exchange Management (Current Transactions) Rules, 2000.
2. Foreign Exchange (Compounding Proceedings) Rules, 2000.
3. Foreign Exchange Management (Adjudication Proceedings and Appeal), Rules, 2000.
4. Foreign Exchange (Authentication of Documents) Rules, 2000.
5. Foreign Exchange Management (Encashment of Draft, Cheque Instrument and Payment of Interest) Rules, 2000.

The fundamental difference between FERA and FEMA is as under:

Under FERA, a normal operative section would provide that 'no person can do the following transactions without general/ special permission'. Thus for example, section 9 prohibited all payments to non-residents. Then several notifications permitted payments subject to certain conditions. It meant that if there was no permission, a payment to a non-resident was prohibited.

Now under section 5, all current account transactions are permitted under FEMA. RBI may regulate certain payments by issuing notifications/circulars. If there is a current account payment on which no notification has been issued, prima facie, it is permitted.

There is yet another major transformation in the protocol as far as regulation concerning immovable property situated in India is concerned. Under FERA acquisition of immovable property in India was governed by "**citizenship criteria**", whereas under FEMA the same is governed by "**residential status**" criteria. It means a foreign citizen who is resident in India (not being a

citizen of any of the eight countries listed above) can purchase immovable property in India without any approval from RBI. He is also not required to file any declaration at the time of purchase of such immovable property.

Conclusion

Thus FEMA has brought about a sea change in the hitherto difficult foreign exchange regulations. What was once considered draconian has been simplified to a great extent for the benefit of non-residents thereby making their lives easier considerably.

FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2000

RBI has framed the Regulations called The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 which have been notified vide Notification No. FEMA 21/2000-RB dated May 3, 2000.

Synopsis of FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2000

Regulation 3

1. It deals with acquisition and transfer of immovable property in India by an Indian citizen resident outside India (NRI).
2. It grants general permission to him to acquire and transfer an immovable property in India other than agricultural or plantation property or a farmhouse.

Regulation 4

1. It deals with acquisition and transfer of immovable property in India by a Person of Indian Origin (PIO).

2. It grants general permission to him to acquire and transfer (in certain situations) an immovable property in India other than agricultural or plantation property or a farmhouse.

Regulation 5

It grants general permission to a person resident outside India who has secured RBI permission to establish a branch, office or other place of business in India (excluding a liaison office) to acquire an immovable property in India which is necessary for or incidental to carrying on the permitted activity.

Regulation 6

It deals with the repatriation of the sale proceeds by an NRI or a PIO, of an immovable property (other than agricultural land or plantation property or a farm house) in India subject to the satisfaction of certain stipulated conditions.

Regulation 7

It prohibits the acquisition or transfer of immovable property in India by citizens of certain neighbouring countries, whether such individual is a resident of India or not.

Regulation 8

It prohibits the transfer of an immovable property in India by a person resident outside India (other than an NRI or a PIO); i.e., a foreigner, without prior permission of RBI.

Thus the Reserve Bank of India has given only three 'General Permissions' (vide regulations 3, 4 and 5) in connection with immovable property in India to the following categories of Non Residents:

1. A non-resident who is a citizen of India.
2. A non-resident who is a Person of Indian Origin. (PIO)
3. A non-resident who has established in India a branch office or other place of business (excluding a liaison) office.

In all other cases, prior permission of the RBI is required.

Prohibition on citizens of certain countries

Citizens of eight countries, (namely, Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal. or Bhutan **(whether resident in India or not)** are debarred from acquiring or transferring any immovable property in India without prior approval of the RBI. However, such a prohibition is not applicable to immovable property acquired on lease for a period not exceeding five years.

General Prohibition

Investment in agricultural property, plantation and farmhouse is prohibited for all classes of persons resident outside India, be it NRIs/OCBs/foreign citizens or other foreign entities.

Acquisition of immovable property

Acquisition of immovable property by an NRI can be by way purchase, gift or inheritance.

Transactions which require RBI's prior permission

All transactions involving the acquisition or transfer of immovable property in India by a person residing outside India (as well as by certain persons who are citizens of certain neighbouring countries) require the prior permission of the Reserve Bank of India unless a general permission has been granted for such a transaction in terms of Regulations 3, 4 or 5. The following categories of persons are now required to obtain the prior permission of the Reserve Bank of India.

Persons who are required to obtain RBIs permission	Matters which require RBI's permission
1. Citizen of India residing outside India (i.e., NRI)	1. To acquire agricultural or plantation property or farm-house in India- **Reg. 3(a)** 2. To transfer agricultural or plan-tation property or a farmhouse in India to another NRI or PIO- **Reg.3(c)** 3. To transfer any immovable property in India to a person resident outside India (other than to another NRI or PIO) **Reg. 3(b) & (c)**
2. A person of Indian Origin resident outside India (PIO)	1. To acquire any immovable property in India (other than agricultural or plantation property or a farmhouse by way of a purchase from other than foreign exchange funds/Non Resident Accounts **Reg.4(a)**) 2. To acquire Agricultural or Plan-tation Property or a farmhouse in India by way of purchase or gift (other than by way of inheritance) **Reg. 4(a) & (b)** 3. To acquire any immovable property in India (other than the agricultural or Plantation property or a farmhouse) by way of a gift from a foreign national resident outside India (other than another NRI or PIO) **Reg.4(b)** 4. To transfer an Agricultural or Plantation property or a Farm House in India by way of a gift or sale to another NRI or PIO (other than a person who is a Citizen of India and Resident of India) **Reg.4(e)**

Persons who are required to obtain RBIs permission	Matters which require RBI's permission
	5. To transfer any immovable property in India by way of a sale to a person resident outside India **Reg. 4(d)** 6. To transfer any residential or commercial property in India by way of a gift to a person Resident outside India (other than another NRI or PIO) **Reg.4(f)**
3. A person resident outside India who has Reg. 5 (b) office or any other place of business in India (excluding a liaison office)	To transfer any property in India (other than by way of mortgage to Authorised Dealer as a security for any borrowings)
4. A foreign national being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan (whether resident in India or not)	To acquire or transfer any immovable property in India (other than a lease not exceeding 5 years) **Reg.7**
5. Any person resident outside India other than an NRI or a PIO), i.e., any foreign national resident outside India	To transfer any immovable property in India Note: The regulations do not grant any general permission to such a person to acquire an immovable property in India Therefore, such a person would also require RBI permission to acquire an immovable property in India) **Reg 8**
6. Any non individual person (i.e., a company or a firm etc.) resident out side India	To acquire or transfer an immovable property in India (other than a lease not exceeding 5 years) **Reg.6(3)(i)**

As per the liberalised policy, transactions permitted without permission of Reserve Bank of India are tabulated hereunder:

NRI

Type of property	Acquired from
Any immovable property other than Agricultural or plantation or farmhouse	Anyone including those residents outside India

PIO

Type	Acquired from	Mode	Condition
Any immovable property other than agricultural or plantation or farmhouse	Anyone	Purchase	To be met out of funds received in India by inward remittance by normal banking channels.
Any immovable property other than agricultural or plantation or farmhouse	NRI/PIO/ Resident from India	Gift	
Any immovable property other than agricultural or plantation or farm house	NRI/Resident from India	Inheritance	The property was acquired in accordance with the foreign exchange laws at the time of acquisition or from a resident in India

Acquisition by way of purchase

A general permission is available to NRIs or PIO to purchase only residential/commercial property in India. There is no restriction on the number of residential/commercial properties that an NRI or a PIO can buy. The name of a foreign national of non-Indian origin cannot be added as a second holder of a residential/ commercial property purchased by an NRI or a PIO.

A foreign national of non-Indian origin, resident outside India, cannot acquire any immovable property in India by way of purchase without RBI's approval. However, a foreign national of non-Indian origin, including a citizen of the eight countries mentioned above, may acquire only residential accommodation on lease, for not more than five years.

He does not require the RBI's permission for this. A person resident outside India (that is, an NRI, a PIO or a foreign national of non-Indian origin) cannot acquire agricultural land/ plantation/farmhouse in India by way of purchase.

Acquisition by way of gift

An NRI or a PIO may acquire residential/commercial property by way of gift from a resident of India, an NRI or a PIO. However, a foreign national of non-Indian origin resident outside India cannot acquire residential/commercial property in India by way of gift. A person resident outside India cannot acquire agricultural land/plantation/farmhouse in India by way of gift.

Acquisition by way of inheritance

A person resident outside India can hold immovable property in India acquired by way of inheritance from a person resident in India. Further, with the approval of the RBI, he may hold immovable property in India acquired through inheritance from a person resident outside India, provided the bequeathor had acquired the property in accordance with FEMA or the foreign exchange law in force at the time of acquisition.

Sale of immovable property

An NRI can sell residential/commercial property in India to a person resident in India, an NRI or a PIO. However, a PIO can sell residential/commercial property in India only to a resident of India. He would need prior approval of the RBI for sale of residential/commercial property in India to an NRI or a PIO.

A foreign national of non-Indian origin whether resident in India or outside India would require prior approval of the RBI for sale of residential property in India acquired with the specific permission of the RBI to a person resident in India or outside India.

An NRI or a PIO may sell his agricultural land/plantation/ farmhouse in India to an Indian citizen resident in India. However, a foreign national of non-Indian origin, resident outside India, would require prior approval of the RBI to sell agricultural land/plantation/farmhouse acquired in India.

As per the liberalised policy, transactions permitted without permission of Reserve Bank of India are tabulated hereunder.

NRI

Type	Mode	Transferred to
Any property	Sale/transfer/gift	Resident in India
Any property other than agricultural/plantation/farmhouse	Sale/transfer/gift	NRI/PIO

PIO

Type	Mode	Transferred to
Any property other than agricultural/plantation/farmhouse	Sale	Resident in India
Agricultural/farmhouse/plantation property in India	Gift/Sale	Resident in India who is a citizen of India
Any residential, commercial property in India	Gift	NRI, PIO or resident

Gift of immovable property in India

An NRI or a PIO may gift residential/commercial property in India to a person resident in India, an NRI or a PIO. Further, an NRI or a PIO may gift agricultural land/plantation/farm house in India to an Indian citizen resident in India.

However, a foreign national of non-Indian origin resident outside India would need prior approval of the RBI to gift agricultural land/plantation/farmhouse acquired by him in India.

Purchase/Sale of immovable Property by Foreign Embassies/Diplomats/Consulate Generals

Foreign Embassy/Diplomat/Consulate General has been allowed to purchase/sell immovable property in India other than agricultural land/plantation property/farmhouse provided

1. clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and
2. the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

Acquisition of immovable property for carrying on a permitted activity in India (Regulation 5)

A person resident outside India who has established a liaison office in India in accordance with FEMA regulations cannot purchase immovable property in India. Practically, all liaison offices in India acquire premises on lease for not more than five years for which no permission is required from the RBI.

However, a person resident outside India who has established a branch office or other place of business in India in accordance with FEMA regulations can purchase immovable property in India provided it is necessary for, or incidental to, carrying on the activity he is engaged in and all applicable laws have been complied with.

Such an entity/concerned person would have to file a declaration in form IPI with the Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said immovable property to an Authorised Dealer as a security for any borrowing.

IPI (see Regulation 5): Declaration of immovable property acquired in India by a person resident outside India

Instructions

The declaration should be completed in duplicate and submitted directly to the Chief General Manager, Exchange Control Department, (Foreign Investment Division–III), Reserve Bank of India, Central Office, Mumbai-400 001 within 90 days from the date of acquisition of the immovable property.

Documentation

Certified copies of letter of approval from Reserve Bank obtained under section 6(6) of FEMA, 1999 (42 of 1999).

1		Full name and address of the acquirer who has acquired the immovable property		
2	(a)	Description of immovable property	(a)	
	(b)	Details of its exact location stating the name of the state, town and municipal/survey number, etc.	(b)	
3	(a)	Purpose for which the immovable property has been acquired	(a)	
	(b)	Number and date of Reserve Bank's permission, if any,	(b)	
4		Date of acquisition of the immovable property		
5	(a)	How the immovable property was acquired i.e, whether by way of purchase or lease	(a)	
	(b)	Name, citizenship and address of the seller/lessor	(b)	
	(c)	Amount of purchase price and sources of funds.	(c)	

I/We hereby declare that

(a) the particulars given above are true and correct to the best of my/our knowledge and belief ;

(b) no portion of the said property has been leased/rented to, or is otherwise being allowed to be used by, any other party .

Encl:

(Signature of Authorised official)

Stamp

Place: Name:

Date: Designation:

Sale proceeds

As far as repatriation of sale proceeds is concerned, such repatriation in respect of properties acquired by the person while being a resident of India or acquired by inheritance from a person who is resident of India, can only be effected with the prior permission of the Reserve Bank of India.

In the event of sale of properties other than agricultural land/ farmhouse/plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of sale proceeds outside India subject to the condition that the immovable property was acquired by the seller in accordance with the provisions of foreign exchange law in force at the time of acquisition or the provisions of FEMA and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 and the amount to be repatriated does not exceed the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from

the funds held is Non-Resident External Account for the acquisition of the property concerned. Repatriation can be made for a maximum of two residential properties.

The repatriation of sale proceeds has been restricted to US$ 1 million per calendar year if properties are acquired from rupee sources by way of inheritance or legacy. This repatriation can be done out of the sale proceeds received from sale of property acquired from rupee sources subject to the condition that the property should have been cumulatively held for a minimum period of 10 years. Further the repatriation is restricted to the amount of foreign exchange remitted by way of inward remittances/NR/FCNR account. However, there is no lock-in period in respect of immovable property acquired by way of inheritance/legacy.

The only significant restriction that exists is with respect to PIOs who are citizens of Pakistan, Bangladesh or Sri Lanka, China, Afghanistan or Iran. These PIOs need to obtain prior approval of the Reserve Bank of India with documentary evidence in support of inheritance and tax clearance/no objection certificate from the Income-tax authorities.

Yet another rule exists with respect to the number of residential properties that can be repatriated. In case of residential units, the restriction is two and for commercial properties, there is no limit. However, rental income is freely repatriable since it is a current account transaction.

Interest or share in a Co-operative Housing Society or Apartment Owners Association

Though the word 'immovable property' has been widely used in FEMA, nowhere does it define the term. Further, even the definition of "immovable property" given in the Transfer of Property Act, 1982, the General Clauses Act, the Sale of Goods Act and the Indian Registration Act, taken together, do not clarify what 'immovable property' is. They only suggest what is either included or not included in 'immovable property'. In fact, in the

above Acts, shares in the co-operative society are not so included in the definition of the term 'immovable property'.

However, the Supreme Court of India has made its definition clear in the case of ***Hanuman Vitamin Foods Pvt. Ltd. v/s State of Maharashtra (2000) 6 see 345***, confirming the Bombay High Court decision in Hanuman Vitamin Foods Pvt. Ltd. & Ors v/s State of Maharashtra & Superintendent of Stamps, Bombay (Writ Petition Number 1820 of 1986, dated 17th February, 1989). The matter of contention in this case was whether the instrument of transfer of shares in a co-operative society was an instrument for transfer of an immovable property, for purposes of levy of stamp duty thereon. The Supreme Court held, by referring to another decision in ***Veena Hasmukh Jain v/s State of Maharashtra (1999) 5 SCC 725***, that the agreement to sell shares in a Co-operative Society is, in effect, the agreement to sell immovable property.

Accordingly, any interest or share in a Co-operative Housing Society or Apartment Owners Association (also known as Condominium abroad) is an immovable property for the purposes of these Regulations.

Repatriation of rental income

NRI/PIOs can freely rent out their immovable property, whether purchase through application of forex or otherwise, without seeking any permission from the RBI. The rental income being a current account transaction is repatriable outside India, only if proper tax is paid or provided for.

Where the house is purchased through housing finance and if the house is rented out, the entire rental income, even if it is more than the prescribed installment, should be adjusted towards repayment of the loan. If the rental income is less then the prescribed installment, the borrower should remit the amount of the extent of the shortfall from abroad or pay it out of his NRE, FCNR or NRO account in India (Refer Master Circular Misc. Remittance dated 1.7.2003 - RBI).

Refund of purchase consideration on account of non-allotment of flats/plots/cancellation of booking/deals in respect of immovable property purchased by NRIs/PIOs in India

Authorised Dealers are permitted to credit refund of application/earnest money/purchase consideration made by the housing building agencies/seller on account of non-allotment of flat/plot cancellation of bookings/deals for purchases of residential, commercial property, together with interest, if any (net of income tax payable thereon), to NRE/FCNR account, of Non--Resident Indian/Persons of Indian Origin provided, the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the authorised dealer is satisfied about the genuineness of the transactions (refer to A.P. (DIR Series) Circular No.46 dated November 12, 2002).

Loans for acquisition of immovable property

Reserve Bank has granted general permission to certain financial institutions providing housing finance e.g. HDFC, LIC Housing Finance Ltd., etc., to grant housing loans to NRIs for acquisition of a house/flat for self occupation subject to certain conditions. The purpose of loan margin money and the quantum of loan will be at par with those applicable to housing loans to residents. Repayment of loan should be made within a period not exceeding 15 years out of inward remittances or out of funds held in the investor's NRE/FCNR/NRO Accounts.

Apart from housing finance institutions, authorised dealers have also been granted permission to grant housing loans to NRIs for acquisition of a house/flat for self occupation subject to the same conditions as housing finance institutions.

Authorized dealers can also grant housing loan to NRIs where he is a principal borrower with his resident close relative as a co-applicant/guarantor or where the land is owned jointly by such

NRI borrower with his resident close relative. Such housing loans availed in rupees can also be repaid by the close relatives of the borrower in India (Please refer to Regulation 8 of Notification No.FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR. Series) Circular No.95 dated April 20, 2003 and A.P. (DIR Series) Circular No.94 dated May 25, 2003).

Loan against the security of immovable property

An NRI can borrow against the security of immovable property from Authorised Dealer subject to following conditions:

1. The loan should be used for meeting the personal requirements or for borrower's own business purposes; and
2. Loan should not be used for prohibited activities, namely;
   (a) Business of chit fund, or
   (b) Nidhi Company, or
   (c) Agriculture or plantation activities or in real estate business, or construction of farm houses, or
   (d) Trading in Transferable Development Rights (TDRs),
3. The loan amount cannot be remitted outside India,
4. Repayment of loan shall be made from out of remittances from abroad or by debit to NRE/FCNR/NRO account or out of the sale proceeds of shares or securities or immovable property against which such loan was granted. (Please refer to Schedules 1 and Schedules 2 to Notification No. FEMA 5/2000-RBI dated May 3, 2000)

Availing housing loan in rupees from the employer

A NRI can avail housing loan in rupees from his employer subject to the terms and conditions mentioned in Regulation 8A of Notification No. FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003.

Investment in housing and real estate development (10C 13 of Exchange Control Manual)

RBI has given permission to NRIs/OCBs to invest on repatriable basis up to 100% in the new issues of equity shares/convertible debentures by an existing or new company engaged or proposing to engage in the following activities:

- ✦ Development of service plots and construction of built- up residential premises;
- ✦ Real estate covering construction of residential and commercial premises including business centres and offices;
- ✦ Development of townships; City and regional level urban infrastructure facilities, including roads and bridges;
- ✦ Manufacturing of building materials; and Financing of housing development.

Repatriation of original investment will be permitted after a lock in period of three years from the date of issue of the equity shares/convertible debentures. Annual dividend on equity shares/interest on debentures can, however, be freely repatriated, subject to payment of applicable taxes. In case of OCBs, net profit (up to 16%) arising from the sale of such investment after the lock-in period of three years can also be repatriated.

The RBI permission is not required for acquiring/holding or transfer/disposal of immovable properties by Indian citizens' resident outside India. Indian citizens holding immovable property in India but who acquire foreign citizenship at a later date are required to take permission from the RBI for continuing to hold the immovable properties.

The facilities are granted to OCBs so long as the ownership/beneficial interest held in them by persons of Indian nationality/origin resident outside India continues to be at least 60 per cent. To ensure this, the OCBs have to furnish a certificate from an overseas auditor/chartered accountant/certified public accountant in form OAC/OAC-1, at the time of applying for the facility for the first time and thereafter as and when required by

Reserve Bank/authorised dealers. The overseas auditor/chartered account/certified public accountant has to certify that the ownership interest in the OCBs is held by NRIs. The documentation accompanying Form OAC/OAC-1 have to clarify that the interest held by persons of Indian nationality/origin in the OCB is actually held by such persons and is not held by them in the capacity as nominees.

Power of Attorney and NRI

The non-resident Indians who are staying abroad may enter into an agreement through their relatives and/or by executing the Power of Attorney in their favour as it is not possible for them to be present for completing the formalities of purchase (negotiating with the builder or Developer, drafting and signing of agreements, taking possession, etc.) These formalities can be completed through some known person who can be given the Power of Attorney for this purpose. Power of Attorney should be executed on the stamp paper before the proper authorities in foreign countries. Power of Attorney cannot be drafted on the stamp paper bought in India.

Section 1-A of Power of Attorney Act, 1882 defines power of Attorney as "power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it".

Meaning of POA

A Power of attorney is an authority given by way of a formal instrument whereby one person, who is called the donor or principal, authorises another person, who is called the donee, attorney or agent, to act on his behalf.

A Power of Attorney can be issued for the following reasons in the case of a real estate transaction:

1. To execute all contracts, deeds, bonds, mortgages, notes, checks, drafts, money orders,

2. To lease, collect rents, grant, bargain, sell, or borrow and mortgage
3. To manage, compromise, settle, and adjust all matters pertaining to real estate.

Types of Power of Attorney

Every act performed by your agent within the authority of the Power of Attorney is legally binding upon the persons granting it. A power of attorney should be given only to a trustworthy person, and only when absolutely necessary. The person who empowers is the Principal and the person to whom the power is conferred is the Agent.

There are two types of power of attorney; 'general' and 'special' (or limited).

A general power of attorney

The principal empowers the agent with the right to carry out all legal acts on his behalf without restricting it to a particular transaction or act and gives the agent very broad powers to act on behalf of the Principal.

A special power of attorney

The authority is restricted to act only on certain matters or only a particular kind of transaction or to carry out a specific legal transaction for the principal. The agent's power of attorney expires on the completion of the transaction.

Revocation of power of attorney

Power of Attorney can be revoked or would stand revoked if:

1. Revoked by the principal himself.
2. The principal dies or becomes insane or becomes bankrupt.
3. The business for which the agent was appointed is over.
4. Mutually agreed upon by the principal and agent.

5. The right under the power of attorney is renounced by the agent

Registration of Power-of-Attorney

1. Registration of power of attorney is not compulsory, it is optional.
2. In India, where the Registration Act, 1908, is in force, the Power of Attorney should be authenticated by a Sub Registrar only. (Whenever a person signs the document and his attorney presents/admits execution.)
3. In other areas, attestation should be by a Notary or diplomatic agents.
4. In case an attorney under a valid Power of Attorney himself signs a document, he may, as an executing or (signing) party present/admit execution of a document though it is attested by a Notary, unless the text of the power specifically excludes such powers
5. Foreign Power of Attorney should be got stamped by the Collector after its receipt in India within prescribed time of 3 months.
6. Registration of power of attorney authenticates the deed of power of attorney.
7. Power of Attorney shall be attested by two or more adult independent witnesses who are of sound mind.
8. If a power of attorney is in respect of an immovable property of value more than Rs100 it must be registered.

Power of Attorney for home loans

Power of Attorney is an important document required by HFCs/Banks while processing home loans for NRIs. Since the NRIs are not based in India, the banks/HFCs need a representative 'in lieu of the NRI' to deal with. Generally, an NRI appoints his parents/brother/sister/wife/children as his representative through POA.

Power of Attorney for selling property

A person staying abroad can also sell his land in India by giving a Power of Attorney to a third person authorizing him the right to sell the land on his behalf. But in such cases, the power of attorney should be witnessed and duly signed by an officer in the Indian embassy in his province. There is no legal support for Power of attorney signed by a notary public.

Provisions regarding PAN

As per Rule 114B(a) of the Indian Income Tax Rules 1962, a person has to quote his PAN in all documents for the sale or purchase of any immovable property valued at Rs 5,00,000 or more. But as per Rule 114C of the rules, an NRI need not apply for and obtain PAN for any transaction regarding the sale or purchase of immovable property.

The non-residents who are filing the Return of Income may be allotted PAN by the Assessing Officer under section 139A (2) of the Income-tax Act. However, if PAN is not allotted he should apply to obtain P.A.N.

The non-residents are exempt from obtaining the PAN under section 139 A (8) (d) of the Income-tax Act. It is advisable to obtain PAN by non-residents who are filing the Return of Income. For others, they may apply for it for the sake of convenience.

Also, procedurally the Income-tax department is not accepting the Returns of Income from any person who has not obtained or applied for PAN. Hence, one may submit PAN application along with his Return of Income.

Wealth Tax Planning

Wealth tax is payable only on non-productive assets, like motor cars, farmhouses, vacant land, jewellery, etc., over and above the minimum exemption limit of Rs 15 lakh. Thus, it is possible to not pay any wealth tax at all even after possessing assets of crores of rupees; as long as one's non-productive assets do not surpass Rs

15 lakh. Other than that, a taxpayer may own unrestrained value of shares, bank deposits, units, commercial property, industrial property, etc. without paying any wealth tax.

No wealth tax is payable on his foreign assets and the tax is payable on net taxable wealth which is arrived at after deducting the debts and liabilities related to the taxable assets. The items of wealth which are either totally exempt from wealth tax and or which are so exempt from wealth tax up to a particular limit are deducted from the gross wealth to arrive at the taxable wealth on the valuation date. Generally speaking, the value of assets on the valuation date as per PART B III Schedule to the Wealth Tax Act is taken for the purpose of computation of wealth tax payable by a non-resident individual. Hence, a non-resident should so plan his investments in India that he secures the maximum deductions and exemptions in a manner that he is liable to least possible wealth tax.

Broadly speaking the exemption in respect of wealth tax could be classified under two headings, namely:

1. Items which are excluded from the definition of "Assets" [as per the definition of "assets" given in Section 2 (e a) of the Wealth Tax Act, 1957].
2. Specific exemptions regarding certain other assets [Section 5 of the Wealth Tax Act, 1957]

Wealth Tax exemptions

In case of NRIs having any of the following assets, the same are not taxable in the hands of NRI under Section 5 of the Wealth Tax Act, 1957.

1. One house property or
2. One plot of land provided area is less than 500 square meters or less.

In addition to the above, OVERSEAS ASSETS held by NRI is also exempt Under Section 6 of Wealth Tax Act, 1957.

Specific exemption for an NRI returning India

Where an NRI/PIO returns to India for permanent residence, the money and the value of assets brought by him into India and the value of assets acquired by him out of such money within one year immediately preceding the date of his return and at any time thereafter are totally exempt from wealth tax for a period of seven years after return to India.

The liability of a non-resident Indian to wealth tax in India is explained by way of the following two examples.

Example 1

Amit, a non-resident Indian, has bought urban land and jewellery worth Rs 20 lakh. He has Rs 40 lakh in bank deposit and other bank accounts, as on 31 March 2006. The wealth tax payable by Amit on the net wealth as on the valuation date of 31 March 2006 relevant to the assessment year 2006–2007 will be computed only on Rs 20 lakh – Rs 15 lakh (exempted), i.e. on Rs 5 lakh as the amount of Rs 40 lakh, being deposits in bank is exempt. The wealth tax is computed @ 1% on Rs 5 lakh = Rs 5,000.

Example 2

Charu, a non-resident Indian and a citizen of India has the following investments in India as on 31 March 2006:

	Rs.
(a) House property on rent for 250 days	4,00,000
(b) Shares in Indian companies	7,00,000
(c) 8% Relief Bonds	8,00,000
(d) Jewellery and cash in hand	9,00,000

The net wealth liable to wealth tax in India of Charu, a non-resident Indian will first be computed as: Jewellery and cash in hand and rented house property Rs 13,00,000. The other items of wealth are completely exempt from wealth tax.

Wealth Tax rates

In case of NRIs, Wealth Tax is leviable at par with resident.

The tax rate is 1% of net wealth subject to basic exemption of Rs 15,00,000 (Rupees Fifteen Lakh).

Capital Gains on Transfer of Immovable Property

The profit on sale of capital asset is treated as capital gains. The capital assets (which are not held as stock-in-trade) are Shares, Debentures, Government securities, Bonds, Units of UTI and Mutual Funds, Immovable property etc.

The capital gains are segregated into long-term capital gains and short- term capital gains in following manner:

Capital Asset	Short-term	Long-term
Equity shares, and listed securities. Units of Unit Trust of India or Mutual Funds	If held for a period not exceeding 12 months from the date of acquisition.	Capital asset which is not a short-term capital assets is long-term capital asset
All other investments and immovable property.	If held for a period not exceeding 36 months from the date of acquisition.	Capital asset which is not a short-term capital assets is long-term capital asset

Computation of Capital Gains on transfer of Immovable Property is done for

1. Long term capital gains: Immovable Property held for >3 years.
2. Short term capital gains: Immovable Property held for <3 years.
3. Profit on sale of residential property.

The mode of computing Capital Gains is as under

	Rs.
Sale proceeds of assets	xxx
Less: cost of acquisition of asset/indexed cost of acquisition	xxx
Capital Gains	**xxxx**

Note:

1. Cost of acquisition

   Cost of acquisition in case of long term capital assets other than Specified Assets means Indexed Cost of Acquisition.

2. Indexed Cost of Acquisition

   For long term capital assets other than Debentures and Bonds (except capital index bonds issued by the Government), the Cost of acquisition means Indexed Cost of Acquisition The system helps you to claim higher cost than actual cost of acquisition. The term "indexed cost of acquisition" is the amount which bears, to the cost of acquisition, the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the assessee or for the year beginning on April 1, 1981, whichever is later.

1. Long term Capital Gains: immovable property held for more than 3 years

This section deals with

(a) Long term Capital Gain i.e., assets held for more than 36 months and in case of shares and securities more than 12 months.

(b) It applies to all immoveable properties and other assets.

(c) Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.

(d) Long term Capital Gain shall be computed by considering indexed cost of acquisition and indexed cost of improvement.

EXAMPLE

(A) Capital Gain on Sale of Immovable property purchased after April 1, 1981.

1. Purchase/sale of Plot of Land/Residential House or any other immoveable property
2. Purchase cost Rs 2,00,000 in April 1982 (financial year 1982–83).

   (Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)
3. Sale Price Rs 9,50,000 in February, 2004.(financial year 2003–04).

	Rs.
Sale Proceed	9,50,000
Less: Indexed Cost of acquisition	
Indexed cost of acquisition 2,00,000 × 463> / 109@	8,49,541
LONG TERM CAPITAL GAIN (Sale proceeds Less Indexed Cost)	1,00,459

Cost of acquisition/purchase

> being cost inflation index of the financial year 2003-04

@ being cost inflation index of the financial year 1982-83

(B) Capital Gain on Sale of Immoveable property purchased before April 1, 1981.

1. Purchase/sale of Plot of Land/Residential House or any other immoveable property
2. Purchase cost Rs 1,00,000 in April1970 (i.e. financial year 1970–71).

(Purchase cost Includes Stamp paper Expenses Advocate fees, Registration Charges etc)

3. Sale Price Rs 9,50,000 in December, 2003 (Financial year 2003–04)

4. Fair market value as on April 1, 1981 Rs 2,00,000 (as certified by valuation officer) being substituted for cost of acquisition.

	Rs.
Sale Proceeds	9,50,000
Less: cost of acquisition	
Indexed cost of acquisition:	9,26,000
2,00,000 × 463, / 100*f*	
being fair market value as on April 1, 1981.	
> being cost inflation index of the financial year 2003-2004	
@ being cost inflation index of the financial year 1981-82	
LONG TERM CAPITAL GAIN (Sale proceeds-indexed cost)	24,000

2. Short term Capital Gains: immovable property held for less than 3 years

This section deals with

(a) Short Term Capital Gain i.e., gain arises from assets held for not more than 3 years.

(b) It applies to all short term assets except shares and debentures of Indian company. For shares and debentures holding period is not more than 12 months.

(c) Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.

(d) In this case, benefit of indexation is not available.

EXAMPLE

Short Term Capital Gain on Sale of Immoveable property or any other Short Term Capital Asset.

1. Purchase/sale of Plot of Land/Residential House or any other immoveable property
2. Purchase cost Rs 2,00,000 in May, 2003 (financial year 2003–04).

(Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)

3. Sale Price Rs 4,50,000 in April, 2004. (financial year 2004–05).

	Rs.
Sale Proceeds	4,50,000
Less : Cost of acquisition	2,00,000
SHORT TERM CAPITAL GAIN (Sale Proceeds Less cost)	**2,50,000**

Exemptions available on re-investment

NRIs are entitled to claim exemption from capital gains tax if they reinvests (within 6 months of sale) long-term capital gains into following assets:

(a) Residential house property [Section 54F of the Income Tax Act, 1961].

(b) Bonds of National Bank for Agricultural and Rural Development (NABARD)/National Highway Authority of India (NHAI)/Rural Electrification Corporation Limited (RECL)/National Housing Bank (NHB)/Small Industries Development Bank of India (SIDBI) (in case of sale of any

long term capital asset) [Section 54EC of the Income Tax Act, 1961].

(c) Eligible public issues of equity shares by Indian companies (in case of sale of listed securities) [Section 54ED of the Income Tax Act, 1961]. With effect from 1 April 2007, the Finance Act 2006 has made this Section applicable to only those capital gains wherein the transfer of capital asset happens before the 1st of April 2006.

EXAMPLE:

(A) Capital Gain on Sale of Immoveable property purchased after April 1, 1981.

1. Purchase/sale of Plot of Land/Residential House or any other immoveable property.
2. Purchase cost Rs 2,00,000 in April 1982 (financial year 1982–83).

   (Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)
3. Sale Price Rs 9,50,000 in February, 2004. (financial year 2003–04).
4. Amount Invested in Specified Bonds Rs 1,90,000.

	Rs.
Sale Proceeds	9,50,000
Less: Indexed Cost of acquisition	
Indexed cost of acquisition 2,00,000 × 463 --- 109 = Cost of acquisition/purchase being cost inflation index of the financial year 2003-2004 = being cost inflation index of the financial year 1982-83	8,49,541
LONG TERM CAPITAL GAIN (Sale Proceeds Less Indexed cost)	**1,00,459**

EXEMPTION

Long Term Capital Gain (As above)	1,00,459
Less:- Exemption	
being Amount Invested in Specified Bonds within 6 months.	1,90,000
LONG TERM CAPITAL GAIN	**NIL**

EXAMPLE

(B) CAPITAL GAIN ON SALE OF IMMOVEABLE PROPERTY PURCHASED AFTER APRIL 1, 1981.

1. Purchase/sale of Plot of Land/Residential House or any other immoveable property.
2. Purchase cost Rs 2,00,000 in April 1982 (financial year 1982–83).
   (Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)
3. Sale Price Rs 9,50,000 in February, 2004. (financial year 2003–04).
4. Amount Invested in Specified Bonds Rs 95,000

	Rs.
Sale Proceeds	9,50,000
Less: Indexed Cost of acquisition	
Indexed cost of acquisition 2,00,000 × 463 --- 109 Cost of acquisition/purchase being cost inflation index of the financial year 2003–2004 being cost inflation index of the financial year 1982–83	8,49,541
LONG TERM CAPITAL GAIN (Sale Proceeds Less Indexed cost)	1,00,459

EXEMPTION	
Long Term Capital Gain (As above)	1,00,459
Less :- Exemption .	
being Amount Invested in Specified Bonds within 6 months.	95,000

LONG TERM CAPITAL GAIN	**5,459**
	========

These exemptions are limited to the investment made in specified assets, provided the same are held for more than 36 months from the date of acquisition.

Specified Asset means any bond

(a) By the National Bank for Agriculture and Rural Development (NABARD) or by the National Highway Authority of India or

(b) By the Rural Electrification Corporation Ltd or

(c) By the National Housing Bank or by the Small Industries Development Bank of India.

3. Profit on sale of residential property

Long Term Capital Gain arising on sale of residential property and exemption in case of purchase of new residential house from the sale proceeds of Residential property sold, is dealt by Section 54 of the Income Tax Act, 1961.

This section deals with

1. Long term Capital Gain i.e., assets held for more than 36 months.
2. It applies to residential property only.

3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.
4. Long Term Capital Gain shall be computed by considering indexed cost of acquisition and indexed cost of improvement.
5. Resident as well as NRI is eligible for exemption from tax on Long term Capital Gain provided
   (i) He has purchased or constructed a residential house within specified period, and
   (ii) He will not sell new residential house for a period of 3 years from the date of its purchase or construction.

   OR

   (i) If he deposits the funds before due date of furnishing the return of Income into CAPITAL GAINS ACCOUNTS SCHEME 1988 and
   (ii) Utilized the said deposits for purchase or construction of new residential house within the specified period.
6. Amount of exemption: lower of the following
   a) The amount of capital gain generated on transfer of residential house property; or
   b) The amount invested in purchasing or construction (including the amount deposited in the deposit scheme) new residential property.
7. Specified period in this case means one year before or two years after the date on which the transfer took place or within a period of three years from the date of its construction.

Set-off of gains against losses

When NRI has incurred loss on sale of shares and later when he sells other shares where he has capital gains, in such a case the NRI is eligible to claim set off provided both the transactions are in the same year i.e. during April–March financial year. In this case, NRI can apply for tax exemption certificate prior to the sale

of shares of second lot where he has capital gains to ensure set - off and Nil or lower deduction of tax.

Gift Tax Act, 1958

Under the Gift Tax Act, 1958, gift tax was payable by the donor up to 30 September 1998. The Gift Tax Act has been repealed with effect from 1 October 1998 and therefore the Gift Tax is not chargeable for the gifts made on or after 1 October 1998. Gifts by an NRI out of amount standing to his credit in NRE account or gifts made by him to relatives, in convertible foreign exchange, or gifts of specified savings certificates and securities or of foreign exchange asset is not taxable. The gift can therefore be freely given by NRIs to residents, but they must be genuine and by an NRI who has capacity to give such gifts. There are no gift tax implications on the transfer of real estate. However, after the implementation of the Finance Act 2004 any gift to a person who is not a relative as defined by the Income Tax Act would be taxable as income of the recipient on the market value of the gift. The relatives as defined under the Income Tax Act would not be liable to such income tax.



5.3

Income Tax Aspects for an Investor

There are many provisions under Income Tax Act, 1961 under which income from real estates is taxable subject to certain exemptions and deductions. Income from real estate can be by way of rent or by way of gain on its transfer.

Rent from building and land appurtenant thereto is chargeable to income tax under the head *income from house property.*

Rent from land is chargeable under the head *income from other sources*.

Any gain on transfer of any land or building is chargeable under the head *income from business and profession* if it is held as stock-in-trade; otherwise it is chargeable under the head *Capital Gains*. (Capital Gains are attracted even on transfer of movables, but in this chapter the Gains are discussed with reference to immovable properties only) So the important criteria for taxability of the income derived from real estate are its 'use'.

Based on its use, a real estate can be categorized as under:

- Self-occupied properties for residential use.
- Self-occupied properties for commercial use.
- Properties used for agriculture.
- Let out properties.
- Vacant properties.

- Properties kept as stock in trade.
- Properties kept as investment.

Self-occupied Residential Properties

There will be no tax liability if there is only one self-occupied house property. If there is more than one such property then there will be no tax liability for only one house property at the option of the assessee.

The relevant provisions of Income Tax Act, 1961 are reproduced hereunder:

> **Sec 22** The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head **Income from house property**.

Determination of the annual value

Sec 23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be

a) the sum for which the property might reasonably be expected to let from year to year; or
b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or
c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the

sum referred to in clause (a), the amount so received or receivable:

provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation: For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realize.

2. Where the property consists of a house or part of a house which
   a) is in the occupation of the owner for the purposes of his own residence; or
   b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

   the annual value of such house or part of the house shall be taken to be nil.
3. The provisions of sub-section (2) shall not apply if
   a) the house or part of the house is actually let during the whole or any part of the previous year; or
   b) any other benefit derived by the owner.
4. Where the property referred to in sub-section (2) consists of more than one house;
   a) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;
   b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an

option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.

It is worth mentioning here some relevant case laws.

The term 'occupy' appearing in section 22 has been judicially interpreted, as occupation directly by the assessee himself or through an employee or agent but such occupation by the employees, etc., within the meaning of the exception in the said section, must be subservient to and necessary for the performance of the duties in connection with the business of the company *CIT v. T.V. Sundaram Iyengar & Sons Ltd. [2004] 271 ITR 79 (Mad.).*

In context of section 22 'owner' is a person who is entitled to receive income from property in his own right *CIT v. Podar Cement (P.) Ltd. [1997] 92 Taxman 541/226 ITR 625 (SC).*

The meaning given to the term 'owner' in section 22 must not be such as to make that provision capable of being made an instrument of oppression. It must be in consonance with the principles underlying the Act. One of the most important rights or the powers of ownership is the right to exclude others from possession and the property right *Addl. CIT v. Sahay Properties & Investment Co. (P.) Ltd. [1983] 144 ITR 357 (Pat.).*

The word 'owner' refers to the owner of the property itself and not the owner of its annual value *Swaika Oil & Produce Co. (P.) Ltd. v. CIT [1993] 201 ITR 520 (Cal.).*

The benefit is available only to natural persons, an individual *CIT v. Mohd. Amin Tyamboo (1980) 125 ITR 375 (J&K)]*

If the property is owned by the firm and occupied by the partner, it will be taxable *CIT v. K. Gangaiah Chetty & Sons (1995) 214 ITR 548 (Mad.)*

Self-occupied for Commercial Use

According to Sec. 22 self-occupied properties used for the purpose of carrying out some kind of business or profession are not taxable under the head 'Income from House Property' if the profit from such business or profession is chargeable to income tax. Moreover

the user of the property will be allowed to claim a deduction on account of depreciation under sec 32.

Properties Used for Agriculture

In India agricultural income is exempt from Income Tax. Similarly Capital Asset does not include agricultural land in India.

The relevant provisions of Income Tax Act, 1961 are reproduced hereunder:

Sec 2 (1A) agricultural income means

a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;
b) any income derived from such land by
   i. agriculture; or
   ii. the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or
   iii. the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;
c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

   provided that
   i. the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind,

by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

ii. the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated

A. in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

B. in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

Explanation 1: For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section;

Explanation 2: For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture

falling under sub-clause (a) or sub-clause (b) shall not be agricultural income;

Sec 2 (14) Capital asset means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include

i. any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

ii. personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

Explanation: For the purposes of this sub-clause, jewellery includes

a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

iii. agricultural land in India, not being land situate

a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population41 of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item

(a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

The onus lies with the assessee to prove that the land is the agricultural land [*Kalpetta Estate Ltd. V. CIT* (1992) 61 Taxman 54 (Ker.)]

Let out Properties

In case of let out properties the annual value is taxable after allowing certain deductions under the head 'Income from house properties'. The annual value is determined as higher of the actual rent received or receivable and the amount of reasonable rent at which the property is expected to be let out.

If a property is covered under Rent Control Act, then the amount so computed cannot exceed the standard rent determinable under this Act. [*Shiela Kaushish v. CIT* (1981) 131 ITR 435 (SC)]

Standard Rent is the maximum rent which a person can legally recover from his tenant under the Rent Control Act.

Income from rented properties is charged to tax on the basis of Annual Value of the property irrespective of the fact whether the income has been actually received or not [*Ram Pershad & Sons v. CIT* (1995) 81 Taxman 332,334 (Delhi)].

Rental income from let out commercial properties is taxed as 'Income from House Property'. The purpose for which the property is used is irrelevant. It may be for residential or commercial. Even the income earned from a market consisting of shops, buildings, and open space is charged under the same head [*P.V.G.Raju v. CIT* (1967)66 ITR 122 (AP)].

The word 'building' is not confined in its scope only to dwelling houses. 'House' is defined in the *Oxford Dictionary of English*, 10th Edition as: "a building for human habitation especially one

that is lived in by a family or by a small group of people consisting of ground floor and one or more storey." The word 'house' in association with other words also has many other meanings. But a commercial building is not regarded as a house. That, however, would not take the income from such buildings out of the ambit of section 22 - *CIT* v. *Chennai Properties & Investments Ltd.* [2004] 136 Taxman 202/266 ITR 685 (Mad.).

Unrealized rent, (rent which the owner could not realize), is not taxable if following conditions are satisfied:

1. Tenancy is bonafide.
2. Defaulting tenant has vacated or steps have been taken to compel him to vacate the property.
3. Defaulting tenant is not in occupation of any other property of the assessee.
4. Legal proceeding to realize rent have been initiated.

Vacant Properties

Even the Annual Value of the vacant property is taxable. If there is only one such property and it was unoccupied because of employment/business or profession carried out on any other place and the assessee has to reside at that other place in a building not belonging to him, the annual value of such property shall be taken to be nil, provided it should not be let out and no other benefit is derived there from by the assessee. But if such property is occupied even for a fraction of the year, the notional income will be taxable in the hands of the assessee [*CIT v. Pradeep Kumar M.Shah* (1981) 130 ITR 118 (Ker.)].

The property is taxable if it is not occupied because of personal convenience [*Shikhar Chand Jain v. CIT* (1986) 157 ITR564 (MP)].

It is worth mentioning that the Act talks about 'any other place' and not 'any other town'. If the unoccupied property is in the same town where the assessee stay in the official residence by

reason of his office, there will be no tax. [*CIT v. Avadh Behari Rohtagi (Mr. Justice)* (1986) 157 ITR 441 (Delhi)]

Deductions Available under Income Tax Act

Following deductions are allowable from the *Income from House Property*, whether self occupied, let out or vacant.

1. **Municipal Taxes:** Municipal taxes borne by the assessee and paid during the year, irrespective of the year to which they pertain, are allowed as deduction.
2. **Flat Deduction or Standard Deduction:** A sum equal to 30% of net annual value (Annual Value – Municipal Taxes) is allowable to meet miscellaneous expenses, viz. repairs, maintenance, insurance etc. This sum is allowed whether or not any actual expense is incurred.
3. **Interest on borrowed Capital:** Interest on borrowed capital for acquisition, construction, repair, renewal or reconstruction of House Property is allowable as deduction on accrual basis. Interest paid or payable pertaining to pre-acquisition or construction period is allowed as deduction in five equal installments commencing from the year of acquisition or completion of house irrespective of the fact whether the property is self occupied or let out. There is no limit of allowable interest in case of let out properties. For self occupied properties Rs 150000 is allowable as deduction as interest on loan taken if the loan is taken after 1 April 1999 for acquisition or construction and the acquisition or construction is completed within three years from the end of financial year in which the loan is taken. For any other case only Rs 30000 is allowed. Interest on fresh loan taken to repay the original loan is also deductible.

   No deduction of interest of borrowed capital shall be made unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee

for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

4. **Repayment of Housing Loan and other payments:** Following payments subject to maximum of Rs 100000 p.a. is allowable as deduction under Sec 80C.
   a) Any installment or part payment of the amount due under self-financing schemes or other scheme of any development authority, housing board or any authority engaged in the construction and sale of house property on ownership basis;
   b) any installment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to
   c) repayment of the amount borrowed by the assessee from
      i. the Central Government or any State Government, or
      ii. any bank, including a co-operative bank, or
      iii. the Life Insurance Corporation, or
      iv. the National Housing Bank, or
      v. any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under clause (viii) of sub-section (1) of section 36, or
      vi. any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or
      vii. the assessee's employer where such employer is an authority or a board or a corporation or any other

body established or constituted under a Central or State Act, or

viii. the assessee's employer where such employer is a public company or a public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society; or

d) The stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee, but shall not include any payment towards or by way of:

A. admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or

B. cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any other person on his behalf or been let out; or

C. any expenditure in respect of which deduction is allowable under the provisions of section 24;

No deduction is allowed for renovation, reconstruction, repair or alteration of house. Repayment of loans from friends and relatives are also not eligible for deduction. Further if the property is disposed of within five years of its acquisition or construction the amount allowed as deduction will be treated as deemed income.



5.4

Tax Planning for Real Estate Investment

One of the most important rules for tax planning while buying a house property in India is that one should own only one house or a part thereof in the form of a flat or apartment particularly when it is meant to be used for self-occupation or dwelling by self or any member of his family.

If any one is the owner of two or more self-occupied houses or flats, only one self-occupied house would be exempt from income tax and the extra self-occupied house(s) would be liable to tax in respect of deemed rental income.

If a second house for self-occupation is desired, then the best course for him would be to acquire the second house in the name and through the funds of any other member of the family like, wife or major son or major daughter or brother or sister or father or mother or the Hindu Undivided Family.

House Property for Renting Purposes

If one is interested in acquiring a house for the purpose of letting out, then a distinction is to be made between commercial property and residential property.

From the point of view of tax planning, there would not be any loss if he were to invest his funds in the acquisition of one or more commercial house property. Though he would be liable to income-tax in India on the net rental income from such house property, he would not suffer any disadvantage while selling the same particularly when he wishes to obtain 100 per cent tax exemption under the provisions of 54F of the Income-tax Act, 1961 as described later.

However, the better planning for the purpose of investment in commercial property in India is to split the purchase of more than one property in different names so that different members of the family own different property and incidence of income-tax is the lowest.

If an investor is interested in acquiring a residential house property for renting purposes, then he should see that there is only one residential property in his name. This is for enabling the said person to spread the tax incidence amongst the different members of the family.

However, in some cases, there may not be any great incidence of income tax, if an investor were to acquire one house property for self-occupation and other house property for letting out. In such a case, one property or flat or apartment used for self-occupation would be completely exempt from income tax whereas the other house would be liable to income tax in respect of net income from it.

If there is any interest payable in respect of funds borrowed by an investor for the acquisition of the property or for repairs to the property, then the said interest, whether paid or not, would also be deductible in computing the net income from house property.

Right to carry forward real estate loss

If there is any loss under the head 'Income from house property' and the said loss cannot be set off against any income of the same year under any other head, then the loss from house property not so set off would be allowed to be carried forward for the next eight

assessment years to be set off against any income from house property.

Power of Attorney purchase is possible

In India, normally an immovable property should be registered through the conveyance deed which is to be compulsorily registered. However, if the purchase of house property is done not through a regular conveyance deed but through an agreement to sell with a power of attorney duly executed by the seller, then it need not be registered with the registrar or Sub-Registrar in any State in India and no stamp duty on the purchase of the house property is to be paid.

Selling residential house property and getting 100 per cent exemption

If an investor is interested in selling a residential house property, whether one or more, he would be eligible to get 100 per cent exemption in respect of long-term capital gains (i.e., where the house property is kept for more than three years since acquisition).

If the amount of long-term capital gains is invested in the purchase of another residential house property in advance within one year of the date of sale of the first house property or within two years after the date of said sale in another property.

In this manner, 100 per cent exemption from long-term capital gains can be secured particularly when he is interested in disposing of one residential house property and in acquiring another residential house property, subject to some procedural rules regarding keeping the unspent amount in a bank namely, 'The Capital Gains Account Scheme'.

Selling any other asset and investing in residential house property to get 100 per cent tax exemption

If an investor is not the owner of more than one residential house property and has long-term capital gains on the sale of any other asset like shares, debentures, units, commercial house property, jewellery, open land etc., then he may also get 100 per cent tax exemption in respect of long-term capital gains made on the sale of such capital asset provided he invests the same in a residential house property.

Wealth-tax exemption

There is an exemption not only for the commercial property used for one's own business or profession but also for all commercial complexes and commercial buildings from the levy of wealth-tax. Besides, if any individual is the owner of only one house property or a plot of land up to 500 sq. m, he would be granted complete exemption in respect of the same from wealth-tax under the provisions of section 5 thereof. Besides, all residential properties let out for a minimum of 300 days in a year would be completely exempted from wealth-tax.

Likewise, the open land for development purposes would be exempt from tax for a period of ten years. Thus, in respect of real estate transactions, an investor can save a good deal of income tax and wealth-tax through proper tax planning.

Saving tax with the use of Gift Tax norms

Until the gift tax was introduced, taxpayers had devised an easiest way to evade or reduce estate duty, income tax and wealth tax by gifting money, as also movable and immovable assets within the family. It was at this juncture that the government decided to introduce gift tax. Gift Tax was introduced in 1958. The objective was to curb instances of tax evasion by taxing gifts in the hands of the donor.

After the introduction of gift tax, several changes were made in the tax laws, but the basic structure of an archaic gift tax administration remained. In 1984, even the Estate Duty Act was abolished. And, almost a decade later, in 1993, the scope of the Wealth Tax Act too was considerably restricted. A major change in tax regime was the abolition of gift tax in 1998. From 1st October 1998, gifts were kept out of tax net. Gifts were made non-taxable both in the hands of the donor as well as the donee.

What is a gift? A gift is a voluntary transfer of 'property', without any monetary consideration. Property can be movable as in the case of cash, bank balances, jewellery, shares, bonds and debentures, as also immovable property like a residential flat, plot of land, bungalow and agricultural land. Even intangible property such as goodwill, brand names or any other rights can be gifted without attracting tax.

Donee's responsibility

However, you cannot receive a gift from just about any and everybody. The donee has to prove what is known as the ICG of the donor that is the 'Identity' of the donor, his or her 'Capacity' to make a gift, and the 'Genuineness' of the transaction.

Identity of the donor: One often receives gifts in cash on weddings, anniversaries, birthdays and other family functions. In such cases, as a donee, you must keep track of who has given what. For, to be able to use the money without inviting the attention of the taxman, you will have to be in a position to prove the identity of the donor. In the absence of proof of identity, the taxman may tax the entire amount in your hands as income from an undisclosed source or as an unexplained investment under the Income Tax Act.

Wherever possible, therefore, gift cheques should be received 'crossed' and 'account payee' to prima facie prove the identity of the donor. It's also a good idea to ask the donor for a letter of confirmation that can be produced when demanded by the taxman.

Capacity of the donor: As a donee, you should again be able to prove that the donor has the capacity to give you the gift. That is, you will have to prove that the donor has sufficient means to make the gift and that he is assessed to tax, has a PAN number and that and that the transaction is reflected in his books of account.

Where the donor earns income that is exempt from tax, like in the case of agricultural income, you may have to prove that he actually has agricultural income with records of agricultural land holding, average yield earned in that particular year, expenses incurred, and the like.

Genuineness of the transaction: Naturally, the donor must be a close acquaintance or a relative. One wouldn't expect a total stranger to give, say, your spouse or children gifts out of a feeling of love and affection. A tip: be particularly careful while receiving gifts though overseas remittances; the taxman likes to ascertain the genuineness of the transaction and your relationship with the donor in most such cases.

Donor's responsibility

A donor is required to keep the following points in mind before making the gift:

Though gift tax has been scrapped, gifts of immovable property will attract the provisions of the Registration Act and the Stamp Act. A donor has to keep these charges in mind.

Further, it is tax-efficient to gift income-earning assets as the income earned from the asset is thereafter taxed in the hands of the donee, who may have income that may either not be taxable or taxable at a lower rate. Therefore, such assets should not be gifted to a minor child, since the income from it will then be clubbed with that of the parent with the higher income.

Similarly, think twice before making a gift to a spouse, since income from gifted assets is taxed in the hands of the donor. However, all future income that is generated using the income

from the gifted asset is not taxable in the donor's hands. So, if you gift your wife, say, Rs 10 lakh and the amount earns Rs 1 lakh, the Rs 1 lakh will clubbed with your income. If, however, your wife invests the Rs 1 lakh to earn Rs 10,000, it will not be clubbed with yours.

Methods to reduce tax

You can reduce a great amount of tax by gifting assets within the family. Subject to the payment of stamp duty and registration charges, you can now transfer property in the form of houses, flats or plots to children above the age of 18, or even minors on the threshold of 18, without attracting gift tax. A family business can also be transferred to a relative without incurring gift tax liability.

Similarly, senior citizens too enjoy a significant tax rebate. Besides, it's likely that they may be paying less tax owing to a reduction in interest rates and earning capacity. It may, therefore, be advantageous for children who are earning well to gift assets to their ageing parents to save tax within the family.



5.5

Service Tax on Investors

Investors are persons who put their money in real estate for a period of time. They do not render any service and hence, are not liable to service tax. However, a service provider collects service tax from the investor when he uses the services of such a service provider under the following circumstances:

1. When he engages the services of an architect while designing the plan of his house;
2. When he chooses to buy an apartment or a row house in a residential complex where there are more than 12 residential units.
3. When he hires the services of a consulting engineer regarding any one of the following disciplines:
   a) Architecture
   b) Electrical
   c) Electronics
   d) Civil
   e) Structural
   f) Agricultural
4. When he engages the services of an agency for erection, commissioning or installation services like, ventilation, air-conditioning, fire-proofing, waterproofing, sound insula-

tion, thermal insulation, lift and escalator services, fire escape staircases and travelators, etc.

5. When he hires the services of an interior decorator for the purpose of furnishing his house, office, clubs and other buildings.
6. When he hire the services of a real estate agent for purchasing a house, office or any other building.
7. When he hires the services of an agency for site formation and clearance, excavation, earthmoving and demolition services.

Some Important Points about Service Tax

Service tax is levied on provision of service. Six conditions have to be fulfilled for levy of service tax, viz.,

1. a service should have been rendered. There is no service tax where only goods are sold;
2. there should be a service provider;
3. there should be a recipient of service;
4. the service should be rendered in India, except in J&K;
5. the service should be taxable under Section 65(105) of the Finance Act;
6. the aggregate value of taxable service during any financial year should exceed rupees four lakhs.

It should be noted that in case a service is received from outside India, by a person who has his place of business, fixed establishment, permanent address or usual place of residence in India, for business or commerce, the incidence of service tax shall be computed as if the recipient had himself provided the service.

Rate of service tax

Section 68(1) of the Finance Act, 1994 requires every person providing taxable service to any person to pay service tax at the prescribed rate (12% ad valorem and education cess 2% on 12%) and in the prescribed manner.



5.6

Wealth Tax Planning

Under the Wealth Tax Act, wealth tax is charged for every assessment year in respect of the net wealth on corresponding valuation date for every individual, HUF and company. Wealth tax is charged at the rate of one percent of the amount by which the net wealth exceeds Rs 15 lakh. Net wealth includes assets owned by the assessee.

Properties owned by an assessee considered for computation of wealth tax:

1. Any building or land appurtenant to it: This includes any type of house. The house may be used for residential or commercial purposes, for the purpose of maintaining a guest house or any other purpose. It also includes a farmhouse situated within 25 km from the local limits of any municipality.
2. **Urban land:** This means land situated in any area which is comprised within the jurisdiction of a municipality or a cantonment board and which has a population of more than 10,000 according to the last preceding census. It also includes land situated in any area within a distance of eight kilometres from the local limits of any municipality or cantonment board. This should be notified by the Central Government in the Official Gazette.

3. It is to be noted that all residential houses and properties are not included for the purpose of computation of wealth tax. Some are exempt from wealth tax. These include:
4. One house or part of a house or a plot of land belonging to an individual or a Hindu Undivided Family. The house may be self-occupied or let out. In case the house is owned by more than one person, exemption is available to each co-owners of the house.
   i) Any building owned or occupied by a cultivator, or receiver of rent. The building should be in the immediate vicinity of the land, and it should be a building which the cultivator or receiver of rent requires as a dwelling house.
   ii) An asset, being a plot of land comprising an area of up to 500 square metres.
      a) Any house for residential or commercial purposes which forms part of stock in-trade.
      b) Any residential property that has been let-out for a minimum period of 300 days in the previous year.
      c) Any property in the nature of commercial establishments or complexes.
      d) A house meant exclusively for residential purposes and which is allotted by a company to an employee having a gross annual salary of less than Rs 5 lakh.
      e) Any house which an assessee may occupy for the purposes of any business or profession carried on by him.

In addition to these, the following are also not treated as an asset and hence not included for the computation of wealth tax:

- ✦ Any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him.

- Any land held by an assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.
- Land occupied by any building which has been constructed with the approval of the appropriate authority.
- Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated.



5.7

Property Tax Aspects

Property tax is a levy charged by the municipal authorities for the upkeep of basic civic services in the city. In India it is the owners of property who are liable for the payment of municipal taxes. Generally, the property tax is levied on the basis of reasonable rent at which the property might be let from year to year. The reasonable rent can be actual rent if it is found to be fair and reasonable. In the case of properties not rented, the rental value is to be estimated on the basis of letting rates in the locality.

Property tax is a tax paid on privately owned property. It is paid semi-annually or annually, as the Local Government decides. It is based on local tax rates and assessed property value. It is determined by local municipal laws.

Who is exempted from paying property tax?

Provision is made in law for exempting the following building and vacant lands from property tax under law.

- Places kept separately for and places actually used for public worship and not used for any other purpose.
- The building and vacant lands belonging to central or state Government which are used for the purpose of the government and which are not used for Housing and commercial purpose.

- ✦ Ancient and historical monuments and archaeological places.
- ✦ The building and vacant land belonging to Housing Boards, Local Authorities which are not been given to the possession of any person on sanction, allotment, lease.
- ✦ The building and vacant land belonging to Housing Boards and Local Authorities which are not used for housing and commercial purposes.

Capital value based self assessment scheme of property tax

Most of the states in India, have adopted Self Assessment Scheme for calculating Property Tax. This Self Assessment scheme was introduced to enable the property owners/occupiers to have an opportunity of indicating their own taxes. The people can pay their taxes at Banks, Citizen Service Centres, e-Seva Centres and also through Internet.

Objective of self-assessment of property tax

There are two systems in assessment and recovery of taxes.

1. Assessment of tax by the officer.
2. Self-assessment system.

Under the former there was huge discretion vested in the assessment officer which made the system arbitrary and often allegation of corruptions were made. Under the later the taxpayer assesses his own property tax based on definite rules. Obviously Self Assessment Scheme is superior to the assessment by an officer.

How is property tax calculated?

The tax on land and building is commonly called property tax. The property tax base is classified into two groups.

1. Annual rental value of the property.
2. Property tax based on estimated capital value of land and buildings.

For every property there lies a capital value. If the property is let, there lies a rental value. Each property is not let. It is difficult to decide annual rent for the self-occupied houses. There is no annual rent in hotels, but the rooms are let on daily rent. Nursing homes and choultries collect daily rent. Several hardships were to be faced in levying tax based on annual rental value.

Actual rent is different and expected rent is different. Under the Act, tax was being assessed on the basis of expected annual rental value. Whether the property is let or not, tax was being levied, based on the expected annual rental value calculated as per the discretion of the Assessment officer. The result was harassment and excess tax to the honest owners of the property, lesser tax to the tax evaders who could influence the assessment process and harassment to the efficient officers by the influential powerful persons.

The annual rental value is invisible, immeasurable subjective matter. The system of assessing property tax based on rental value had given room for injustice and the tax evaders instituted endless litigations in the Court of Law. The Supreme Court had also given a verdict that while levying property tax the annual rental value should not be fixed over and above the fair rent prescribed in the Rent Control Act.

For example, let us find out how property tax is calculated in Karnataka. If the capital value of a property is Rs 12 lakh, the estimated annual rent will be Rs 1.2 lakh. That is, Rs 10000 per month. If property tax is levied based on monthly rent of Rs 10000 two months rent of Rs 20000 has to be given as property tax. The property tax in the new self-assessment scheme at 0.3% means Rs 3600. Since the Karnataka Rent Act came into effect from 31 December 2001, considering that if the property tax based on rental value is continued, it may have an unbearable burden on the owner of the house. The property tax system based on the estimated capital value was brought into force with effect from 19 November 2001 in the interest of taxpayers. The rate of

property tax is reduced to a large extent. 50% of rebate has been given to the self-occupied buildings.

Method of Self-assessment of Property Tax

Tax on land and building

As mentioned in the Constitution the tax on land is classified into two types depending on the use of land.

- Land Revenue – Land tax on agricultural land.
- Property Tax – Tax on building and building site.

The land may be classified for the tax purpose as agricultural land and building site. There are two types of tax on land, land revenue and property tax. In rural areas the power of collecting land revenue on agricultural land rests with Revenue Department. In urban areas the power of collecting property tax on building site and building rests with the Municipalities. The tax on land and building is called as property tax.

The property tax is levied on the building and vacant land based on the taxable capital value. The capital value of the building includes the capital value of built up area or the site. The land held by a person for the purpose of construction of building and the land on which building has not been constructed is called vacant land.

Property tax has been levied for all the buildings and vacant lands except those within the limits of city and municipal area, which are exempted under Law.

The taxable capital value of the property

The capital value of the property may be divided into two groups.

- Taxable capital value of vacant land
- Taxable capital value of building along with land on which it is built.

Vacant land is the land on which building has not been built. It

could be a completely vacant land or can be land around the building which has not been built upon.

The capital value of building and land on which it is built is the capital value of building (after depreciation) plus the capital value of area of land or which building is built–but excludes vacant land around the building. The capital value in either case is the multiplication of estimated guidance value (as published under 5.45B of Stamp Act) with the area.

Method of self-assessment of the property tax

Property tax shall be levied every year on all the buildings and vacant land within the limits of city and municipal area.

Tax on vacant land

Property tax is leviable on the capital value of the vacant land i.e., at the rate not less than 0.1% (one thousandth) and not more than 0.3% (three thousandth).

Tax on buildings

The tax on building shall be assessed on the building along with the land occupied by the building. The capital value of building (after depreciation) and the capital value of land on which building is built in the base for tax on buildings.

Tax is leviable for building inclusive of land at the rate not less than 0.3% (three thousandth) and not more than 0.6% (six thousandth).

Taxable capital value of the vacant land

(Example of Karnataka)

The capital value of the vacant land is assessed based on the estimated market value of the land as published by the Committee constituted under Section 45B of the Karnataka Stamp Act. Multiplying the estimated market value from the area of the vacant land, the capital value of the vacant land will be arrived at.

LV = Estimated value of the land per sq. ft. or sq. m as given in 5.45B of the Stamp Act

LA = Area of the vacant land in sq. ft. or sq. m.

CVL = Capital value of the land

CVL = LV × LA

The capital value of the land is the total value arrived at by multiplying the area of the land from the sq. ft. value of the land.

Tax on vacant land

Provision is made in law to levy property tax on vacant land at the rate of minimum 0.1% (One thousandth) and maximum 0.3% (three thousandth) of the capital value. The Municipality should publish the rate of property tax.

For example in a locality in municipal area the estimated land value is fixed at Rs. 60 per sq/ft, the area of vacant land is 1200 sq. ft. and tax rate is 0.1%, what is the amount of property tax?

LV = 60 LA = 1200 CVL = 72000

The tax on vacant land of 1200 sq. ft. = 72000*01/100 = 72 is Rs 72.

Taxable capital value of the building

The taxable capital value of the building shall be determined including the land occupied by the building.

CC = Cost of construction per sq. ft. or meter as published in 5.45B of the Stamp Act

DQA = Depreciation Quotient approved by PWD

PLA = Plinth area of the building/area of the land occupied by the building

LV = Estimated land value per sq. ft. or sq. m.

CVB = Capital value of the building including land

CVB = (CC × PLA) – (CC × PLA × DQA) + LV × PLA

i.e., the capital value of the building may be calculated by subtracting the depreciation out of the cost of construction of the building and by adding the capital value of land, e.g. the plinth area of the building is 800 sq. ft., cost of construction is Rs 360 per sq. ft., the age of the building is 10, the value of the land per sq. ft is Rs 60. What is the capital value of the building?

CC = 360, PLA = 800, LV = 60, DQA = 0.09562

CVB = $360 \times 800 - 360 \times 800 \times 0.09562 + 60 \times 800$

CVB = $288000 - 27538 + 48000 = 308462$

Capital value of the buildings for tax at the rate of 0.2% = $(308462 \times 2) / 1000 = 616.92$

Tax at the rate of 0.3% = $(308462 \times 3) / 1000 = 925.386$

Tax at the rate of 0.3% is Rs 925

Tax at the rate of 0.4% is Rs 1234

Tax at the rate of 0.5% is Rs 1542

Tax at the rate of 0.6% is Rs 1850

The Municipality shall issue the following guidelines essential for tax assessment.

1. Estimated market value of the land.
2. Estimated cost of construction of the building for difference types of building.
3. Depreciation quotient for relevant age of the building.
4. Rate of property tax based on nature of use.

The taxpayer may calculate the property tax himself by utilizing the above information.

If a person calculates the tax using the above criteria there will be no discrimination. The criteria followed here is visible and measurable. Hence there is no doubt that the system of self-assessment of property tax based on capital value is scientific.

The information to be furnished by the Municipality

- The Municipality should determine the rate of tax and publish the same. In addition the following information

should be widely publicized.

- The estimated market value of land published in each ward or locality or streets as per the Stamp Act.
- Types of building and their estimated cost of construction.
- The depreciation quotient based on the age of the building.
- Rate of tax with reference to nature of use of the premises.
- Property tax return form and the method of submission.
- The name of the banks receiving tax payment and the challan form.
- Procedure for giving rebate to the taxpayers paying tax within the prescribed time.

Payment of tax and filing returns

The owner liable to pay property tax shall pay the tax in the banks prescribed and file the property tax return in the prescribed form. The tax may be paid in time by consulting the property tax consultants.

The owners failing to submit the returns

Payment of self assessed property tax and filing returns are mandatory. Non-payment of tax within the prescribed time is an offence. In the Corporation the commissioners may entrust the tax assessing power to an officer authorized by him. In City Municipal Council, Town Municipal Council and Town Panchayat the Commissioners and chief officers can assess the tax themselves or may entrust the work to their sub-ordinate officers. The officer is referred to as an 'authorised officer'.

If an owner of the property fails to pay the self-assessed property tax and submit the returns, the authorized officer shall take the following actions:

- Inspection of the land and building.

- Local enquiry.
- Assessment of property tax on the basis of information collected.
- Imposing penalty at the rate of 2% of the tax assess per month.
- Sending a copy of the order to the owner concerned.
- Revising or confirming the order considering the objections filed by the owner within thirty days from the date of receiving the order.
- Sending the copy of the revised or confirmed order to the owner.
- Issuing demand notice if tax and penalty is not paid even after the issue of the order.
- Provision is made to file an appeal before the District Judge within the jurisdiction of the City Corporation and before the Magistrate in the jurisdiction of other Municipalities within 30 days from the date of receiving the notice.
- If the appeal is admitted the owner shall credit the tax amount accepted by him in the form of deposit
- Recovering the tax by seizure by the owner who do not make appeal and who do not pay tax and penalty considering him as guilty.
- If seizure is not possible for any reason, suit should be filed before the Magistrate.
- The Magistrate may recover double the amount of the arrears as penalty and credit the same to the City Corporation or Municipality fund.
- Tax may be assessed at any time within six years from the date of assessment year for which the owner should have paid the tax and penalty may be imposed if the owner evades to pay the self assessed tax.



5.8

Real Estate Mutual Funds

A NEW WAY OF INVESTING IN REAL ESTATE

REMF in India

Owning a home is an ambition common to most of us. Most of us buy a home to live in it. But there are a few who buy real estate as an investment. This was the state of affairs till recently. However, with the introduction of Real Estate Mutual Funds into Indian markets, things have become to change. Now investing in real estate is not the hobby of just wealthy businessmen. Ordinary salaried class has also understood the math behind investing in real estate funds. Moreover, if you decide to be a visionary and buy land cheap in the suburbs, the area may remain undeveloped for ages. Most important, are you ready to go through the endless legal ordeal? What about checking title deeds and no-objection certificates? Can you afford the time and expense involved in buying more land? It is because of these reasons, real estate funds are gaining popularity in India.

Advantage realty funds

Real estate mutual fund, it's a simple idea, and works like any other mutual fund. A number of people invest small sums and

invest the amount so collected in real estate instead of in shares or debt. Real estate mutual funds or REMFs have evolved greatly in the US, where the concept of REIT or real estate investment trust is popular.

The REITs, like mutual funds, collect money from individuals and institutions and deploy them into real estate. Unlike property, REITs or REMF units are securities and can be easily bought or sold on the stock exchanges.

Typically, REITs own large commercial office spaces and hotels, and earn rental income. There are some REITs that focus on capital appreciation, while others earn from mortgages. The REITs buy, develop and sell property and share profits from any capital appreciation on the sale of property with investors. Apart from sale of property, real estate funds also make money from rentals on the commercial property owned by them.

These trusts are popular with small investors. The main reason is that an investor gets to gain from any boom with even a small starting investment (usually the equivalent of Rs 5,000 or so). The bigger advantage is that all the money is not invested in one property alone, which could be risky. Instead, the trust invests in several properties in various locations, which reduces both risk and volatility. And finally, the experts managing the fund take care of the legal hassles; investors are not involved.

After stocks, there is probably no asset class like property that can preserve the value of your portfolio from the eroding effect of inflation. It is widely held that gold is also a good foil to counter inflation. But over the years, gold has performed poorly on the return parameter.

Another important touch a real estate fund adds to your portfolio is that of stability. Although property prices can also be volatile, the volatility is a far cry from what investors are used to seeing in stocks for instance. When turbulence in global oil prices or economic upheavals rock your portfolio, you can expect real estate/real estate funds to be the rock in your portfolio.

The flip side

If the REIT does not invest in a sufficiently diversified range of real estate, the risks are naturally greater. There are also other risks that you must consider, including over-building, fire, earthquake or other natural calamities. Worse, the government, due to political compulsions, may change real estate tax laws, making it expensive to own property even on paper.

Also, real estate is a cyclical market; today's boom may sustain for a few more years, but a downswing is more or less inevitable. This means returns will not always be high or even predictable. And, like any mutual fund, the fund managers may make wrong calls, and leave the fund holding a lemon instead of a pot of gold.

Real estate funds have the same risks that are associated with equity/debt mutual funds. For instance, you could make the wrong choice while selecting a real estate fund in which case you could be saddled with a non-performer. Although this is not a limitation with real estate funds per se, it serves to highlight that there can be poorly managed real estate funds just like there can be poorly managed equity/debt funds.

If with equities three years is the minimum investment time frame, then with real estate investments you need to be even more patient. Buying property, developing it and then renting it out or selling it, is a high gestation activity. It could take some time before your real estate mutual fund actually starts making money

REMFs offer an innovative option for investors to buy and trade shares in the real estate sector and collect dividends from capital appreciation and rental incomes.

A REIT is basically a company that buys, develops, manages and sells real-estate assets, and allows participants to invest in a professionally managed portfolio of properties. The primary difference between a REIT and a real-estate company is that it is a pass-through entity, which distributes the majority of its

income cash flow among investors and saves tax at the corporate level.

REITs are generally classified into three broad categories - Equity REITs, Mortgage REITs and Hybrid REITs. A majority of the REITs in the U.S. fall under the equity category, where a REIT invests and owns properties and earns from their disposal and rentals. Mortgage REITs deal in investment and ownership of property mortgages. Hybrid REITs employ a combination of both strategies.

To tap the booming real-estate sector in India, the introduction of REITs/REMFs seems to be a plausible option with the requisite tax and regulatory structures.

Few important facts about real estate in India

Recent reports indicate that the share of real estate as a percentage of India's GDP has risen from 5.25% to over 7% from 2002–03. Returns from this sector exceed those for most other investment alternatives in the market. Yields on commercial real estate across metros in India are higher than those prevalent in global real estate markets. With the revolution in the services sector over the last decade, the rise in the sector's share of GDP to 50% marks a shift in the Indian economy and takes it closer to the fundamentals of a developed economy.

The IT and ITES sector has grown phenomenally despite adverse global conditions and grew by 54% in 2003–04. Apart from this, biotechnology, insurance, banking and consulting businesses have also been growth segments driving the demand for real estate. A higher demand can be seen in the retail segment with an expected influx of clothing and lifestyle stores, restaurants and beverage chains, entertainment and leisure complexes.

Real estate development in India is estimated to be in the region of USD 15 billion, growing at a pace of about 30 per cent each year. It has been projected that there is a demand for 66 million square feet of IT space over the next five years. Similarly

the commercial property market has been growing at a compounded annual growth rate of over 30% during the last 5 to 7 years across major cities in India and the demand for office space itself is estimated to have grown from over 3 million sq. feet in 1998 to over 15 million sq. feet in 2005.

Real estate investment—an overview

Investment Avenues	Returns	Volatility	Liquidity	Risk
Stock Market	High	Very High	High	Very High
Bonds	Moderate	Moderate	High	Low
Bank Deposits	Moderate	Low	High	Low
Precious Metals	High	Moderate	Moderate	Low
Real Estate	High	Low	Low	Low

Real Estate Fund

The craze of New Fund Offers (NFO) which has catapulted the fortunes of the mutual fund industry in the last two-year period has been amazing. These schemes with their huge mobilization and popularity among the general public have definitely been the flavor of the season. Mutual Fund industry has seen many new product innovations in this period. The industry currently is growing from strength to strength and to sustain its interest in the investing public, product innovations should continue. An area of investment which though has huge potential but has not caught investor's fancy is Real Estate Fund, which are structured just like a mutual fund scheme.

What exactly is realty fund?

Typically, these funds own large properties, commercial office spaces, hotels etc. and earn rental income as well gain from capital appreciation. They buy, develop and sell property and share profits with investors as in any other mutual fund scheme. Thus they have the potential of being very popular with small investors. But sadly, Real Estate Funds are yet to take off in India in a big way.

The Real Estate market in India currently is on a high growth curve, and several factors such as a booming economy, favorable demographics and liberalized FDI regime, have helped it even further. There are certain issues though, such as land reforms and absence of substantial tax incentive for real estate development which need to be addressed.

The Indians traditionally have an affinity for fixed asset investments such as land and gold, and property has always been looked up to as an investment area which only the large ticket investors could afford. Due to the local nature of real estate and complexity of transactions, it is not easy for an investor on their own to identify opportunities in different cities and locations.

Real Estate Funds thus serve the most basic purpose which an equity-oriented mutual fund scheme does make the investments relatively risk-free and convenient compared to direct investment in the securities.

Availability of realty funds

Till recently, Securities Exchange Board of India (SEBI) had stood firm on its stand of not allowing retail participation in Real Estate Funds. The reason being, the high speculative nature of this class of asset. However, in a major policy change, in the year April 2004, SEBI decided to allow Venture Capital Funds to operate in this sector. As a result, a number of large financial firms entered into the foray of Real Estate Funds with an

investment target or over US$ 1.2 billion in the next couple of years.

Today, Real Estate funds are available not only to HNIs and institutional and global investors, with very high minimum investment criteria but also to retail investors with small savings. With the restriction of retail participation in the funds, till recently, the funds operating in India were more like Real estate venture capital funds than mutual funds with no/negligible retail participation at all. The minimum investment criteria for High Networth Individuals was Rs 5 lakh (US$ 11,450) as per the guidelines of the Venture Capital Funds.

Issues currently plaguing the sector are low liquidity in the sector, which is not very good and the investment horizon is very long term. There is very little transparency on the valuations front. Regulatory issues like waiving of stamp duty and annual property taxes to reduce the high cost involved are also very important.

Real Estate Funds are good for the industry as they help in bringing organized money in this fragmented market. India is one of the few markets, along with China, where the growth in real estate is sustainable.

Important players in the realty fund market

There are a large number of financial institutions who have forayed into this sector. Each one of them have entered into the market with specific strategy and investment criteria. While Kshitij Venture Fund plans to invest only on malls and commercial space leased out to retailers, there is Ascendas India IT Park Fund whose focus is to invest only on IT Parks in the country. Then there is Dewan Housing whose target is mass housing units in urban as well as semi-urban locations. Few other Funds like those from HDFC and ICICI have targeted to diversify their investment with focus on residential, commercial and retail properties as well.

A snapshot of few important players in the market:

Name	Investment Size
HDFC India Real Estate Fund	US$ 171 million + US$ 57 million Greenshoe Option
IDFC	US$ 345.22 million
ICICI-Tishman Speyer (India Advanced Fund III)	US$ 300 million
Maia (NRI Malini Allies)	US$ 150 million + US$ 100 million Greenshoe Option
Ascendas India IT Parks Fund	US$ 230.14 million
Kotak Mahindra Realty Fund	US$ 115.07 million
Deewan Housing Finance	US$ 69.04 million
Kshitij Venture Capital Fund (Pantaloon)	US$ 57.53 million
Fire Capital	US$ 50 million
Edelweiss Capital	US$ 35 million
IL&FS	NA
Indian Real Estate Opportunities Fund	NA
Dawnay Day AV	NA

Some of the Industry players who have taken the initiative are Kotak, HDFC, Anand Rathi, IL&FS, ICICI Ventures among others.

Kotak Realty Fund established in May 2005, is one of India's first private equity funds with a focus on real estate and real estate intensive businesses. It operates as a venture capital fund. The fund's corpus has been contributed by leading banks, domestic corporate, family offices and high net worth individuals. The fund is close ended and has a life of seven years. The Fund has raised around $100 million from domestic investors. The strategy of the fund is to make investment at project level with developers as well as at an enterprise level in realty development

companies. The fund has the mandate to make investments in retail, hotels, healthcare, education etc.

HDFC, the first specialized housing finance institution in India has been providing financial assistance to individuals, corporates and developers for the purchase or construction of residential properties besides providing property related services, training and consultancy. In its 27 years of business presence, the company has developed close relationships with all major developers, local development bodies, state governments, regulators and has a branch network of over 180 offices across the country catering to over 2400 towns and cities.

HDFC Property Fund is a seven year close ended real estate venture fund called HDFC India Real Estate Fund. The fund has been launched in association with State Bank of India. HDFC holds close to 80 per cent and SBI the remaining stake while the fund is managed by HDFC Venture Capital Ltd. The scheme had a minimum contribution of Rs 5 crore per investor and would target banks, insurance companies, corporates and high net worth individuals for investment.

To achieve a balanced risk-reward profile, the inaugural scheme, HI-REF will invest in three broad classes of companies:

1. Projects which are complete—this would comprise real estate assets, which are in use with established, high-quality tenants. Such asset class typically would denote steady income type characteristics.
2. Projects in the development stage—where the lead-time to commercial deployment is typically between 1–3 years and the completed projects subsequently would have contractual off-take arrangements in place.
3. Projects in the planning stage—where the lead-time to commercial deployment would be 3–6 years. These projects would offer the highest amount of return although with a greater risk.

AnandRathi Real Estate Opportunities Fund (AR REOF) is a close ended fund, for domestic and overseas investors. The fund focuses on growing markets such as Pune, Bangalore, Chennai, Hyderabad and other cities that are witnessing substantial urban development. The fund's investment strategy is to focus on acquiring secured rental income producing real estate assets with quality blue chip tenants and picking up equity stakes in specified real estate projects being developed by reputed developers.

Anand Rathi (AR) is a rapidly expanding full-service securities firm founded in 1994 stock broker Anand Rathi to provide broking service to customers in Mumbai. The group operates through over 100 locations in India and its operations extend to Bangkok & Dubai as well.

IL&FS Realty Fund is a private equity fund. The fund seeks to achieve a gross investment-level leveraged annual internal rate of return in excess of 25%. In addition, the fund will target a cash-on-cash stabilized yield on equity exceeding 8% per annum for income-generating projects.

ICICI Ventures has also launched a property fund, the funds seeks to invest in the commercial, residential, retail and other world-class real estate assets, both in developed and development projects, in the potentially growing cities of India. The fund seeks to deliver a compound annual rate of return in excess of 20–25% p.a over a 7 years tenor.

The progress has been very slow so far, and as of now there is a lot of ambiguity on this subject. Real estate fund so far has been a non-starter largely because of the roadblocks like varying stamp duty across states, lack of transparent valuation methodology etc. Increasing awareness about these kinds of funds operating in India and the advantages and convenience that they offer are sure to catch investor's fancy sooner or later, and we feel it is just a matter of time before market regulators introduce investor friendly norms in this sector too.

Analysis of the fund performance

According to the latest quarterly India Property Investment Review from property consultants Knight Frank India, the target internal rate of return of these funds range from 15 per cent to as high as 30 per cent. This rate of targeted return indicates the non-homogeneity in the Indian real estate markets.

Future of realty fund in India

A report by a leading international consultancy puts the future of real estate market in the right perspective by stating that real estate has emerged as one of the most appealing investment areas for domestic as well as foreign investors in India's fast growing economy. The interest shown by investors from Singapore to invest in Indian realty by forming a consortium to promote real estate projects recently, is another indication of the immense potential as well as increasing foreign interest in this sector.

According to reports, these investors are awaiting regulatory approvals for their foray into the Indian market. The booming IT sector with nearly 70 per cent of new construction estimated, would be the tremendous growth driver behind real estate market. Another growth-driver will be the basic need for modern real estate. The growing young population with huge surplus earnings is also likely to channelise money into real estate, housing, educational establishments, shopping malls and infra-structure projects.

With the extreme volatility of the stock market, the possibilities of investors diverting some money into the real estate sector is increasing by day. If this happens, it will instill greater buoyancy into the already-robust Indian realty sector. A robust real estate market also has the potential to fuel growth in associated sectors like cement and steel, which, in turn, will help contribute to the growth of the country's economy.

The realty boom has also had a positive spin-off on other segments as well; for example, on real estate mutual funds. While, initially, most funds were floated by big names such as HDFC and Kotak Mahindra, presently, more players are reportedly mulling setting up their own funds. LIC Housing Finance (LICHF) is one such, though, its strategy is to first garner experience in the field before undertaking operations in a big way.

The entry of real estate mutual funds (REMF) could trigger land acquisition by realty developers across the country, cutting down time and cost over-runs, according to players in the real estate segment. Land acquisition has slowed down over the last couple of months after RBI norms virtually discouraged banks from providing funds to developers for purchase of land.

Banks are allowed to lend only after developers get all the necessary approvals from the state and local authorities, which can happen only after the land is acquired. The central bank's discomfort over the build-up of an asset price bubble also prompted it to raise the risk weight on exposures to commercial real estate from 125% to 150% in April this year.

REMFs will come in handy for land acquisitions, irrespective of the project size, according to Lalit Kumar Jain, president, Promoters and Builders Association of Pune. According to him, Pune will require around 30m square feet of IT space and 3,00,000 residential units over the next three years. The total fund requirement is estimated at around $2–3 bn, and a good chunk of this funding could come from REMFs.

The entry of real estate funds (REFs) have made a difference in the way land acquisitions are funded. Earlier, few players were funding land acquisitions through internal cash flows. But now with the entry of REFs, the scenario for funding land acquisitions have undergone a dramatic change. Besides, the entry of REMFs will further professionalise the construction industry.

The entry of REMFs also calls for the state government to reduce the stamp duty on realty transactions as it will lower the

entry load for retail investors who want to diversify their investment portfolio. REMFs can invest directly or indirectly in real estate.

These schemes can invest directly in real estate properties within the country or in mortgage (housing lease)-backed securities. They are allowed to invest in equity shares, bonds and debentures of listed or unlisted companies that deal in property and undertake property development. The structure of the REMFs, initially, shall be close-ended.

The units of REMFs have to be compulsorily listed on the stock exchanges. Besides, the net asset value of the scheme shall be declared daily. Realty experts are of the view that this will make both REMFs and developers more accountable to retail investors.

How important is to invest in a real estate fund?

According to Personalfn's Asset Allocator, real estate has the most important role to play in your portfolio and not without reason. You can survive without stocks, bonds and gold, but you can't live without property. To be sure, the role of property in the individual's portfolio is pivotal to say the least and every individual must work at ensuring he has adequate property in his portfolio.

Table to show ideal percentage of investment in property:

Age group (years)	% of assets in property
<30	50%
30–45	40%
45–55	30%
>55	30%

Advantages of investing in a real estate mutual fund

The local nature of real estate and complexity of transactions makes it difficult for an investor to invest on their own in different cities and locations. A real estate fund provides investors a platform to diversify their real estate investments in various markets.

Investing in a real estate mutual fund brings in the required stability to your portfolio. Although property prices are as volatile as other equity investments, when there is an economic upheaval or turbulence in global oil prices, it could prove to be the stabilizing factor in your portfolio. Investing in property fund can also help you counter inflation.

Moreover, when you are unable to identify a right location for investing in property or have any difficulty in identifying the right developer, investing in a property fund can take you places.

Real estate funds work on a very simple principle like any other mutual fund. A number of people invest small sums and invest the amount so collected in real estate instead of in shares or debt. Real estate mutual funds or REMFs have evolved greatly in the US, where the concept of REIT or real estate investment trust is popular. (The difference between the two, say experts, is purely technical. Because REITs are trusts, the tax implication is minimal.)

The following are the few advantages of investing in a real estate mutual fund are:

1. **Professional management:** Each Real Estate Fund has in place a well qualified and experienced team to safeguard the interests of the investors.
2. **Diversification:** Investors can have variety of investment options in their portfolio thereby, equipping themselves better for future market downturns.
3. **Convenient administration:** Since their investment is in the safe hands of professionals, they can save themselves from the headache of taking care of their investment themselves.

4. **Return potential:** Return potential is anticipated to be anything between 15% to 30%, which is not bad when compared to returns from other investment options. Thus, they provide competitive returns together with a strong income when compared to bonds and stocks.
5. **Transparency:** With the advent of large financial institutions in this sector, one can expect greater transparency and with SEBI as the governing agency for this sector, the risk element reduces even further. Under the watchful eyes of SEBI, investors can be assured of good service from the various Funds.
6. **Protection against inflation:** Since these Funds would be investing in leasing, the chances of receiving higher rentals increases whenever there is inflation in the market. This acts as an inflation hedge.
7. **Protection from legal hassles:** Since these are managed by professionals, investors can save themselves from the hassles of paying duties, taxes and documentation, etc.

Limitations of investing in a real estate mutual fund

1. Real estate funds have the same risks that are associated with equity/debt mutual funds. For instance i.e. you could make the wrong choice while selecting a real estate fund in which case you could be saddled with a non-performer. Although this is not a limitation with real estate funds per se, it serves to highlight that there can be poorly managed real estate funds just like there can be poorly managed equity/debt funds.
2. If with equities three years is the minimum investment time frame, then with real estate investments you need to be even more patient. Buying property, developing it and then renting it out or selling it, is a high gestation activity. It could take some time before your real estate mutual fund actually starts making money.

Regulations governing realty funds in India

Real Estate Mutual Funds in India are governed by the SEBI Mutual Fund Regulations 1996 as amended from time to time. The Securities and Exchange Board of India has come out with a slew of measures providing more leeway to the mutual funds industry. These include allowing MFs entry into real estate sector and launch of 'capital protection' schemes. However, the Ministry of Finance has clarified that there is no need to amend the Securities and Exchange Board of India Act for enabling the mutual funds to set up real estate funds.

The Finance ministry had suggested that the guidelines would be in line with the recently issued norms for gold funds. As SEBI was not sure whether it could regulate market players dealing in any instruments other than that in the form of securities, it had proposed to amend the prevailing act. This had delayed the foray of many mutual funds in this sector. HDFC mutual fund and ICICI mutual fund had offered close-ended real estate funds through their venture capital arms.

The guidelines issued by the SEBI proposes to chalk out the exposure norm for a mutual fund to a specific builder, exposure to a particular city or geographical location and to the type of property, commercial or residential. Another significant norm relates to whether the mutual funds can only buy and sell properties or can also involve in leasing it out. Currently mutual funds enjoy long term capital gains tax exemptions.

According to market players, the norms also deal with the tax treatment of the income earned out of such funds.

SEBI's guidelines on REMF

SEBI approved the guidelines for REMF in the last week of June 2006. The Securities and Exchange Board of India's announcement allowing real estate mutual funds (REMF) is to be welcomed. The Indian real estate market has been through a boom phase, raising general interest in the sector. However,

investment directly in real estate is lumpy, sticky and involves high transaction costs. Those wishing to benefit from the boom have had the option of investing in the shares of real estate companies, but these have been exorbitantly priced. Even the shares of companies that have surplus real estate which can be developed had reached stratospheric levels. Now there is a correction in the market, but on a medium- to long-term basis, there can be little doubt that the real estate sector holds considerable promise. REMFs will present retail investors with a new set of investment options, and also help legitimise funding for the industry, which has traditionally not had access to finance from the organised sector and therefore been mired in murky deals involving different shades of money.

The Sebi announcement is well-timed because it has come in the wake of the correction in real estate prices. It has also come at a time when retail investors are not quite so enamoured of the stock market and are looking soberly at alternatives, other than fixed income securities that barely keep step with inflation. Real estate investments have a longer gestation period than many other sectors, but they are likely to be lodged between equities and fixed income options in terms of risk and returns, as long as the debt-equity balance is rational. Besides, REMFs will provide increased liquidity and transparency, compared with buying property directly. For real estate companies and even companies developing the special economic zones, a new source of financing has been opened up.

While Sebi has not published the guidelines yet, there will be some operational issues that need to be addressed. First, it is possible to value mortgage-backed securities and stock or bond prices of real estate companies even if they are not traded regularly, but how are real estate properties such as land bank or commercial/dwelling units in work-in-progress to be valued and marked to market on a daily basis, so that the fund house can announce the net asset value? Will REMFs be liable to pay stamp duties and property taxes or will these duties be waived or set off?

Since these duties are governed by the states or local governments, the central government will need to intervene. There will also be issues concerning transaction costs like brokerage, which could be high in property transactions, and which may also need to be regulated. Some of these issues go well beyond Sebi's mandate.

Some funds already exist which have invested in real estate, but these were floated as venture capital funds and are less regulated. The retail participation in these funds has been negligible as the ticket size runs into lakhs of rupees. Nevertheless, there are a few companies and fund managers who have experience of investing in real estate today. There is no doubt that some of the existing mutual funds have the capability of running such a fund. So, the market could see some new specialised asset management companies that focus on REMFs. Some real estate developers, who are familiar with the terrain, may also team up with financial players and get into this new line of business.

A Snapshot of Guidelines Issued by SEBI regarding REMF (The full text of these guidelines have not yet been published)

1. The market regulator has defined Real Estate Mutual Fund Scheme as a scheme of a mutual fund which has investment objective to invest directly or indirectly in real estate property and shall be governed by the provisions and guidelines under SEBI (Mutual Funds) regulations.
2. The structure of the REMFs, initially, shall be close ended. The units of REMFs shall be compulsorily listed on the stock exchanges and the NAV of the scheme shall be declared daily.
3. The REMFs shall appoint a custodian who has been granted a certificate of registration to carry on the business of custodian of securities by the Board. The custodian shall safekeep the title of real estate properties held by the REMFs.

4. These schemes can invest, including directly in real estate properties within India, mortgage (housing lease) backed by securities, equity shares/bonds/debentures of listed/unlisted companies which deal in properties and also undertake property development and in other securities.

Real Estate Funds in Other Countries

In this chapter, I am discussing the nature of REIT in other countries like

1. The United States
2. The United Kingdom
3. Japan and
4 Germany

United States REITs

In the United States real estate investment is through Real Estate Investment Trusts (REITs). REITs are formed as companies that have an issued share capital. Further, they have the flexibility to raise funds through preference shares and debt. In this structure they are always close-ended and listed on the exchanges.

REITs were started without tax benefits and did not do well till the US Tax Laws were amended in 1986 to provide them with tax benefits if they conform to certain requirements that have been laid down. REITs are very popular now in the United States. As per the data available, there are around 300 REITs operating in the country with assets in excess of US$ 300 billion

In the U.S., REITs generally pay little or no federal income tax, but are subject to a number of special requirements set forth in the Internal Revenue Code, one of which is the requirement to annually distribute at least 90% of its taxable income in the form of dividends to its shareholders.

In recent practice, many REITs distribute all of or even more than their current earnings, often resulting in dividend yields

comparable to bond yields. If an investment company such as a REIT distributes more than its taxable income, the excess distribution is considered 'return of capital' for tax purposes (taxed as a capital transaction, rather than regular income). The distribution requirement may hamper a REIT's ability to retain earnings and generate growth from internal resources. This and other restrictions imposed by the Internal Revenue Code generally limit a REIT's suitability for growth-oriented investors. However, other considerations may result in potential for stock price appreciation, such as improvements in the REITs underlying leasing markets, changes in interest rates or increasing demand for REIT stocks.

Today, there are more than 193 publicly traded REITs operating in the United States their assets total over $500 billion. Approximately two-thirds of these, trade on the national stock exchanges.

In order for a corporation to qualify as a REIT and gain the advantages of being a pass-through entity free from taxation at the corporate level, it must comply with the following Internal Revenue Code provisions:

1. Structured as Corporation, business trust, or similar association.
2. Managed by a board of directors or trustees.
3. Shares need to be fully transferable.
4. Minimum of 100 shareholders.
5. Pays dividends of at least 90 percent of REIT's taxable income.
6. No more than 50 per cent of the shares can be held by five or fewer individuals during the last half of each taxable year.
7. At least 75 per cent of total investment assets must be in real estate.
8. Derive at least 75 per cent of gross income from rents or mortgage interest.

9. Have no more than 20 per cent of its assets consist of stocks in taxable REIT subsidiaries.

United Kingdom REITs

For many years the Treasury resisted the idea of introducing REITS. However, following a report on housing supply in the UK by Kate Barker, they reconsidered their position and issued a consultation paper on the form that REITS should take. The first part of the consultation ended in July 2004 but the issue was raised again as part of the Budget 2005 discussion paper. In this the Government published a summary of the format which it intended REITS to take. This was followed by draft legislation which is likely to be enacted in 2006.

The legislation laying out the rules for UK REITs is due to be enacted in the Finance Act 2006 and will come into effect in January 2007.

UK REITS will have to distribute 95% of income. They must be a close-ended investment trust and be UK resident and publicly listed on a stock exchange recognized by the Financial Services Authority.

In the United Kingdom, real estate investments are done through 'Pooled Managed Vehicles'. While these are different from Open-ended Investment Companies (OICs), they can be in the form of Trusts. The regulator for these PMVs is the Financial Services Administrator (FSA), as is the case for OICs. They, however, have a variable capital and are similar to open-ended funds.

PMVs may get tax benefits based on the investor profile. Offshore funds as well as pension fund investors qualify for benefits. However, there are no tax benefits for the regular PMVs. This is similar to there being no tax benefits for typical OICs. The PMV has the ability to delay redemption if there is excessive pressure to exit the fund.

The company structure followed in the USA (REITs), which allows the flexibility to raise funds by leveraging the balance sheet was deemed inappropriate by the Sub-committee for pooling of small savings in the area of Real Estate investment. The PMVs in UK are in the form of Trusts and similar to the Mutual Fund/ Collective Investment Schemes which are regulated by SEBI.

The structure of UK REITS

A UK REIT will be in the form of a company but, importantly, not an Open Ended Investment Company (OEIC). The company must be publicly listed on a Recognised Stock Exchange. It must also be tax resident in the UK and not be dual resident in any other jurisdiction. These conditions must be met for a company wishing to become a UK REIT.

The company must have only one class of ordinary shares in issue and have no other classes of shares.

Key qualification requirements for a UK REIT

Qualification and key features

In order to qualify as a REIT a company will need to meet certain conditions. The key features are summarised here:

1. The company must be a UK resident, closed-ended company listed on a recognized stock exchange (which means the Main Market and does not include AIM).
2. The shares in the company must not be closely held, which means that no one person (individual or corporate) should hold more than 10% of the shares.
3. The property letting business, which will be tax exempt, must be effectively ringfenced from any other activities and should comprise at least 75% of the overall company, with regard to both its assets and its total income.

4. A minimum of 90% of the UK-REIT's net taxable profits (after interest and capital allowances) from the ring-fenced letting business must be distributed to investors.
5. The UK-REIT will be required to withhold basic rate tax on the distribution of profits paid to investors.
6. The company will be subject to an interest-cover test on the ring-fenced part of its business (which is a means of calculating how highly geared it is) and should attain a specified level.
7. The company must have at least three properties in it's portfolio throughout all accounting periods.
8. The value of a single property must not exceed 40% of the combined value of all of the property business.
9. Within 6 months of the end of it's accounting period the UK REIT must distribute 95% of the profits of the tax exempt business.

Tax treatment of REITS

So long as at least 75% of the company's activity relates to the ring fenced property letting business both in terms of income and assets (rather than services provided to that business) it will benefit from favourable tax treatment. That is an exemption from Corporation Tax on both profits and capital gains the result of which should be strong dividends to shareholders. In terms of distributing it's income the company is required to withhold basic rate tax on the distribution. As with distributions from shares generally, investors will not receive a tax credit in respect of this.

Tax treatment for shareholders

The principle behind UK REITS is to create a position whereby investors can invest in a portfolio of properties as is they owned them directly. Thus UK REITS will effectively be a 'pass through' organization, the effect of which is to transfer the income and

gains of the business through the company exempt of tax to investors who will then assume the tax liabilities.

Tax exemptions for individual investors

It is intended that shares in UK REITS shall be eligible to be held in Individual Savings Accounts (ISAs), Personal Equity Plans (PEPs) and Self-Invested Personal Pension Plans (SIPPs) subject to the existing limits and rules. This would exempt all income and gains from tax making such investments highly attractive.

Japanese REITs

Japan is one of a handful of countries in Asia with REIT legislation (other countries/markets include Hong Kong, Singapore, Malaysia, Taiwan and Korea), which permitted their establishment in December 2001. J-REIT securities are traded on the Tokyo Stock Exchange, and most participants are Japanese conglomerates and foreign investment banks.

Since the burst of the real estate bubble in 1990, property prices in Japan have seen steady drops through 2004, with some signs of price stabilization and possibly price increase in 2005 and 2006. Some see J-REITs as a way to increase investment in the real estate market, although notable increases in asset values has not yet been realized.

German REITs

Germany is also planning to introduce German REITs (short G-REITs) in order to create a new type of real estate investment vehicle. Government fears that failing to introduce REITs in Germany would result in a significant loss of investment capital to other countries. Nonetheless there still is resistance to these plans, especially by the social democratic party. As of June 2006 the ministry of finance has announced that they still plan to introduce G-REITs in 2007. The legal details seem to adopt much

of UK-REITs regulations (taxation, public listing, etc.), as far as it is possible to tell yet.

A new law is currently being drafted to allow Real Estate Investment Trusts in Germany

The German Finance Minister Peer Steinbrück intends to draft a new law to allow Real Estate Investment Trusts in Germany, commonly referred to as REITs.

REITs operate generally as follows

1. They are listed on the stock exchange.
2. They do not pay any tax.
3. Most of their earnings are distributed as dividends (german draft 90%).

According to the „Süddeutsche Zeitung“ the law is currently being discussed with the federal states [Ländern]. If everything runs according to plan the legislation could be in force for the beginning of 2007.

The Finance department expects that up to 6 million of the 29 million apartments in German could be of interest to these funds.

Due to the fact that the funds themselves pay no tax, the investors therefore pay double the rate of tax on earnings from REITs as they would from normal stock market investments.

The finance minister also wants to encourage industry who are not in the real estate business, to offload non-business essential property to these funds. The 65 largest listed companies in Germany have property reserves of € 80 billion. This would create more potential finance for investment in core activities. The businesses would only have to pay a flat tax of 20% on profits made through such transactions.

To avoid too much turbulence on the market by these schemes, the German draft foresees that property be retained by the REITs for a minimum of 3 years, with a maximum of 50% of properties allowed to be sold inside of five year.



5.9

Precautions to be Taken in Real Estate Transactions

Home is one of your most prized possessions. It is important to be prudent and discreet in each and every step of buying a house, right from choosing the agent to closing the deal. Here is a list of questions you should check on different stages.

Choosing the Real Estate Agent

The agent you are going through is one of the most important links in buying a house. When choosing a real estate agent, ask a prospective broker the following questions:

1. How long have you been in this field?
2. How many home sales have you closed in the last three months?
3. Will you act as a seller's or buyer's agent?

Searching the perfect home: As you begin your search for the perfect home, keep in mind these tips for getting started

1. Develop a checklist of characteristics you want in a home
2. Determine what type of neighborhood you want to live in

3. Determine what facilities and amenities you want in your community or nearby.
4. Let your broker know your likes and dislikes and prioritize them for yourself and your broker
5. Eliminate houses as you search, keeping no more than three to five possibilities at one time.
6. Be prepared to make an offer and leave a deposit when you find the house you want

Making a deal: When you find the home you are interested in, keep in mind these questions to ask your agent or broker.

1. How long has this home been in the market?
2. Is this the first time the home has been listed by this seller?
3. What items in the home are included or excluded from the sale? (Washer/dryer, refrigerator, window treatments, lighting fixtures, furniture, etc.)
4. Has there been any price reduction on the home during its listing period?
5. What is the price range of other homes that have sold in the neighborhood?
6. What are the demographics of the neighborhood?
7. What is the average time a house has been on the market in this neighborhood or area?

Verification of Documents

The broker or the purchaser should carefully verify the following documents before entering into any kind of agreement with the seller.

1. **Title deeds:** The first step is to see the 'Original Title Deed' of the property which the broker is about to show to the prospective buyer or the buyer who is going to purchase the property. It should be confirmed whether it is in the name of the seller and also if he has the full right to sell the same.

While making inspection, the concerned person should always insist on the Original Title Deed and never rely on the photocopy of the title deed. This is due to the fact that the seller may have taken a loan by pledging the original deed. It also needs checking whether the seller has permitted any entry/access to others through this property and whether any other fact has been suppressed/left undisclosed by the owner of the property. It is better to get the original deed examined by a lawyer. Along with the title deed, the broker/ buyer can also demand to see the previous deeds of the land available with the seller.

Verification of the title of the vendor is the most important aspect of a purchase transaction of an immovable property and may be competently handled by a reputed lawyer/solicitor/ chartered accountant etc. The verification is necessary from following two angles:

i) **Validity of Title**: The vendor must have a clear, valid and marketable title over the immovable property which is the subject matter of transaction. This would require a close scrutiny of documents of title produced by the vendor. The document must be a registered document.

ii) Obtaining of Non-encumbrances certificate

2. **Tax receipt and bills:** Property taxes that are due to the Government or Municipality are to be checked. Therefore, enquiries must be made in the concerned departments whether all taxes have been paid up-to date and also whether any notices have been issued for any outstanding amount. The owner should demand the latest receipt of the tax paid for inspection.

While inspecting the property the tax receipt it should be confirmed that the name entered in the owner's column is correct. If the owner does not possess the tax receipt with him, in such cases, the Government or Municipality office should be contacted with the survey no. of the land/property to confirm the name of the original owner. It should also be ensured that the electricity and water bills are up-to-date and if there exists any balance payment to be made, it should be paid by the seller.

3. **Encumbrance Certificate:** Before buying any land, property or house, it is important to confirm that it does not have any legal dues. It can be ascertained by applying for a certificate called 'Encumbrance' from the sub registrar office where the deed has been registered; stating that the said land does not have any legal dues or complaints.

The encumbrance certificate for the past 30 years should be taken into account. Normally, banks insist for encumbrance certificate for the last 13 years. However, it also better if you could get an encumbrance certificate for more than what the banks insist. A person to be on the safer side, can also take a Possession Certificate of ownership of the particular land/ property from the Government or Municipal office.

4. **Pledged land:** Some people may have taken loan from the bank by pledging their land/property. One should always ensure that the seller has paid back all the amounts due. It is always advisable to get a 'Release Certificate' from the bank with regard to the release of all the debts over the land/property legally. One could buy a land/property without the release certificate. But, if the purchaser wants to take a loan in future, the release certificate is a must.

5. **Measuring the land:** It is always advisable to measure the land before registering the same. One should ensure that the measurements of the plot and its borders are accurate. The help of a recognized surveyor can be taken by the broker. To avoid problems in the future a Survey Sketch of the land taken from the Survey Department.

6. **More than one owner**: In some cases, the land may be owned by more than one person. In such cases, before registering, buyer needs to get the release certificate from the other owners also.

7. **Buying from an NRI:** A person staying abroad can also sell his land/ property in India by giving a Power of Attorney to a third person authorizing him to sell the same on his behalf. In such case the broker/buyer should verify the power of attorney and whether it has complied with all the required formalities.

8. **Agreement:** Once all the matters, financial/otherwise are settled between the parties, it is better to give an advance and write an agreement. This ensures that the owner does not change his word regarding the cost as well as make a sale to someone else who offers more money. The agreement should be written explicitly stating the actual cost, the advance amount, the time span within which the actual sale should take place and how to proceed in case of any default from either parties, to cover the loss. The agreement can be prepared by a lawyer and should be signed by both the parties and two witnesses. After signing the agreement if one of the parties makes a default, the other party can take legal action against him.

Execution of "Agreement to Sell"

An "Agreement to Sell" may be executed once the contract for purchase of immovable property has been finalised. Besides that, value of the property, the "Agreement to Sell" must provide about the payment of transfer fees, stamp duty and registration fee which differs from state to state and is quite substantial. This may either be payable by vendor or the buyer or may be shared equally by the two as per the agreement. The final sale would however, be subject to buyer obtaining permission from Reserve Bank, where necessary, and seller obtaining permission of competent authority under Urban Land (Ceiling & Regulation) Act, 1976 where necessary. The 'Agreement to Sell' does not require compulsory registration even if it contains recital of the payment of a part or whole of the purchase money.

9. **Registration:** The property can be registered in a sub registrar's office, after preparing the title deed including all the relevant information. The government licensed document writers or lawyers who are entitled to prepare deeds should write it.

A draft should be prepared before actually writing the document in stamp paper. Make sure all the details mentioned are accurate. If there is incorrectness in the document after registering, a secondary document with the correct details has to

be registered and depending on the incorrectness, the registration expenses will be increased.

Make sure that the deed is registered within the time limit mentioned in the agreement. Original title deed, previous deeds, Property/House Tax receipts, encumbrance certificate, khata and two witnesses are needed for registering the property.



5.10

All About Home Loans

The sky rocketing real estate prices has not put a dampener on people's intentions to invest in it. 2005 was a good year for the home loan industry and reports suggest that there has been a 30% growth rate in comparison to 2004 in home loan disbursements. Housing finance companies (HFCs) have made merry on account of such sporadic growth. HFCs are also slowly seen to be moving beyond the realm of offering 'pure' home loans. They are not just restricting themselves to home loans only but are now venturing into offering property related loans. The year 2006 has been seeing the HFCs moving towards becoming a one-stop shop for property and home loan seekers. The loan seeker will look at the HFC as a very convenient destination to meet all their property and home loan requirements. The rising home loan interest rates experienced during the year, with a rise in the range of 25–50 basis points, has not been a deterrent to the buyer.

There are various options that are available to a person who would like to get a loan to buy property or to get a loan against property. Some of them are briefly listed below:

1. **Home loans**
   a) Purpose: Purchase of
      - Flat, row house, bungalow from developers

- ✦ Existing freehold properties
- ✦ Properties in an existing or proposed co-operative housing society

b) Maximum loan

- ✦ 85% of the cost of the property (including the cost of the land) and based on the repayment capacity of the customer.

c) Maximum Term

- ✦ 20 years subject to your retirement age.

d) Rate of Interest

- ✦ Different for each HFC but ranges between 8 to 11%

2. Loan against property (LAP)

a) Purpose

LAP is a loan available against the mortgage of property. It works just like a personal loan but at relatively lower interest rates. Also like a personal loan, the end use of LAP is not monitored. It is one of the products that tackle the working capital needs of many business people, which helps them overcome tight financial conditions.

b) Maximum Loan

The limit is up to 60% of the current market value for an unencumbered residential property and it is 50 percent of the value in case of commercial property. Though each lending institution will have a threshold of the maximum amount which can be loaned.

c) Maximum Term

The repayment period varies from 7–15 years

d) Rate of Interest

The rate of interest varies from 11–13%

3. Home extension loans

a) Purpose

Home Extension Loan is available if you want to add space to your home. Like an additional room, a larger room, or even enclosing an open balcony.

b) Maximum Loan

85% of the cost of extension

c) Maximum Term

20 years subject to your retirement age

d) Rate of Interest

10 to 13.5%

4. Home improvement loan

a) Purpose

- ✦ External repairs
- ✦ Tiling and flooring
- ✦ Internal and external painting
- ✦ Plumbing and electrical work
- ✦ Waterproofing and roofing
- ✦ Grills and aluminum windows
- ✦ Waterproofing on terrace
- ✦ Construction of underground/overhead water tank
- ✦ Paving of compound wall (with stone/tile/etc.)
- ✦ Borewell

b) Maximum Loan

85 to 100% of cost of Improvement subject to the property market value

c) Maximum Term

15 years subject to your retirement age

d) Rate of Interest

Similar to a Home Extension Loan rates.

5. Short term bridging loan

a) Purpose

This is a short term loan to help customers with the interim period between the sale of your old home and the purchase of a new home.

b) Maximum Loan

90% of cost of new property

c) Maximum Term

2 to 5 years

d) Rate of Interest

Is usually higher than a housing loan as the term is also short.

6. Land purchase loan

a) Purpose

Loan to purchase land either to construct a house or as an investment

b) Maximum Loan

85% of cost of the land and based on the repayment capacity of the customer.

c) Maximum Term

15 years subject to your retirement age

Other property loans available are:

Home conversion loans

Borrowers can avail of a Home Conversion Loan to acquire another dwelling unit, through sale of the existing dwelling unit. The existing loan can be transferred to the new property with an increase in loan amount based on the current eligibility. This saves the customer from the hassle of prepaying the first loan and availing of new loan thus saving them prepayment charges and processing charges to the extent of loan conversion.

Top-up loans

It offers the customer a loan against the mortgage of the existing house. It helps in encashing the investment in a house without having to dispose it off to fund various needs related to Higher Education, Purchase of Furniture, Business Requirements, etc. The rates of interest are same as Housing Loans.

Loan to professional for non residential premises

Purchase, Construction, Improvement of office, Clinic

- Doctors
- Chartered Accountants
- Lawyers
- Other self-employed professional

Loan against future rent receivables

Owners who have let out or propose to let out their premises to Reputed Companies/institutions, Public Sector Undertakings/ Established Commercial Organizations/Multinationals/Banks etc. can avail of loan on the basis of the rent which they would receive from letting out their property.

Home Loan Eligibility

Not all HFCs have the same method of calculating the home loan eligibility but the fundamental nature of calculation remains the same. The EMI per lakh along with the individual's `income available for making EMI payments' is what determines the home loan eligibility for the individual. All HFCs have their own EMI table, which lists the monthly EMIs per lakh, for varying tenures and interest rates.

Factors like individuals profession and location of the property are considered when working out the loan eligibility. Most HFCs have a list of 'negative professions' and 'negative areas'. Though

these lists may not be official loan applicants covered under these lists will reduce their chances of a loan. Other details like the number of people financially dependent on the individual, the individual's credit repayment history if any and his saving habits help the HFC in deciding the individual's home loan eligibility.

Steps to get better loan eligibility

1. The EMI payable is directly related to the tenure of the loan. For a fixed amount of loan the longer the tenure the lesser the EMI. So if the applicant increases the loan tenure he would have to pay a lower EMI which would enhance his chances of loan eligibility.
2. An applicant already having other outstanding loans payable by him like car loan or personal loan would find it more difficult to be eligible for a home loan. A bad track record in credit card payments is also a significant factor for home loan eligibility.
3. Applicants can apply for such loans that have the facility of having reduced EMI's for the first few years and then the EMI's can be enhanced further. The applicant's loan eligibility would increase as HFCs usually consider the lower EMI of the initial years to calculate his loan eligibility.
4. Applicant can club his income along with the income of his spouse/father/mother/child so as to increase his loan eligibility to a higher amount.

Processing fees

A processing fee has to be paid to the housing finance company (HFC) for the home loan. Different HFCs charge different processing fees depending on the type of loan applied for. Some HFCs take a processing fee from the individual before the loan is sanctioned, which is when the individual has submitted all the requisite documents to the HFC. HFCs also have a minimum

amount of processing fee e.g. Rs 2,500 or 0.50% of the home loan amount, whichever is higher. In some cases, the HFC will take a part of the processing fee before the sanction that is non-refundable and the remaining part is taken after the loan is sanctioned. Whichever the HFC, the applicant must bargain for a lowering of the processing fee rates.

Reasons for rejection of loan application

Being aware of some of the major reasons of loan rejections can help us be better prepared and save us from disappointments.

1. To ensure that the specific norms with respect to a minimum area of the flat are met with. The 'minimum area' norm will vary across HFCs so you need to ensure that your home meets the minimum area requirement while applying for the loan or else look for an HFC that gives a loan as per your flat area.
2. Financial standing of the applicant is checked before loan approval. Affirmative responses to whether his monthly income meets the minimum income requirement, whether he has a fixed source of income, and if he has a clean credit background will ensure getting a loan approved.
3. The personal history of an individual like the number of dependants an individual is scrutinized to ascertain the repayment capability of the individual. A higher number of dependants implies lower repayment capacity. The last 6 months' savings account statement of the individual will speak about his saving habits and his ability to honor EMIs.
4. The applicant's age when applying for the loan will determine the tenure of the loan and in turn the EMI. So the higher the age the lesser the loan tenure and also the chances of getting the loan approved.
5. HFCs are also likely to decline the loan in case of a legal/ technical discrepancy like an unclear title deed.

6. Home loans on resale properties are sanctioned only if they are less than 50 years old. Similarly, the property also has to fall within the geographical limits as defined by the HFC for it to sanction the home loan

Gone are the days when owning one house was considered as a luxury. The current change in scenarios and with the HFCs aggressively marketing the home loans they have helped the common man achieve their dream of owning a house that was unthinkable of some years back. And since buying a home is probably the biggest purchase most of us will ever make in our lifetimes it is always beneficial to make a well-informed decision not only about the home but also about the financing of the home.

Buying a home is probably the biggest purchase most of us will ever make in our lifetimes. Owning your own home is a watershed event in your life. You are the master (or mistress) of your own space. But the process of finding your little nest is a stressful one. Worse still is the process of negotiating a home loan. In the following sections, we will try to make the experience of negotiating for a loan as simple as possible so that in the end you can make an informed choice.

Fees and charges payable

There are few costs involved once you apply for a home loan. These costs can be highlighted in the loan application or in few cases hidden and may be demanded only after the borrower signs the loan documents. The following list of costs prepares you to estimate the actual cost of borrowing funds for your house more accurately:

1. **Interest Tax**: is the tax payable on the interest paid on the home loan and not the principal. Sometimes, this tax is included in the interest rate of the loan, or charged separately as interest tax on the loan amount.
2. **Processing Fee**: It's a fee payable to the lender at the time of applying for the loan. Its either a fixed amount not linked to the loan or may even be charged as a percentage

of the loan amount. In few cases, the loan amount might sanctioned after deducting the processing fee.

3. **Prepayment Penalty**: When the loan is cleared or paid back before the completion of the agreed tenure, a penalty is charged by some banks, which is generally 1% or @ of the amount prepaid. However, there are few banks which levy this penalty only when the borrower prepays the loan with money borrowed from another institution. In other words, few banks do not charge any penalty if the borrower prepays the loan using his own sources.
4. **Commitment Fee**: Some banks/HFCs levy a commitment fee when the loan is not availed of within a stipulated period after it has been approved or sanctioned.
5. **Miscellaneous Costs**: It is quite possible that some banks may charge documentation or consultation or administrative charges.

Basis of interest rate calculation

The interest rate on home loans is calculated on the following basis:

- **Daily Reducing Balance**: In this system, the principal on which you pay interest reduces everyday as you pay your EMI**Monthly Reducing Balance:** In this system, the principal on which you pay interest reduces every month as you pay your EMI
- **Annual Reducing Balance:** In this system, the principal is reduced only at the end of the year, thus you continue to pay interest for that portion of the principal which you have already paid back to the lender.

As such, it is advantageous to go for a bank which works on a daily reducing balance system.

Documents for mortgage loan

Generally, when you apply for a home loan, most of the banks/ HFCs ask for a standard set of documents relating to your income proof and property that you are purchasing. Documentation requirements for salaried persons, self-employed are a little different. This list below is merely indicative. Finally, it is left to the bank's discretion to add or delete some documents from the list.

Documents for the salaried class

1. Photo identity proof (e.g., voter's card, ration card, passport, driving license, etc.).
2. Address proof (utility bills like electricity bill, telephone bill, mobile bill or gas bill).
3. PAN Card.
4. Form 16 or income tax return for the previous year or the previous three years also.
5. Latest salary slip showing the gross income with all the deductions.
6. Employment proof like a letter from the HR Department or identity card or visiting card, etc.
7. Passbook or bank statements for the last 6 months.
8. Details of credit card.
9. Details of any other loan availed.

Documents for the self-employed

1. Photo identity proof (e.g., voter's card, ration card, passport, driving license, etc.)
2. Address proof (utility bills like electricity bill, telephone bill, mobile bill or gas bill)
3. PAN Card
4. Balance sheet, Profit or Loss Statement and income tax returns for the last three years certified by a chartered accountant.

5. Registration certificate of the business establishment.
6. Passbook or bank statement for the last 6 months
7. Details of credit card
8. Details of any other loan availed

No income proof loans

Few banks in India have introduced "no income proof loans" where the borrower does not need to produce any proof of his income. This kind of loan is very popular in the West where the loan amount can go as high as 90 to 95% of the property value with relatively higher rate of interest. However, in India the amount of loan that can borrowed under this scheme is only 50 to 60% of the property value and it is available to only a select category of people.

EMI calculator

EMI (Equated Monthly Installment) is the amount payable to the lending institution every month, till the home loan is paid back in full. It consists of a portion of the interest as well as the principal.

EMI Formula (L × I) × (1+I)^N/[(1+I)^N]-1
l = loan amount
I = rate of interest
N = term of the loan
^ = to the power of

Assuming a loan of Rs 1,00,000 @ 7.50% interest per annum, repayable in 15 years, the EMI calculation using the formula will be:

EMI = (100,000 × 0.00625) × (1 + 0.00625) ^ 180 / [(1 + 0.00625) ^ 180] – 1

EMI = 625 × 3.069452 / 2.069452

EMI = Rs. 927



5.11

Know All About Mortgage

Mortgage is a transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an agreement, which may give rise to a pecuniary liability.

The person borrowing and transferring his interest in an immovable property to the lender is the mortgagor. The lender is the mortgagee. The funds lent against which the property is used as security is the mortgage money. The instrument by which the transfer is effected is called a mortgage-deed.

Types of Mortgages

Simple mortgage

Without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage- money, and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the Mortgagee shall have a right to cause the mortgaged property to be sold for satisfaction of the mortgaged debt.

Conditional mortgage

The mortgagor presumably sells the mortgaged property on condition that on default of payment of mortgage money on a certain date, the sale shall become absolute or on condition that on such payment being made the sale shall become void or on condition that on such payment being made the buyer shall transfer the property to the seller.

Usufructuary mortgage

The mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money. The mortgagee is allowed to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, or partly in lieu of interest or partly in payment of the mortgage money.

English mortgage

The mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a provision that he will re-transfer it to the mortgager upon payment of the mortgage-money as agreed.

Mortgage by deposit of title deeds or equitable mortgage

A person delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon. It can be conducted in a town where the state government concerned may, by notification in the Official Gazette, specify in this behalf.

Anomalous mortgage

A mortgage, which is not any of the above, is called an anomalous mortgage.

Title deeds to be necessarily registered

A mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by a mortgagor and attested by at least two witnesses.

Right to redeem and suit of redemption

After making the entire payment of the loan amount, the mortgagor has a right to require the Mortgagee to deliver the mortgage deed and other title deeds and if the Mortgagee is in possession of the mortgaged property, to deliver possession thereof either to back to the mortgagor or such third person as he may direct. Such a right is called right to redeem and a suit to enforce is called a suit of redemption.

Transfer of mortgage

The mortgagor may direct the mortgagee to transfer the property, which he is in possession of, to a third party after all the dues have been paid off. The document to be executed for this is called transfer of mortgage in which the mortgagee is called the transferor and the third party is the transferee.

Situations when the mortgagee can exercise the right to sell the property

A mortgagee can exercise his power to sell or concur in selling the mortgaged property, in default of payment of the mortgage-money without the intervention of the court in the following cases:

- Where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or

class from time to time specified in this behalf by the state government in the official gazette.

- Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgagee is the government.
- Where a power of sale without the intervention of the court is expressly conferred upon the mortgagee by the mortgage deed and the mortgaged property is situated within the town which the State Government may, by notification in the official Gazette, specify on this behalf.

Steps to take before mortgagee can exercise right to sell the property

Before exercising his right to sell the mortgaged property, the conditions indicated below need to be satisfied:

- The mortgagee has served a notice in writing requiring payment of the principal money to the mortgagor, or one of the several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or
- Some interest under the mortgage amounting at least to five hundred rupees is in arrears and unpaid for three months after becoming due.

Agreement for mortgage

There should be an agreement of mortgage executed between the mortgagor and mortgagee.

Important clauses in the Agreement for Mortgage

The Agreement for Mortgage generally provides for payment of compound interest with monthly, quarterly or half yearly rests or otherwise. The interest rate is capped by the maximum rate chargeable under the Interest Act.

- It also provides that the mortgagor will make out a marketable title to the property to the satisfaction of the mortgagee's solicitors or advocates.
- To tenure of the land should be checked up and mentioned, to find out whether the tenure is onerous or not.
- There is also a provision made for payment of the amount due in the event in the mortgagor failing to pay interest amounting to more than Rs 500 which remains in arrears for three months.

Mortgagor to bear all costs of mortgage

The mortgagor will have to pay all costs of and incidental to the mortgage including the mortgagee's solicitor's or advocate's cost. If he has engaged his own solicitior or advocate, he will also have to pay his costs. If the transaction is brought about by a broker, the mortgagor has to also bear the brokerage cost.



5.12

Individual Agreements

Agreement for Business Centre

This Agreement is made and entered into at Delhi on this _____ day of _____ 2007

BETWEEN

M/s _____, having its registered office at _____ carrying on the business of establishing "Business Centre" at _____, represented by its _____, Mr. _____, S/o Mr. _____, aged about _____ years hereinafter referred to as "The Licensor'" (Which expression shall, unless it is repugnant to the context, mean and include the successors-in-interest, administrators and permitted assigns) of the ONE PART

AND

M/s. _____ having its registered office at _____, represented by its General Manager Mr. _____, S/o Mr. _____, aged about _____ years herein after referred to as "The Licensee", (Which expression shall, unless it is repugnant to the context, mean and include the successors-in-interest, administrators and permitted assigns.) of the OTHER PART.

WHEREAS the Licensor has represented that it has _____ sq feet of vacant premises, in the business centre with infrastructure

to render _____ office facilities to cater the needs of persons who are in need of office space.

The Licensee has approached the Licensor to occupy the said premises and facilities and the Licensor has agreed to grant the same on mutually agreed terms and conditions mentioned hereunder:

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. This agreement shall be in force for a period of _____ months from the date of execution of this Agreement.
2. In case the Licensee commits any breach of the terms of this Agreement, or causes any harm or damage to the premises and the amenities provided, the license hereby granted shall stand terminated without notice.
3. The Licensee shall pay a license fee of Rs _____ (Rupees _____ only) every month on or before _____ day.
4. The Licensee shall give a Security Deposit of Rs _____ before the premises is handed over to him. The aforesaid Security Deposits shall be returned without interest on the expiry of this agreement or on termination thereof or on the Licensee vacating from the said premises
5. If any part of this Agreement for any reason be declared invalid or impossible of compliance or performance by the parties hereto, such part of the agreement shall not affect the validity of any remaining provisions, which shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.
6. The licensee shall not sub-let the aforesaid premises to any person except with the express permission in writing from the licensor allowing him to do so.
7. The licensee shall use the aforesaid premises only for his business/industrial/commercial purposes and not for any other use or any illegal, immoral or indecent activity.

8. The licensee shall not do any act or omission which leads to or is likely to lead to any damage or deterioration or destruction of the aforesaid premises.
9. The licensee shall not carry out any major repairs or structural changes without the express permission in writing from the licensor allowing him to do so.
10. Notwithstanding anything contained in the aforesaid clauses, this agreement shall terminate automatically, if any of the aforesaid terms and conditions are contravened or violated by the licensee.
11. If the licensee commits any breach of the terms of the agreement, the licensor shall be entitled to be compensated by him at his own cost and moreover he will be at liberty to terminate the agreement without any notice.
12. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
13. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, it shall be referred to the arbitral tribunal as per the following terms and condition:
    a) Each party shall appoint one arbitrator.
    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI
    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
    d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the

tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties hereto have affixed their signatures and seal, on the _____day, _____ 2007.

Signed sealed and delivered by Mr. _____ the
_____ of _____ the Licensor Herein

Signed sealed and delivered by Mr. _____ the
_____ of _____ the Licensee Herein.

In the presence of:
(Name, address and signature of Witnesses)
1.

2.

Received on the day and the year hereinabove written and from the Licensee a sum of Rs. _____ only) being security deposit to be paid by the Licensee to the Licensor by cheque number _____ dated _____ drawn on the Bank _____)

In the presence of:
(Name, address and signature of Witnesses)
1.

2.

Agreement for Sale (Apartment in Co-op. Society)

This Agreement to sell is executed at Delhi on this _____ day of _____ 2007

BETWEEN

Mr. _____, S/o_____ aged about _____ years R/o _____, hereinafter called the "Vendor" which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of the First Part.

AND

Mr. _____, S/o _____ aged about _____ years R/o _____, hereinafter called the "Purchaser" which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of the Second Part.

WHEREAS the Vendor is the sole and absolute owner of flat No. _____, and measuring about _____ square feet of super built-up area on _____ floor of building known as "_____" (hereinafter referred to as "the said Building") belonging to _____

Co-operative Housing Society Limited situated at _____ (hereinafter referred to as "the said Flat") and which is more particularly described in the schedule of this agreement and the vendor is the member of _____ Co-operative Housing Society Limited, registered under Serial No. _____ of _____ (hereinafter referred to as "the said Society") and as a member and the owner of the said flat in the Society he was allotted five fully-paid-up shares of the said Society of the face value of Rs _____ (Rupees _____ only) each bearing distinctive Nos. _____ to _____ (both inclusive) under share certificate No. _____ (hereinafter referred to as "the said Shares");

AND WHEREAS the Vendor has absolutely seized, possessed and sufficiently entitled as the owner of the said Flat in the said Building of the said Society;

AND WHEREAS the Vendor has agreed to sell and transfer and the Purchaser has agreed to purchase all right, title and interest of the Vendor in the said Flat and the said Shares and the right of occupation of the said Flat in the said building of the said Society including his right, title and interest in the said Flat for a total sale consideration of Rs _____ (Rupees _____ only);

AND WHEREAS the Parties hereto have agreed to record the Terms and Conditions on which the Vendor has agreed to sell and the Purchaser has agreed to purchase and acquire the right, title and interest of the Vendor in the said Flat including the said shares of the Vendor in the said Society;

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Vendor hereby agree to transfer to the Purchaser and the Purchaser hereby agree to purchase and acquire all the rights, title and interest of the Vendor in the said Society including the said Flat measuring about _____ Square Feet of super built up area on the _____ floor of the building known as _____ belonging to the _____ Co-operative Housing Society Limited situated at _____, together with the said Shares bearing distinctive Nos.

_____ to _____ (both inclusive) allotted under share certificate No. _____ and all the rights of the Vendor as to the use, occupation and enjoyment and ownership of the said Flat together with all rights, title and interest of the Vendor in the said Society for a total consideration of Rs _____ (Rupees _____ only) to be paid by the Purchaser to the Vendor in the manner hereinafter mentioned.

2. The said consideration to be paid by the Purchaser to the Vendor is as under:
   a) Rs _____ (Rupees _____ only) paid on the execution of this agreement as Earnest Money or Deposit (the receipt whereof the Vendor hereby admit and acknowledge in the presence of witnesses);
   b) The balance consideration of Rs _____ (Rupees _____ only) will be paid on or before _____ and against the delivery of vacant and peaceful possession of the said Flat by the Vendor to the Purchaser and on the completion of all the formalities of transfer and registration of the said flat and the said shares;
3. The Vendor has represented to the Purchaser:
   a) that the Vendor has paid all the dues and outgoings in respect of the said Flat up-to-date.
   b) that the said Flat is free from any kind of encumbrances.
   c) that the said Flat and shares belong to the Vendor absolutely and that no other person/s have any right, title or interest whatsoever therein by way of gift exchange, mortgages, charges, lien, sale, inheritance, lease or otherwise in the said shares/said flat.
   d) that notwithstanding anything herein contained, any act, deed, matter or thing of whatsoever nature done by the Vendor or any person/s lawfully or equitably claiming by, through or in trust the Vendor has full right, power and absolute authority to sell or transfer

to the Purchaser the said Flat and the Vendor has full right, title and interest in the said shares and that the Vendor has not done any act of omission or commission whereby the ownership, possession and/or occupation of the said shares of the Vendor may be rendered illegal and/or unauthorized for any reason or on any account.

e) that the Vendor shall obtain the necessary 'No Objection Certificate' from the said Society for transfer, and sale of the interest of the Vendor in the said Society, as well as the right, title and interest of the Vendor in the said Flat to the Purchaser and also to the admission of the Purchaser to the membership of the said Society in place of the Vendor when the sale herein is completed by delivering the vacant and peaceful possession of the said flat to the Purchaser.

f) on the payment of the full purchase price herein reserved, the Purchaser shall be entitled to full free vacant and peaceful possession of the said Flat.

g) The Vendor has represented to the Purchaser that the total transfer fee/transfer premium/donation payable to the said Society for transfer of the said flat/said shares of the said society in the name of the Purchaser shall be borne and paid by both the parties hereto in equal proportion/[by the Purchaser].

4. The Vendor declares and covenants with the Purchaser that the said Flat and his shares are free from encumbrances of any nature whatsoever and that the Vendor has full right, title and interest in the said Flat and has full right and authority to assign and transfer his entire interest in the said Society including the said Flat and the said Shares to the Purchaser.

5. The Vendor covenants and assures the Purchaser that his Membership of the said Society is subsisting and is in full force and has not been terminated.

6. The Purchaser covenants, with the Vendor that he shall always abide by the Rules, Regulations and By-laws of the said Society and shall pay the municipal taxes and maintenance charges in respect of the said Flat from the day the Vendor delivers possession of the said Flat to the Purchaser. It is specifically agreed by and between the parties that till the said Flat is transferred in the name of the Purchaser, the Purchaser shall not be liable to pay any maintenance charges in respect of the said Flat to the said Society and the same shall be borne by the Vendor.
7. It is agreed between the Vendor and the Purchaser that the expenses for stamp duty on these present or on final sale deed/ transfer deed and registration charges in respect of this transfer shall be borne and paid by the Purchaser alone and the Vendor shall not be liable to pay the same or any part thereof. However, the stamp duty or duties and charges in respect of all previous transfers in respect of the said flat shall be the responsibility of the Vendor.
8. The Vendor shall sign and execute any deed or writing as well as all other papers and documents as may be required by the Purchaser for transferring the said Flat and the said shares to the name of the Purchaser in pursuance of this Agreement and payment of the balance sale consideration.
9. The Vendor undertakes to hand over all the documents including share certificate, transfer forms, receipts, papers concerning the said Flat to the Purchaser against the receipt of the balance consideration of Rs _____ (Rupees _____ only).
10. The Vendor undertakes to do and to execute all acts, deeds, matters and things as are or may be necessary, proper or expedient for the purpose of fully and effectually transferring the said Flat and the said Shares of the said Society to and in favour of the Purchaser in the record of

the said Society to enable the Purchaser to have and to hold the said Flat and the said Shares absolutely.

11. It is agreed that in the event of any delay or default by the Purchaser in making payment of the balance consideration on the due date, and the Vendor is ready to complete the transaction, the Vendor shall give seven days notice in writing to the Purchaser and if the Purchaser fails to make payment within such notice period, then and in that event this Agreement shall stand terminated and the Vendor shall be entitled to forfeit the earnest money of Rs _____ Rupees _____ only) paid by the Purchaser;
12. In the event there is any delay or default on the part of the Vendor in performing his part of the contract then the Purchaser shall be entitled to specific performance of this Agreement together with right to claim all costs, charges, expenses and losses suffered by the Purchaser from the Vendor.
13. In the event of there being any dispute the said dispute shall be referred to Arbitration of sole Arbitrator (two arbitrator one appointed by each party) and the said arbitration shall be as per the Provision of Arbitration and Conciliation Act 1996.
14. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
15. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, it shall be referred to the arbitral tribunal as per the following terms and condition:

    a) Each party shall appoint one arbitrator.

b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and

may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and on the day and the year first herein above stated.

_____ VENDOR

_____ PURCHASER

In the presence of the following witnesses:

1.

2.

Agreement for Sale of a House when the Purchase Money is to be Paid in Instalments

This Agreement is made and entered into at Delhi on this _____ day of _____ 2007

BETWEEN

Mr. 'A' S/o _____ aged about _____ years resident of _____ hereinafter called the "Vendor" which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of ONE PART.

AND

Mr. 'B' S/o _____ aged about _____years resident of _____ hereinafter called the "Purchaser" which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of the OTHER PART.

Whereas the vendor is absolutely seized and possessed of or well and sufficiently entitled to the house more fully described in the schedule hereunder;

And whereas the Vendor has agreed to sell and the Purchaser has agreed to purchase the said house for a consideration of Rs _____ out of which the Purchaser has paid a sum of Rs _____ as earnest money in part payment of the purchase price and has accepted the title of the vendor as at the date of this Agreement.

And whereas the Purchaser has shown his inability to pay the balance consideration in one lump sum and has requested the Vendor to accept the balance purchase price in installments

which the Vendor has agreed upon the terms and conditions hereinafter appearing.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The Vendor shall sell and the Purchaser shall purchase the house bearing municipal No_____ Road _____ more fully described in the Schedule hereunder and hereinafter called the said house, at the price of Rs _____ out of which the Purchaser has paid Rs _____ as the earnest money on _____ to the vendor and balance purchase price will be payable by him in installments of Rs _____ each per quarter on _____ day, of _____ day, of _____ day and _____ day of 2005 in every year, the first payment being made on the date of this agreement (the receipt of which the Vendor hereby acknowledges) and the last payment to be made on _____.
2. The Purchaser may pay off the entire balance amount of purchase price for the time being remaining due by giving _____ days notice in writing to the Vendor.
3. As soon as the purchase price is paid in full to the Vendor, he shall execute the deed of conveyance in favour of the Purchaser in respect of the said house. The stamp duty, registration charges and other out of pocket expenses in respect of execution and registration of conveyance deed shall be borne by the purchaser.
4. If the Purchaser shall make default in payment of any installment for a period of _____ months after the date hereinbefore fixed for payment of the same, the Purchaser shall be deemed to have neglected or failed to comply with the conditions of sale and the Vendor shall be entitled to determine this agreement and the earnest money of Rs _____ and the installments paid by the Purchaser shall be liable to be forfeited to the Vendor and may be retained by him in or towards satisfaction of the amount payable by the Purchaser to the Vendor as liquidated damages for

breach of the conditions of the sale, which are hereby fixed at Rs _____ and the balance, if any, shall be paid by the Vendor to the Purchaser without interest thereon within _____ days for such forfeiture and thereupon the Vendor shall be entitled to resume possession of the said house.

5. Unless the conveyance deed is executed in favour of the Purchaser, the Purchaser shall not transfer, mortgage, sub-let or transfer the possession of the house or any part thereof except with the permission of the Vendor in writing.
6. The Purchaser covenants with the Vendor that he shall keep the said house in proper repair and get the same annually white washed till any installment remains unpaid under this agreement.
7. In the event of there being any dispute the said dispute shall be referred to shall be referred to the arbitral tribunal as per the following terms and condition:
   a) Each party shall appoint one arbitrator.
   b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
   c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
   d) The Arbitration proceedings shall take place at _____, Delhi.
   e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs. _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

8. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/ modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.

In witness whereof the parties aforementioned have executed this Agreement on this the _____ day of _____ 2007.

Schedule of the above property:

WITNESSES:

1. _____VENDOR:

2. _____PURCHASER:

Agreement for Sale of Leasehold Property

This Agreement is made and entered into at Delhi on this __ day of _____ 2007

BETWEEN

Mr. 'A' S/o _____ aged about _____ years resident of _____ hereinafter called the "Vendor" which expression shall, unless

repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of ONE PART.

AND

Mr. 'B' S/o _____ aged about _____ years resident of _____ hereinafter called the "Purchaser" which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of the SECOND PART.

AND

Mr. 'C', S/o _____, aged about _____ years resident of _____ hereinafter called the 'Lessee' which expression shall, unless repugnant to the context or meaning hereof , mean and include his/her successors, legal heirs, executors, administrators, legal representatives, nominees and assignees of the THIRD PART on the terms and conditions hereinafter mentioned whereby it is agreed and declared as follows:

Whereas the vendor is the owner of the building situated at Street No. _____ in Ward No. _____ in the town of _____ bearing Municipal No. _____ and,

Whereas the said building has been demised on a lease of thirty years commencing from _____ to the lessee as per deed of lease, dated _____ registered on _____ under the terms and conditions contained in the said lease deed.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The vendor has agreed to sell and the purchaser has agreed to purchase the said building and the lessee has agreed to at torn to the purchase at the completion of the safe pursuant to this agreement in consideration of payment of the sum of Rs _____ (Rupees _____) as price for the said sale by the purchaser to the vendor, out of which a sum of Rs _____ (Rupees _____) has been paid to the vendor by the purchaser (the receipt of which the

vendor hereby acknowledges) and the balance of Rs _____ (Rupees _____) has been agreed to be paid to the said vendor on the date of the presentment of the deed of sale before the Sub-Registrar for the purpose of registering the same.

2. The vendor has agreed to satisfy the purchaser about the title of the vendor to the premises and that the vendor is entitled to convey the said title to the purchaser free from all other encumbrances, except that of the leasehold interest, vested in the lessee for the remaining period of _____ years under the terms and conditions laid down in the said lease deed, one month prior to the execution of the date fixed, for completion of the transaction of the sale pursuant to this agreement.
3. The vendor has agreed to bear the expenses for the purchase execution and registration of the deed of sale in the first instance which expenses, however shall be payable equally and the purchaser's share of such expenses shall be paid to the vendor on completion of the sale and delivery of the deed of sale to the purchaser. It is further agreed that the title of the premises shall not pass to the purchaser until the full consideration mentioned above for the sale transaction, shall have been paid to the vendor, the lessee shall, however, be bound to pay sum reserved under the lease deed dated aforementioned to the purchaser on and from the date of registration of the deed of sale.
4. It is further agreed that the draft of deed of sale shall be submitted by the vendor to the purchaser a fortnight prior to the date of the intended execution, and, after approval thereof by the purchaser, the vendor undertakes to obtain the concurrence of the lessee to the deed of sale which shall be executed and presented for registration within two months of the date of this agreement.
5. It is further agreed that the purchaser shall pay interest at the rate of _____ per cent- per annum to the vendor on any

sum out of the aforesaid price which shall remain unpaid to the vendor as from the date of the registration of the deed of sale pursuant to this agreement.

6. The vendor undertakes to pay all rates, taxes or other assessments levied or leviable on the said premises upto the date of registration of the sale-deed, where after the purchaser shall be responsible to pay the said public charges.
7. In the event of there being any dispute the said dispute shall be referred to shall be referred to the arbitral tribunal as per the following terms and condition:
   a) Each party shall appoint one arbitrator.
   b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
   c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
   d) The Arbitration proceedings shall take place at _____, Delhi.
   e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.
   f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.
   g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

In witness whereof, the parties aforementioned have executed this deed of sale in token of acceptance thereof.

WITNESSES

1. Signature of the seller_____.

2. Signature of the purchaser_____

3. Signature of the Lessee _____

Flat Ownership Agreement

This Agreement is made on this the _____ day of _____ 2007 at Delhi

BETWEEN

Mr. _____, S/o _____ aged about _____ years R/o _____, (hereinafter referred to the "purchaser" which expression shall, unless the context otherwise requires, include his/her successors, legal heirs, executors, administrators and assignees) of the First Part.

AND

Mr. _____, S/o_____ aged about _____ years R/o _____, (hereinafter referred to the "Seller" which expression shall, unless the context otherwise requires, include his/her successors, legal

heirs, executors, administrators and assignees) of the Second Part.

Whereas the Seller had entered into an agreement dated _____ for acquiring ownership rights and possession in flat no. _____ on the ground floor in the building known as "_____" at _____ with Mr. _____ referred to as the "Transferor" in the said agreement.

Whereas the said Mr. _____ had entered into an agreement dated _____ for acquiring the ownership rights and possession in flat no. _____ on the ground floor in the building known as "_____" at _____ with Mr. _____ referred to as the "Builders" in the said agreement and Mr. _____ referred to as the "Confirming Party" in the said agreement.

Whereas the Seller has been allotted Flat No _____ admeasuring _____ square feet at _____, a society registered under the provisions of The Delhi Co-operative Societies Act, having Registration Number _____ and having its registered office at _____ (hereinafter called the "Society") and holding _____ fully paid shares of Rupees _____ each in the said society bearing distinctive numbers _____ to _____ (Both Inclusive) represented by Share Certificate Number _____ issued to the Seller by the Society as a tenant in common.

Whereas the Seller as such member is in possession and occupation of Flat No. _____ admeasuring _____ square feet in the aforesaid society (hereinafter called the "Flat").

Whereas the Seller has agreed to sell the said shares and the entire interest in the said flat to the Purchaser and the Purchaser has agreed to purchase the said shares and the shares, rights, title, and interests of the Seller in the said flat and the rights of the Seller in the amount standing to the credit of the Seller in the Books of Accounts of the said Society for a total consideration of Rs _____ (Rupees _____ Only).

WHEREAS both the parties to this agreement are desirous of reducing the terms and conditions of this agreement in writing as follows:

NOW THIS AGREEMENT IS WITNESSETH AND IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

1. The Seller has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Seller the said Flat _____and the underlying shares in the said Society for a total consideration of Rs _____ (Rupees _____ Only).
2. The Purchaser has agreed to pay in all a sum of Rs _____ (Rupees_____ Only) to the Seller towards the aforesaid consideration on the execution of this agreement.
3. The Seller has agreed to hand over peaceful vacant possession of the said Flat to the Purchaser on the execution of this agreement.
4. The said Flat and the said shares are being sold by the Seller to the Purchaser along with all the privileges as part and parcel of sale of the said premises including all the rights, title, interest and benefit of every nature and kind in respect of the said Flat, shares and membership of the said Society that accrued to and vested absolutely in the transferor in pursuance of the agreement dated _____ mentioned earlier in this agreement.
5. The Seller hereby declares that the said Flat and the said shares agreed to be sold are free from encumbrances of whatsoever nature and that the Seller has full right, absolute authority and power to sell the said Flat situated at _____, as also the said shares.
6. The Seller shall pay all the taxes and other payments including all dues payable to the aforesaid society in respect of the said Flat till the date of this agreement and after the date of this agreement, the Purchaser shall be responsible for making such payments.
7. The Seller shall get the said premises and all the shares standing in his name transferred to the name of the Purchaser and will execute and deliver to the Purchaser

all the documents that may be necessary for the completion of this sale. The transfer fees and/or any other charges payable to the society or such transfer shall be borne and paid by the Purchaser.

8. The Seller hereby declares that the Purchaser shall on and from the date of this agreement peacefully possess, occupy and enjoy the said Flat without any hindrance, claim, demand, interruption or eviction of the Seller or any other person or persons lawfully or equitably claiming through, under or in trust for the Seller.

9. The Purchaser shall on and from the date of this agreement be entitled:

   To have and hold the possession and occupation of the said Flat and to hold the same and to the use and benefit of the Purchaser and his successors

   To assign in any manner, whether conditionally or without any claim, charge, right, interest, demand or lien of the Seller.

10. The Seller declares that:

    i) The Title of the Seller to the said Flat is unconditional and absolute and that he is entitled and competent to transfer or dispose of the said Flat and the said shares to the Purchaser.

    ii) The Seller is the lawful owner of the shares in the aforesaid society bearing distinctive numbers _____ to _____ (both Inclusive) represented by Share Certificate Number _____ issued to the Seller by the Society.

    iii) The Seller is in exclusive possession of the said Flat and no other person has any right to possession of the said premises or any right to the said possession thereof.

    iv) The said Flat was acquired by the Seller from and out of his funds to which he was legally entitled and

in the circumstances he is the sole and absolute owner thereof.

v) The said Flat is free from all encumbrances, lien, charge or mortgage and in any case the Seller has not created any encumbrance on the said Flat and there is no statutory, commercial or personal liability to any private, public or revenue authority for payment on the said Flat.

vi) To the best of the knowledge and information with the Seller, there is no litigation or other proceedings pending in respect of the said Flat and there is no attachment levied in respect of the said Flat nor has any competent authority issued any order prohibiting the sale, transfer or assignment of the said Flat, or the benefits of the agreement for acquiring the same

vii) The Seller has not committed any breach nor has he been guilty of any breach or non-compliance with any of the terms and conditions of the agreement dated _____ as mentioned earlier in this agreement and that the said agreement is valid and subsisting at law till the date of execution of these presents.

viii) There is no other factor or circumstances within his knowledge preventing or any manner obstructing the aforesaid transfer of the said Flat and the said shares.

11. The Seller is aware that the Purchaser has agreed to acquire the said Flat and pay the consideration of the same relying on the correctness of the representations made by the Seller and the Seller repeats and confirms that the said representation and statements made hereinabove are true and correct. In the event of Purchase if the purchaser suffers from any prejudice or loss whatsoever on account of the negligence or misrepresentation by the Seller or by any other person on his behalf,

the Seller shall indemnify and keep indemnified the Purchaser in respect of all such expenses, costs, liabilities or obligations as the Purchaser may incur on such account. The Seller has agreed to indemnify the Purchaser for any costs, expenses or other liability which the Purchaser or any person claiming under the Purchaser may incur for discharge of any charge, encumbrance or other liability in respect of the said Flat.

12. The Seller further agrees that the Seller and/or any other person claiming through him shall from the date of this agreement, at all times thereafter, whenever called upon by the Purchaser, to do and execute or cause to do done and executed all such acts, deeds and things whatsoever for more perfectly securing the interest of the Purchaser in the said Flat. The purchaser has agreed to bear reasonable costs incurred by the Seller in this behalf.

13. The Seller acknowledges the receipt of the aforesaid amount as full and total consideration for the sale amounting to Rs _____ (Rupees _____ Only) and the Purchaser acknowledges obtaining absolute possession of the aforesaid Flat.

14. The Seller has agreed to hand over to the Purchaser the necessary transfer forms and other papers relating to the aforesaid transfer including the agreements dated _____ and _____ mentioned earlier in this agreement in respect of the said Flat.

15. The Purchaser hereto undertakes to abide with and follow the rules and regulations of the said Society as governed by its bye-laws.

16. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.

17. In the event of any difference of opinion or dispute between the Parties on any matter pertaining to this agreement and the aforesaid transfer, it shall be referred to the arbitral tribunal as per the following terms and condition:

a) Each party shall appoint one arbitrator.

b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the

reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs. _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties hereto have set their signatures and executed this agreement on this the _____ day of _____ 2007 at Delhi.

Executed by the said Mr. _____.

Witness:
1.

2.

Executed by the said Mr_____.

Witness:
1.

2.

Leave and Licence Agreement

This Agreement of Leave and Licence is made and entered into at Delhi on this _____ day of _____ 2007

BETWEEN

Mr. _____ S/o _____ of, residing at _____ hereinafter called the LICENSOR (Which expression unless be repugnant to the context or meaning thereof be deemed to include his heirs, executors, administrators and assigns) of the ONE PART.

AND

Mr. _____ S/o _____, residing at _____, hereinafter called the LICENSEE (Which expression unless be repugnant to the context or meaning thereof be deemed to include his heirs, executors, administrators and assigns) of the OTHER PART; WHEREAS the LICENSOR is the exclusive owner and is seized and

possessed of the _____, admeasuring about _____ hereinafter referred to as the 'SAID FLAT' for the sake of brevity's. AND WHEREAS THE LICENSEE has approached the licensor to give the said FLAT to the licensee on leave and licence basis for a period of eleven months from _____ on terms and conditions hereinafter appearing; NOW THIS AGREEMENT WINESSETH AS UNDER

Whereas LICENSOR wants to rent on leave and license basis the aforesaid premises to LICENSEE and LICENSEE wants to taken the aforesaid premises on leave and license basis for business purposes.

Whereas the parties are desirous to enter into an agreement for such purpose and reduce the terms and conditions to writing as follows:

NOW THIS AGREEMENT IS WITNESSETH AND IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

1. LICENSOR has agreed to rent on leave and license basis the aforesaid premises to LICENSEE and LICENSEE has agreed to take the aforesaid premises on leave and license basis in accordance with the terms and conditions of this agreement.
2. LICENSEE has agreed that he shall use the aforesaid premises for his business/residential/industrial/ commercial purpose only and pay to LICENSOR a sum of Rs _____ per month (Rupees _____ only per month).
3. The term of this leave and license agreement shall be for a period of 11 months from the date of this agreement. This agreement shall, be terminated on the expiry of the aforesaid period and LICENSEE shall have to vacate the aforesaid premises immediately on expiry of the aforesaid period duly handing over the premises to LICENSOR. However, this leave and license agreement may be extended beyond the aforesaid period by mutual

agreement between the parties to this agreement for a period not exceeding 11 months at a time.

4. LICENSOR has agreed that he shall bear and continue to bear all liabilities, obligations, costs and responsibilities which he bears as an owner of the aforesaid premises.
5. Notwithstanding anything contained in clause 3 above, LICENSEE has agreed that he shall vacate the aforesaid premises within one month from date of notice from LICENSOR requiring the aforesaid premises for any reason whatsoever and without assigning any reasons thereto.
6. LICENSEE has agreed that he shall have no rights or interests over and above the rights and interests of LICENSOR in the aforesaid property and that his rights as a user of premises shall, without any further act being done by any person terminate and cease absolutely on cancellation of this agreement.
7. LICENSEE has agreed to remove himself along with his total connections with the aforesaid premises and to surrender and relinquish his rights under this agreement on and after the cancellation of this agreement.
8. LICENSOR shall be entitled to deal with the aforesaid premises as owner in any manner as he deems fit on LICENSEE surrendering his aforesaid rights in accordance with the terms & conditions of this agreement.
9. The LICENSEE shall not be entitled to create any sub-License or part with possession in any manner of the Licensed Premises.
10. LICENSEE shall not do any act or omission which leads to or is likely to lead to any damage or deterioration or destruction of the aforesaid premises.

11. LICENSEE shall not carry out any major repairs or structural changes without the express permission of LICENSOR in writing, to do so.
12. Notwithstanding anything contained in the aforesaid clauses, this agreement shall terminate automatically, if any of the aforesaid terms and conditions are contravened or violated by LICENSEE.
13. If LICENSEE commits any breach of the terms of the agreement, LICENSOR shall be entitled to be compensated by him at his own cost and moreover he will be at liberty to terminate the agreement without any notice.
14. LICENSEE shall keep the said FLAT in good condition and if any damages, breakages are caused to the said FLAT, he shall make good the loss caused to LICENSOR on account of such damages and breakages.
15. This agreement constitutes the entire agreement between the parties and supersedes any oral or written agreement made earlier to the date of this agreement. Any variations/modifications to this agreement shall not have any effect unless the same is in writing and executed by both the parties.
16. If any dispute or differences arise between the parties hereto regarding the claim by one party against the other or regarding the implementation of this agreement or interpretation or meaning of any of the clauses herein, the said dispute shall be referred to the arbitral tribunal as per the following terms and condition:
    a) Each party shall appoint one arbitrator.
    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI
    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF, the parties hereto have under set and subscribed their hands this the _____ day, of _____ 2007.

Signed and delivered the possession

1. LICENSOR

2. LICENSEE

WITNESSES:

1.

2.

Relinquishment Deed

This Deed of Relinquishment is executed at Delhi on this _____ day of _____, 2007

BY

Sh. _____ son of Late Sh. _____ resident of _____, Delhi, hereinafter called 'the RELEASOR' Which expression shall unless repugnant to the context or meaning hereof ,mean and include his heirs, successors, legal representatives, executors, administrators and assigns, of the FIRST PART.

IN FAVOUR OF

Sh. _____ son of Late Sh. _____ resident of _____, Delhi, hereinafter called 'the RELEASEE' Which expression shall unless repugnant to the context or meaning hereof ,mean and include his heirs, successors, legal representatives, executors, administrators and assigns, of the RELEASEE.

WHEREAS the Party of the First Part is the legal heir of the deceased late Shri /Smt. _____ who died intestate.

AND WHEREAS the said Shri /Smt. _____ has left behind him a property i.e. flat no. _____ situated in _____, admeasuring about _____ sq. ft. consisting of _____ rooms at _____.

AND WHEREAS the Releasee has been residing with the deceased since last _____ years.

AND WHEREAS during lifetime of Shri/Smt. _____ he had expressed his desire to bequeath the said flat to the party of the Releasee.

AND WHEREAS the party of the first part was also aware of the same and as such for transmitting share and interest in the said flat no _____ in favour of the party of the Releasee and Releasors has shown his readiness and willingness to execute necessary documents by relinquishing his share and interest as a legal heir in the said property.

AND WHEREAS mutually it has been agreed that for the said share and interest as legal heir in the said property of late Shri

/Smt _____ for consideration of Rs _____ to which Releasee has agreed to give to the party of the first part.

AND WHEREAS the Releasee in order to become exclusive owner of the premises the Releasors relinquishes and ceases to have any right, title or interest therein.

AND WHEREAS it is necessary to bring this fact on record.

NOW THIS DEED OF RELINQUISHMENT WITNESSETH AS UNDER:

1. That the Releasors has released and relinquished in favour of the Releasee all their rights, titles and interest in the said flat situated at _____ and to hold the same as the absolute owner along with all furniture and fixtures standing thereon. And the Releasors do hereby declare that the said premises is and has been the exclusive property of the Releasee with effect from _____.
2. That the first party, does hereby declare that the Releasee is entitled to have his name incorporated as the owner of the said flat in the records of the society by transferring share, title and interest in his name. And the Releasors will do every such assurance or thing for further or more perfectly assuring the property released to the Releasee as may be reasonably required.
3. That the Releasors, their heirs, successors and assigns have been left with no claim, title or interest in the property hereby relinquished and the releasee is the sole and absolute owner thereof.

IN WITNESS WHEREOF the releasor and the releasee have set their respective hands to this deed of relinquishment at Delhi on the date, first hereinabove mentioned.

RELEASOR

RELEASEE

WITNESSES:

1. Mr. _____ Son of _____.
   Resident of _____.

2. Mr. _____ Son of _____.
   Resident of _____.

Deed of Transfer in a Co-operative Society

This Deed of Transfer is made at Delhi on this the _____ day of _____, 2005,

BETWEEN

Mrs. _____ W/o _____ aged about _____ years, residing at H.No._____ hereinafter referred to as "THE TRANSFEROR" (which expression shall, unless it be repugnant to the context or meaning thereof be deemed to include her heirs, executors and administrators) of the ONE PART

AND

Mr. _____ S/o _____ aged about _____ years, residing at H.No. _____ hereinafter referred to as "THE TRANSFEREE" (which expression shall, unless it be repugnant to the context or meaning thereof be deemed to include her heirs, executors and administrators) of the OTHER PART.

WHEREAS the Transferor is a registered member of _____ Co-operative Housing Society Ltd., a Co-operative Society formed and registered under the provisions of the Delhi Co-operative Societies Act, 2003, under Registration No. _____ dated _____ situated at _____, (hereinafter called "the said society") and as member of the said society, the Transferor is holding _____ (_____) fully paid up shares of Rs _____ (Rupees _____ only) each bearing distinctive Nos. _____ to _____ *(both inclusive)* as per the share certificate No. _____ issued by the said society (hereinafter called the "the said shares").

AND WHEREAS by virtue of being member of the said society, the Transferor is absolutely seized and possessed of and otherwise well and sufficiently entitled to flat No. _____, admeasuring _____ sq. ft. built up area on the _____ floor of building No. _____ of _____ (hereinafter called "the said Premises") situated at _____ (city) belonging to the said society.

AND WHEREAS the Transferor has agreed to sell and transfer to the Transferee, and the Transferee has agreed to purchase and acquire all right, title and interest of the Transferor in the said share certificate No.__ and in flat No. _____, on the ground floor of building No. _____ of _____ situated at _____ (city), at or for the sum of Rs _____ (Rupees _____ only) on the terms and conditions hereinafter contained.

AND WHEREAS the Transferee has paid to the Transferor the full consideration of Rs _____ (Rupees _____ only) before the execution of these presents.

AND WHEREAS the Transferor has obtained the consent of the said society for the transfer of the said shares and the said premises to the Transferee.

AND WHEREAS the Transferor has executed and handed over to the Transferee the Transfer forms and all other letters, documents and writings as required under the _____ Co-operative Societies Rules, 2061 and bye-laws of the said society for the effectual transfer of the said Premises and the said Shares.

AND WHEREAS the stamp duty and registration charges payable in respect of this Deed of Transfer shall be borne and paid by the Transferee alone. The transfer fee/premium/Donation payable to the said society in respect of the transfer of the said shares/premises shall be borne and paid by the Transferee and the Transferor in equal proportion.

AND WHEREAS the Transferor has handed over to the Transferee the vacant and peaceful possession of the said premises along with the original of the said share certificate and all other documents pertaining to the said premises and the

Transferee has requested the Transferor to execute these presents which the Transferor has agreed to do in the manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH AS FOLLOWS:

1. In pursuance of the aforesaid agreement and in consideration of a sum of Rs _____ (Rupees _____ only) paid by the Transferee to the Transferor on or before the execution of these presents being the full consideration receivable by the Transferor, (the payment and receipt whereof the Transferor hereby admit and acknowledge*)* the Transferor for herself and her heirs, executors and administrators and assigns hereby grant, convey and transfer unto the Transferee all her beneficial rights, title and interest into and upon the said shares bearing distinctive Nos. _____ to _____ *(both inclusive)* vide share certificate No._____ issued by the _____ Co-operative Housing Society Limited and all funds (including sinking fund) and properties standing in her name in the records of the said society AND including the flat No. _____ admeasuring _____ sq. ft. built up area on the _____ floor of the building _____ of _____ of the said society situated at _____ _____ together with all the rights and privileges whatsoever of the Transferor as the member of the said society and all the rights, title and interest of the Transferor in the said shares and in the said Premises SUBJECT HOWEVER to the payment by the Transferee of all taxes and outgoings and other charges now or hereafter payable to the said society or any other body AND the Transferor doth hereby covenant with the Transferee that the Transferor is the absolute owner of the said shares/Premises and she has full right, power and absolute authority to transfer her rights, title and interest in the said Premises and the said shares in favour of the Transferee in the manner aforesaid AND the Transferor hereby covenant that she shall at the

request and cost of the Transferee sign and execute such further deeds, documents and papers which the Transferee may reasonably require to effectively transfer and vest the Transferor's right, title and interest in the said shares and the said Premises in favour of the Transferee.

2. The Transferor declares records and confirms that the said Premises with all rights attached thereto are free from all encumbrances' charges of any kind whatsoever and the Transferor has observed the bye-laws of the said society and cleared all dues in respect of the said Premises till the date of execution of this transfer deed. The Transferor further declares that the said shares and the said Premises are neither the subject matter of any litigation, nor the same are attached in the execution of any decree whether of Government or otherwise.
3. The Transferor has not created or purported to create any tenancy rights, license or other rights of use and occupation in respect of the said Premises.
4. The Transferor has not contracted to sell/transfer the said Premises/shares to any other person and the said Premises/shares are free from all encumbrances, liens, and charges of any nature whatsoever.
5. The Transferor covenants with the Transferee that the Transferor shall indemnify and keep indemnified the Transferee from and against all actions, claims, demands, charges etc. falling due prior to execution of these presents in respect of the said shares/Premises.
6. The Transferor agrees to accompany the Transferee and/or her legal advisor or her representative to the office of the Sub-Registrar of Assurance and lodge this transfer deed for registration and admit the execution thereof.
7. The Transferor agrees to produce his Income-tax Clearance Certificate under the Income-tax Act, 1961 to enable the Transferee to register this Transfer Deed.

8. The Transferee declares that on being admitted as a member of the said society he will observe and abide by the rules regulations and bye-laws of the said society from time to time in force.

9. The stamp duty, registration charges if any payable in respect of this deed of transfer and in any other document to be executed in future in respect of the said Premises/shares shall be borne and paid by the Transferee alone. The Transfer premium/charges payable to the said society in respect of the transfer of the said shares/premises shall be borne and paid by the parties to this Deed in equal proportion.

10. In the event of there being any dispute the said dispute shall be referred to shall be referred to the arbitral tribunal as per the following terms and condition:

    a) Each party shall appoint one arbitrator.

    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

    d) The Arbitration proceedings shall take place at _____, Delhi.

    e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the Transferor and the Transferee have hereunto set and subscribed their respective hands on the day and year first hereinabove written.

WITNESSES

1. Signature of the Transferor_____
2. Signature of the Transferee_____

Gift Deed

Consideration Value Rs _____

Stamp Duty _____ Rs _____

Corporation Tax _____ Rs _____

Total _____ Rs _____

This Gift Deed is executed at New Delhi on this _____ day of _____, 2007 by and between Sh. _____ S/o _____ R/o _____hereinafter called the "DONOR",

AND/IN FAVOUR OF

Smt. _____ W/o _____ R/o _____ hereinafter called the "DONEE".

The expression "Donor" and "Donee" herein used shall mean and include them, their, heirs, successors, legal representatives, administrators, nominees and assignees.

And Whereas the Donee is the real daughter-in-law of the Donor and out of his love and affection for the Donee, the Donor has agreed to transfer the said share of the said property. i.e. 1/2 (one-half) undivided share in the Entire Freehold Built-up Property bearing No. _____, along with 1/2 (one-half) undivided, indivisible and impartiable ownership rights in the freehold land underneath measuring 300square yards, (hereinafter referred to as "THE SAID SHARE OF THE SAID PROPERTY") by way of Gift to the Donee, which has been accepted by the Donee.

NOW THIS GIFT DEED WITNESSETH AS UNDER:

1. That the aforesaid Donor out of natural love and affection for the Donee, of her own free will and without any pressure, undue influence or coercion from any side and without any monetary consideration, doth hereby transfer, convey, assign the said share of the said property with super-structures, alongwith all the freehold rights, title, interest, easements and privileges alongwith sanitary and electrical installations, fixtures and fittings whatsoever appurtenant to the said share of the said property TO HAVE AND TO HOLD the same unto the Donee, absolutely and forever.
2. That the aforesaid Donor assures the Donee that the said share of the said property hereby gifted is free from all sorts of encumbrances such as prior sale, gift, mortgage, and disputes etc.
3. That the said share of the said property is already in possession of the Donee and this fact is hereby again confirmed by the Donor, the Donor has delivered proprietary rights and symbolic possession of said share of the said property to the Donee by this Deed.

4. That the Donee will pay electricity, water, house tax bills or any other dues and demands of the concerned authority in respect of the said share of the said property.
5. That the Value of the said share of the said property has been assessed by the Valuer at Rs _____ the stamp duty has been paid according to law, the value setforth in this Deed is absolutely fair. No monetary transaction has taken place.
6. That now the Donor admits that he has been left with no right, title, interest or concern of any nature whatsoever in the said share of the said property and the Donee has become the absolute owner of the said share of the said property by this Deed, who shall be fully competent to use and enjoy the said share of the said property or transfer or alienate the same to anyone by way of sale, gift, mortgage, lease or otherwise to anyone in the manner she likes, without any claim, demand and objection by the Donor and his other heirs and successors.
7. That the Donor will get the said share of the said property transferred, mutated and assessed in the name of the Donee in the Records of MCD, BSES Rajdhani Power Limited, DJB or any other concerned authority, otherwise also the Donee can get her own name so entered on the basis of this Gift Deed or its certified true copy.

IN WITNESS WHEREOF, the Donor and the Donee have signed this Gift Deed at New Delhi, on the date first mentioned above in the presence of the following witnesses.

WITNESSES:

1. DONOR.
2. DONEE.

Lease Deed

THIS LEASE DEED IS MADE AND EXECUTED AT DELHI ON THIS THE _____ DAY OF _____, 2007

BETWEEN

Sri _____, S/o. _____ aged about _____ years, R/o. _____Delhi. Hereinafter called the "LESSOR", which term shall mean include all his successors, administrators, legal representatives, assignees of the One Part.

AND

Sri _____, S/o. _____ aged about _____ years, R/o. _____ Delhi. Hereinafter called the "LESSEE" which term shall mean and include all her successors, administrators, legal representatives, assignees of the Second Part.

WHEREAS the Lessor is the landlord and absolute owner of residential house bearing No. _____ at _____ Delhi and has agreed to let on lease to the Lessee the property comprising of three bedrooms, one drawing room, three bathrooms, two store a kitchen and a lobby for a period of 11 months w.e.f. January 1, 2007, at a monthly rent rate of Rs 10,000 (Ten thousand rupees)

AND WHEREAS he parties are now desirous of reducing the terms of this lease into writing

THIS DEED WITNESSES AS UNDER:

1. In consideration of the rent herein reserved and the covenants and the conditions hereinafter contained and to be observed on the part of the Lessor and the Lessee, the Lessor hereby demises unto the Lessee the residential house bearing No. _____ at _____ Delhi and has agreed to let on lease to the Lessee, the property comprising of three bedrooms, one drawing room, three bathrooms, two store a kitchen and a lobby w.e.f. January 1, 2007, at a monthly rent rate of Rs 10,000 (Ten thousand rupees)

2. That the lessee hereby agrees and undertakes to pay the lessor a sum of Rs 10,000 (Ten Thousand Rupees) per month towards the rent for the land which is exclusive of electricity consumption charges and water consumption charges, which shall be borne by the lessee separately.
3. That the Lessee shall pay the agreed rent to the Lessor on or before 7th of each succeeding English month.
4. The Lessee has inspected the premises, its fittings and fixtures including electric and sanitary fittings and found them in good working order, the Lessee shall be responsible to restore them in the same condition at the time of surrender of possession.
5. The Lessee shall use the demised premises solely for residence of himself and his family members and shall not use or allow the premises to be used for any other purpose.
6. That the Lessee shall pay all the Taxes, cess etc. as levied by the concerned authorities from time to time.
7. That the Lessee shall comply with all rules and regulations of the local authorities whatsoever with regards to the demised premises.
8. That the Lessee shall permit the Lessor or their any person on its behalf to inspect the Schedule Property whenever necessary.
9. That if the Lessee intends to discontinue the lease then the Lessee shall cause a written notice to the Lessor of such intention at least three months in advance.
10. The cost of the lease agreement and registration charges for the same shall be borne by Lessee.
11. The Lessee shall not cause any nuisance or cause any harm or damage to the other occupants of the building and in the event of the above occurring, the Lessee shall keep the Lessor indemnified.

12. The period of this lease is fixed for 11 months w.e.f. 1st January, 2007, renewable at the option and at the discretion of the Lessor, subject to such increase in rent and on such terms and condition that may be mutually settled. Whenever the lessee is desirous of renewing the lease period, the lessee shall give the notice in writing to the lessor before the expiry of the lease. However it will be at the option of the Lessor to grant further renewal or not. If further renewal is not granted, the lessor shall be obliged to vacate the demised premises upon the completion of the lease period.

13. This agreement is executed in duplicate and each party shall be entitled to have one copy thereof duly executed by both the parties, each copy is an independent instrument but both of them together constitute one and the same agreement.

14. This agreement shall be governed by and construed in accordance with the laws of India and subject to the sole jurisdiction of the Delhi Court.

15. In case of dispute between the Lessee and Lessor both the parties will try and resolve the dispute through the application of the procedure and provisions of the Arbitration and conciliation Act, 1996, by appointing either one arbitrator or two arbitrators, one to be appointed by each party, who in turn shall appoint a third arbitrator whose decision shall be final and binding on the parties to the agreement.

16. That notwithstanding anything hereinafter contained, it is expressly agreed by and between the parties hereto that in the event of any default of any condition hereinafter referred to the Lessor shall be entitled to and shall always have the power to terminate the lease hereunder granted at his absolute discretion and/to keep the said premises without subjecting himself to any liability on that account and in such an event, the Lessee

shall surrender the premises and deliver the same to the Lessor.

17. In the event of there being any dispute between the parties on any terms of the agreement the said dispute shall be referred to the arbitral tribunal as per the following terms and condition:

a) Each party shall appoint one arbitrator.

b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as

determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties have put their signature hereunder on the Date, month, and the year first above written.

1. LESSOR

2. LESSEE

WITNESSES:
1.

2.

Mortgage Deed

THIS DEED OF MORTGAGE is executed on _____ in the year 2007 at Delhi.

BETWEEN

Sh. _____ S/o _____ R/o _____ hereinafter referred to as the Mortgagor (which expression shall, unless repugnant to the subject or the context, mean and include the heirs, successors, legal representatives, executors, administrators and assigns) of the First Part

AND

Sh. _____ S/o _____ R/o _____ hereinafter referred to as the Mortgagee (which expression shall, unless repugnant to the subject or the context mean and include the heirs, successors, legal representatives, executors, administrators and assigns) of the Second part.

Whereas the mortgagor is in need of some money for _____ purpose and with that purpose he approached the mortgage to borrow a sum of Rs _____.

And whereas the mortgage agreed to advance the said amount to the mortgagor on certain terms and conditions which have been accepted by the mortgagor.

NOW THIS DEED OF MORTGAGE WITNESSES AS UNDER:

1. That the mortgagor does hereby declare that he is full and sole owner of the house No. _____ situate at _____ bounded as under:

   In North by _____

   In South by _____

   In East by _____

   In West by _____

2. That the mortgagor is also the owner in possession of the land measuring _____ acres situate _____ together with all rights, easements of all kinds.
3. That the mortgagor has absolute authority to alienate the said property consisting of the house and the land.
4. That in consideration of a sum Rs _____ (in words _____) advanced by the said mortgagee, the receipt whereof is hereby acknowledged by the mortgagor, the mortgagor does hereby mortgage the said house and the land by way of simple mortgage without possession and has transferred and conveyed the interest in the said property up to the said mortgage to hold the same as security for repayment of the loan above mentioned with interest payable @ _____% per annum from date hereof until repayment or realization of the principal and interest accrued thereon.
5. That in case of non payment of the sum becoming due and payable by the mortgagor to the mortgage under this deed the mortgagee shall be entitled to cause the mortgaged premises to be sold and satisfy the debt. The mortgagor to the mortgagee under this deed the mortgagee shall be entitled to cause the mortgaged

premises to be sold and satisfy the debt. The mortgagor shall be personally liable to pay any amount still remaining due and payable to the mortgage.

6. That the mortgagor does hereby assure the mortgagee that the said house and the said land is free from all encumbrances and attachments and are not subject to any burdensome easement or right running with the land in favour of any person.

7. That the mortgagor has assured the mortgagee to get the house insured against the risk of damage by fire, earthquake or any other calamity natural or otherwise and keep the insurance policies in force and effective at his cost. The said insurance policy shall be taken in the name of the mortgagee.

8. That all rates, taxes, cess and other levies in respect of said house and the land shall be paid by the mortgagor.

9. That the period for which the mortgage has been effected in favour of the mortgage is three years. In case the mortgagor fails to make repayment of the mortgage money and interest accrued thereon in full, the mortgagee shall have the right to cause the said house and land to be sold and if on exercise of such right the property is sold, the proceeds thereof shall be first adjusted towards the interest and thereafter towards the principal and if there still remains balance to be paid by the mortgagor to the mortgagee, the mortgagor shall be personally liable for the same.

10. That the mortgagor has assured the mortgagee that the said house and the said land mortgaged unto the mortgagee is free from all encumbrances or charges and that the said mortgagor is entitled to mortgage the same.

11. That the mortgagee shall be bound to redeliver all the title deeds to the mortgagor and reconvey the said premises free from all encumbrances to the mortgagor on

payment of all the dues of the mortgagee in regard to this deed.

12. In the event of there being any dispute between the parties on any terms of the aforesaid agreement the said dispute shall be referred to the arbitral tribunal as per the following terms and condition:

a) Each party shall appoint one arbitrator.

b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

d) The Arbitration proceedings shall take place at _____, Delhi.

e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as

determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

13. In witness whereof the mortgagor and the mortgagee have signed this deed in taking of acceptance of the terms, conditions and stipulations hereof in presence of the witnesses under mentioned on the date aforementioned

Signature of the mortgagor

Signed, of the Mortgagee, in presence of:

WITNESSES:
1.

2.

Sale Deed

Consideration Value Rs _____
Stamp Duty Rs _____
Corporation Tax Rs _____
Total Stamp Rs _____
This Sale Deed is executed at New Delhi on this _____ day of _____,2007

BY

Sh. _____ S/o _____ R/o _____ hereinafter called "THE VENDOR".

IN FAVOUR OF

Sh. _____ S/o _____R/o _____hereinafter called "THE VENDEE".

The expression of the terms the 'VENDOR' and the 'VENDEE'' wherever they occur in the body of this Sale Deed, shall mean and include them, their legal heirs, successors, legal, representatives,

administrators, executors, transferee(s), beneficiary (ies), legatee(s), probatee(s), nominees and assignee(s).

AND WHEREAS the VENDOR is the sole, absolute and exclusive owner of the said property, which is the exclusive property of the VENDOR and the VENDOR has full right, absolute authority to sell, dispose off and transfer the same in whole or in parts and none else except the VENDOR has any right, title or interest in the same.

AND WHEREAS the VENDOR for his bonafide needs and requirements has agreed to sell, convey, transfer and assign to the VENDEE and the VENDEE has agreed to purchase the said property i.e. With all rights of easements, patent or latent, including rights of way and access enjoyed and reputed to be enjoyed in respect of the said property together with all rights in electricity, water, sanitary, fittings, fixtures, connections, lawns, compound, wall etc., structure standing thereon, with all rights of ownership and possession, for a total sale consideration of Rs _____

NOW THIS SALE DEED WITNESSETH AS UNDER

1. That in consideration of the sum of Rs _____, which has been received by the VENDOR from the VENDEE, in the following manner:

   The receipt of which the VENDOR hereby admits and acknowledges, in full and final settlement, the VENDOR doth hereby grant, convey, sell, transfer and assign all his rights, titles and interests in the said property, i.e. (_____), with all the rights of ownership, possession, easement, privileges and appurtenances, with all fittings, fixtures, connections, structure standing thereon free from all encumbrances unto the VENDEE, TO HAVE AND TO HOLD the said property hereby sold to the VENDEE absolutely and forever.

2. That the actual peaceful, physical vacant possession of the said property has been delivered by the VENDOR to the VENDEE, on the spot.

3. That the VENDOR hereby confirms admits and acknowledges that he has been left with no right, title, interest, claim or lien of any nature whatsoever in the said property, hereby sold, and the same has become the absolute and exclusive property of the VENDEE and VENDEE shall be at liberty to deal with the same in the manner she likes and free to use, enjoy, sell, gift, mortgage, lease and transfer the same by whatever mean it likes, without any interference, hindrance, demand, objection, claim or interruption by the VENDOR or any person(s) claiming under or through him or in trust for him.
4. That the VENDOR hereby assures the VENDEE that he has neither done nor been party to any act whereby his rights and title to the said property, in any way be impaired or whereby he may be prevented from transferring the said property.
5. That the VENDOR hereby declares and represents that the said property is never a subject matter of any HUF and that no part of the said property is owned by any minor and nobody has any right, title or interest of any kind whatsoever in the said property and further none else other than the VENDOR has any right, title or interest of any kind whatsoever in the whole or any part of the said property and further there is no impediment in the Vendor's right to execute this Sale Deed.
6. That the VENDOR hereby further assures, represents and covenants with the VENDEE as follows:
    a) That the said property is free from all liens, mortgages, charges and encumbrances and lis-pendens and there is no notices of attachments, acquisition or requisition or notices thereto, relating to the said property.

b) That the VENDOR has good and marketable title to the said property and none other than the VENDOR has any interest, right, title thereto.

c) That there are no outstanding government dues of whatsoever nature including the attachment by the Income Tax Authorities or under any law in force, in respect of the said property.

d) That the VENDOR has not entered into any Agreement with any other person(s) for the sale of the said property.

e) That there is no legal impediment or bar whereby the VENDOR can be prevented from selling, transferring and vesting the absolute title in the said property, in favour of the VENDEE.

7. That the VENDOR assures the VENDEE that the said property is free from all kinds of encumbrances such as prior Sale, Gift, Mortgage, Will, Trust, Exchange, Lease, legal flaws, claims, prior Agreement to Sell, Loan, Surety, Security, lien, court injunction, litigation, stay order, notices, charges, family or religious dispute, acquisition, attachment in the decree of any court, hypothecation, Income Tax or Wealth Tax attachment or any other registered or unregistered encumbrances whatsoever, and if it is ever proved otherwise, or if the whole or any part of the said property is ever taken away or goes out from the possession of the VENDEE on account of any legal defect in the ownership and title of the VENDOR then the VENDOR shall be liable and responsible to indemnify and to make good the loss suffered by the VENDEE and keep the VENDEE saved, harmless and indemnified against all such losses and damages suffered by the VENDEE.

8. That the VENDOR hereby further covenants with the VENDEE that in case the said property hereby sold or any part thereof, is lost from the VENDEE on account of

any legal defects in the title of VENDOR's right and title or the possession or quiet enjoyment of the said property by the VENDEE in any way is disturbed on account of some act or omission of the VENDOR or if any one else claims any right, title and interest paramount to the VENDOR, then the VENDOR shall be liable and responsible for all the losses, damages, costs and expenses sustained by the VENDEE.

9. That the VENDEE shall be at liberty to get the said property mutated in its own name in the records of MCD, DJB, BSES Rajdhani Power Limited, Revenue Records and other concerned authorities.

10. That the sale consideration include the consideration for electricity and water connection and the security deposits made with the said departments. The VENDEE shall be entitled to get the existing electricity and water connections transferred in its favour alongwith the security deposit with BSES Rajdhani Power Limited, water Department etc.

11. That the VENDOR agrees and undertakes to sign and execute any required documents for transfer of ownership, title of the said property in favour of the VENDEE in the records of Municipal Corporation of Delhi, Delhi Jal Board, BSES Rajdhani Power Limited, Revenue Records or any other concerned authorities.

12. That the house tax, water and electricity charges, and other dues and demands of whatsoever nature if any payable in respect of the said property shall be borne and paid by the VENDOR upto the date of handing over the possession to the VENDEE and thereafter the VENDEE will be responsible for the payment of the same.

13. That all the relevant documents in original in respect of the said property have been handed over by the VENDOR to the VENDEE.

14. That all the expenses of this sale deed viz. registration charges etc. have been borne and paid by the VENDEE. The VENDEE shall have the right to collect the original Sale Deed from the office of the Sub-Registrar.

15. In the event of there being any dispute between the parties on any terms and conditions of the aforesaid agreement the said dispute shall be referred to the arbitral tribunal as per the following terms and condition:

    a) Each party shall appoint one arbitrator.

    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.

    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.

    d) The Arbitration proceedings shall take place at _____, Delhi.

    e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

    f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

    g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

    h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties

m) does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

n) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

o) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

p) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

q) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

r) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF, the VENDOR and the VENDEE have signed this SALE DEED at New Delhi on the date first mentioned above in the presence of the following witnesses:

VENDOR

VENDEE

WITNESSES:
1.

2.

Surrender Deed in a Co-operative Housing Society

This Deed of Surrender is made on this the _____ day of 2005,

BETWEEN

Mr. _____ S/o _____ aged about _____ occupation _____, residing at _____, as the FIRST PART (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its administrators, liquidators, etc)

AND

M/s _____ (a co-operative housing society LTD, registered under _____ dated _____ having registered office at present at _____ hereinafter called party of the SECOND PART (hereinafter called and referred to as 'Society', which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its administrators, liquidators, etc).

WHEREAS the society is registered under provisions of Delhi Co-operative Societies Act, 2003 and the parties of the FIRST PART is holding right, title, and interest in respect of the shares and share certificate allotted to her/him as member and also the holder of incidental rights of occupation in respect of plot no. _____ admeasuring about _____ sq. m i.e. _____ sq. ft. More particularly described in schedule hereunder

AND WHEREAS the said member till this day did not construct on the said plot reserved for him and which remained vacant,

WHEREAS the said party of the FIRST PART do not desire to construct and occupy the said plot no. _____ in future and that the party of the FIRST PART are desirous of transferring their properties in favor of the person who shall be admitted as a member of the society and has further admitted to transfer her share and interest in respect on plot no _____ and has further requested the society that she has no interest existing in the said plot no _____ and she is ready and willing to surrender her leasehold rights in the society willfully along with the right, title, if any and interest in shares without any consideration from the society.

AND WHEREAS the member is a lessee in respect of plot no. _____ under the registered lessee deed dt _____ registered in the office of Sub-Registrar, _____ at Sr. _____ on _____, and

The society has accepted the surrender of the said plot no. _____ in favour of the society and in lieu of the said surrender the society is ready to pay to the parties of the FIRST PART and the share money which stands as Rs _____ and the amount in respect of the plot standing in his name, and

NOW THIS DEED OR SURRENDER WITNESSETH AS UNDER:

That the party of the FIRST PART has surrendered without any consideration but accepting refund of Rs _____ all his rights, title and interest as lessee and otherwise all the rights as member in respect of the said property i.e. plot no. _____ which has been

described in as hereunder, in favour of the society and the society has accepted the said surrender of the said plot from the party of the FIRST PART. The society by virtue of this surrender of the said plot has got all powers and control over the said acts of surrender in respect of the plot no. _____.

IN WITNESSETH WHEREOF the parties hereinabove mentioned have put their seal and signatures on the day and date hereinabove mentioned in presence of the witnesses:

DESCRIPTION OF THE PROPERTY

All that piece and parcel of land bearing plot no. _____ situated on the lessors estate bearing S. Nos. _____ & _____ (part) in the village _____ in registration sub district of haveli, dist. _____, within the limits of _____ municipal corporation and bounded as follows:

EAST:

SOUTH:

WEST:

NORTH:

Measuring approximate. _____ sq. m i.e. _____ sq. ft.

THE PARTY OF THE FIRST PART

THE PARTY OF THE SECOND PART

WITNESSESS:

1.

2.

General Power of Attorney

This General Power of Attorney is executed at _____ on this _____ day of _____ 2007 by Sh. _____ Son of Sh. _____ resident of _____ Delhi.

BY THESE PRESENTS, I _____ S/o _____ aged about _____ years resident of _____, do hereby nominate, constitute and appoint Mr. _____ aged about _____ years _____ son of _____ R/o _____, Delhi as my true and lawful Attorneys, in my name my behalf, to do all or any of the following acts, deeds and things, in regard to the Schedule Property:

1. To manage the Schedule Property and pay all taxes, rates and cesses, charges, fines and other levies in regard to the Schedule Property and obtain receipts and discharges.
2. To appear for and represent us before all Government, Statutory, Local, Revenue, Tax and other Authorities as also Courts and Tribunals in regard to the Schedule Property.
3. To submit applications and affidavits, statements, returns to the Government and/or any other Statutory Authorities concerned to obtain necessary clearances, exemptions, sanctions and permissions required under any Act/Law.
4. To negotiate and agree to and enter into agreement/s for sale of the Schedule Property and to sell and convey the Schedule Property and execute Deed of Sale in favour of purchaser/s and do everything necessary for completing the conveyance and registration of such Sale Deeds; and to sign all Forms, Affidavits, applications in that behalf.
5. To receive the sale consideration, advances, earnest money deposits, part payments and balance payments in regard to the sale of the Schedule Property and issue receipts and acknowledgements therefore.
6. To collect, demand and/or recover rents, profits and any other payments whatsoever due or which may become due from time to time in respect the said property or any person thereof and to give a valid receipt and discharge therefore and to make all just and reasonable

adjustments and allowances in respect of the rates, taxes and other out goings.

7. To apply for and obtain all clearance certificate/s and/or no objections required from the concerned Authority.
8. To apply for and obtain necessary clearances, permissions and consents required in connection with sale of the Schedule Property.
9. To represent me before all Government, Statutory, local and other Authorities as also Courts and Tribunals.
10. To initiate, prosecute and defend all arbitration, legal, Revenue, tax and other proceedings relating to the Schedule Property and in that behalf, engage the services of legal and tax practitioners, instruct them and remunerate them.
11. To sign and execute pleadings, applications, petitions, affidavits, declarations, memoranda of appeal, Revision and Review, Returns and other papers/documents and to receive and accept service of processes, Notices, Orders and acknowledge them.
12. To settle, compromise, compound, withdraw any Suit/ proceeding relating to Schedule Property and obtain return thereof; and to do all things and be in charge of conduct of such or proceeding.
13. To pay all rates, taxes and cesses and obtain receipts thereof.
14. Generally to do all other acts, deeds and things whatsoever my attorney deem fit and proper for and incidental to the proper management of the said property or the affairs relative thereto.

I HEREBY AUTHORISE my said Attorneys to delegate all or any of the aforesaid powers to anyone else.

AND I DO HEREBY AGREE AND UNDERTAKE TO be bound by all and whatsoever my said Attorneys may lawfully do or

perform or cause to be done or performed pursuant to or by virtue of these presents.

SCHEDULE
North:
South:
East:
West:

IN WITNESS WHEREOF weI the above named have duly executed at Delhi this POWER OF ATTORNEY on this _____day of _____, 2007 in the presence of the Witnesses attesting hereunder:

WITNESSES:

EXECUTANT
1)

2)

Special Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that I Shri _____ S/o _____ aged about _____ years, R/o _____ through this special power of attorney do hereby appoint, nominate and constitute Sh. _____ as my true and lawful Special Attorney in my name and on my behalf to do and execute the following acts, deeds and things with regards to property No. _____ situated at _____ built on freehold land admeasuring 400 sq. yd.

THE DEED IS WITNESSES AS FOLLOWS:

1. To sign, execute such agreement, document, transfer forms, applications and any other papers or letters by

which my right in Flat No. _____ situated on the _____ Floor are transferred in the name of Shri _____.

2. To do all such acts, sign papers, documents for affecting the transfer of electricity meter in the name of Shri _____.
3. To manage the Schedule Property and pay all taxes, rates and cesses, charges, fines and other levies in regard to the Schedule Property and obtain receipts and discharges;
4. To appear for and represent us before all Government, Statutory, Local, Revenue, Tax and other Authorities as also Courts and Tribunals in regard to the Schedule Property;
5. To hand over possession and to do all other acts, deeds and things necessary in regard to disposal of the Schedule Property;

This shall be irrevocable one and I HEREBY AGREE AND UNDERTAKE TO RATIFY AND CONFIRM all and whatsoever my said Attorneys may lawfully do pursuant to this Power of Attorney.

IN WITNESS WHEREOF I have signed this Special Power of Attorney on the date i.e. this _____ day of _____ 2007 at _____ in the presence of the Witnesses attesting hereunder:

WITNESSES:

EXECUTANT

1)

2)



5.13

Accounting for Investors

Property held for investment includes

- property that produces interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business.
- property that produces gain or loss (not derived in the ordinary course of a trade or business) from the sale or trade of property producing these types of income or held for investment .
- an interest in land or buildings that are not intended to be occupied substantially for use by, or in the operations of, the investing enterprise .

Accounting standard 13 would be applicable in accounting for investments.

Under AS 13, the first step is to classify investments. Investments may be current or long term. A long term investment is an investment other than a current investment. Current investments are "investment that is by its nature readily realisable and is intended to be held for not more than one year from the date on which such investment is made". However, investment in property has to be necessarily classified as long term and disclosed separately.

Cost of investment

The cost of investment property will include:

- brokerage, fees and duties.

Determination of acquisition cost

- If property is acquired, or partly acquired, by the issue of shares or other securities, the acquisition cost should be the fair value of the securities issued (which in appropriate cases may be indicated by the issue price as determined by statutory authorities). The fair value may not necessarily be equal to the nominal or par value of the securities issued.
- If property is acquired in exchange for another asset, the acquisition cost would be determined by reference to the fair value of the asset given up. Alternatively, the acquisition cost of the investment may be determined with reference to the fair value of the investment acquired if it is more clearly evident.

Carrying amount of investment property

- Investment property should be carried in the financial statements at cost. However, provision for diminution shall be made to recognise a decline, other than temporary, in the value of the investments, such reduction being determined and made for each investment individually.
- Any reduction in the carrying amount and any reversals of such reductions should be charged or credited to the profit and loss statement.

Disposal of investments

- On disposal of an investment, the difference between the carrying amount and net disposal proceeds should be charged or credited to the profit and loss statement.

Disclosure

The following information should be disclosed in the financial statements:

a) the accounting policies for determination of carrying amount of investment property;
b) classification of investment investment property;
c) the amounts included in profit and loss statement for:
   i) Rentals on investments. Gross income should be stated, the amount of income tax deducted at source being included under Advance Taxes Paid;
   ii) Profits and losses on disposal of investment property and changes in the carrying amount of such investments;
c) significant restrictions on the right of ownership, realisability of investment property or the remittance of income and proceeds of disposal;
d) other disclosures as specifically required by the relevant statute governing the enterprise.

Treatment in certain cases

- The gross income from property held for investment will be included under Investment income.
- **Expenses of Producing Income: Expenses** incurred (other than interest expenses) to produce or collect income, or to manage property held for producing income can be deducted. The expenses must be directly related to the income or income-producing property, and the income must be taxable to you.
- **Attorney or accounting fees.** You can deduct attorney or accounting fees that are necessary to produce or collect investment income. However, when the property is acquired, attorney or accounting fees are to be included in costs

- **Investment interest:** If you borrow money to buy property you hold for investment, the interest you pay is investment interest.
- **Fees to buy or sell:** You add the fee you pay to a broker to acquire investment property, to the cost of the property. You cannot deduct any broker's fees, commissions, you pay (or that were netted out) in connection with the sale of investment property. They can be used only to figure gain or loss from the sale.
- **Investment counsel and advice.** You add fees you pay for counsel and advice about investments while acquiring them. This includes amounts you pay for investment advisory services.
- State and local transfer taxes. If you pay state and transfer taxes when you buy property, you must treat them as part of the cost of the property. If you pay these transfer taxes when you sell, you must treat them as a reduction in the amount realized.

Please check the Accounting Standand 13 reproduced for your reference:

Accounting for Investments

The following is the text of Accounting Standard (AS) 13, 'Accounting for Investments', issued by the Council of the Institute of Chartered Accountants of India.

Introduction

1. This Statement deals with accounting for investments in the financial statements of enterprises and related disclosure requirements.
2. This Statement does not deal with:

a) the bases for recognition of interest, dividends and rentals earned on investments which are covered by Accounting Standard 9 on Revenue Recognition;
b) operating or finance leases;
c) investments of retirement benefit plans and life insurance enterprises; and
d) mutual funds and/or the related asset management companies, banks and public financial institutions formed under a Central or State Government Act or so declared under the Companies Act, 1956.

Definitions

3. The following terms are used in this Statement with the meanings assigned:

Investments are assets held by an enterprise for earning income by way of dividends, interest, and rentals, for capital appreciation, or for other benefits to the investing enterprise. Assets held as stock-in-trade are not 'investments'.

A current investment is an investment that is by its nature readily realisable and is intended to be held for not more than one year from the date on which such investment is made.

A long term investment is an investment other than a current investment.

An investment property is an investment in land or buildings that are not intended to be occupied substantially for use by, or in the operations of, the investing enterprise.

Fair value is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction. Under appropriate circumstances, market value or net realisable value provides an evidence of fair value.

Market value is the amount obtainable from the sale of an investment in an open market, net of expenses necessarily to be incurred on or before disposal.

Explanation

Forms of investments

4. Enterprises hold investments for diverse reasons. For some enterprises, investment activity is a significant element of operations, and assessment of the performance of the enterprise may largely, or solely, depend on the reported results of this activity.
5. Some investments have no physical existence and are represented merely by certificates or similar documents (e.g., shares) while others exist in a physical form (e.g., buildings). The nature of an investment may be that of a debt, other than a short or long term loan or a trade debt, representing a monetary amount owing to the holder and usually bearing interest; alternatively, it may be a stake in the results and net assets of an enterprise such as an equity share. Most investments represent financial rights, but some are tangible, such as certain investments in land or buildings.
6. For some investments, an active market exists from which a market value can be established. For such investments, market value generally provides the best evidence of fair value. For other investments, an active market does not exist and other means are used to determine fair value.

Classification of investments

7. Enterprises present financial statements that classify fixed assets, investments and current assets into separate categories. Investments are classified as long term investments and current investments. Current investments

are in the nature of current assets, although the common practice may be to include them in investments.

8. Investments other than current investments are classified as long term investments, even though they may be readily marketable.

Cost of investments

9. The cost of an investment includes acquisition charges such as brokerage, fees and duties.
10. If an investment is acquired, or partly acquired, by the issue of shares or other securities, the acquisition cost is the fair value of the securities issued (which, in appropriate cases, may be indicated by the issue price as determined by statutory authorities). The fair value may not necessarily be equal to the nominal or par value of the securities issued.
11. If an investment is acquired in exchange, or part exchange, for another asset, the acquisition cost of the investment is determined by reference to the fair value of the asset given up. It may be appropriate to consider the fair value of the investment acquired if it is more clearly evident.
12. Interest, dividends and rentals receivables in connection with an investment are generally regarded as income, being the return on the investment. However, in some circumstances, such inflows represent a recovery of cost and do not form part of income. For example, when unpaid interest has accrued before the acquisition of an interest-bearing investment and is therefore included in the price paid for the investment, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion is deducted from cost. When dividends on equity are declared from pre-acquisition profits, a similar treatment may apply. If it is difficult to make such an allocation except on an arbitrary basis, the cost of investment is normally reduced by dividends

receivable only if they clearly represent a recovery of a part of the cost.

13. When right shares offered are subscribed for, the cost of the right shares is added to the carrying amount of the original holding. If rights are not subscribed for but are sold in the market, the sale proceeds are taken to the profit and loss statement. However, where the investments are acquired on cum-right basis and the market value of investments immediately after their becoming ex-right is lower than the cost for which they were acquired, it may be appropriate to apply the sale proceeds of rights to reduce the carrying amount of such investments to the market value.

Carrying amount of investments

Current investments

14. The carrying amount for current investments is the lower of cost and fair value. In respect of investments for which an active market exists, market value generally provides the best evidence of fair value. The valuation of current investments at lower of cost and fair value provides a prudent method of determining the carrying amount to be stated in the balance sheet.

15. Valuation of current investments on overall (or global) basis is not considered appropriate. Sometimes, the concern of an enterprise may be with the value of a category of related current investments and not with each individual investment, and accordingly the investments may be carried at the lower of cost and fair value computed category-wise (i.e. equity shares, preference shares, convertible debentures, etc.). However, the more prudent and appropriate method is to carry investments individually at the lower of cost and fair value.

16. For current investments, any reduction to fair value and any reversals of such reductions are included in the profit and loss statement.

Long-term investments

17. Long-term investments are usually carried at cost. However, when there is a decline, other than temporary, in the value of a long term investment, the carrying amount is reduced to recognise the decline. Indicators of the value of an investment are obtained by reference to its market value, the investee's assets and results and the expected cash flows from the investment. The type and extent of the investor's stake in the investee are also taken into account. Restrictions on distributions by the investee or on disposal by the investor may affect the value attributed to the investment.
18. Long-term investments are usually of individual importance to the investing enterprise. The carrying amount of long-term investments is therefore determined on an individual investment basis.
19. Where there is a decline, other than temporary, in the carrying amounts of long term investments, the resultant reduction in the carrying amount is charged to the profit and loss statement. The reduction in carrying amount is reversed when there is a rise in the value of the investment, or if the reasons for the reduction no longer exist.

Investment properties

20. The cost of any shares in a co-operative society or a company, the holding of which is directly related to the right to hold the investment property, is added to the carrying amount of the investment property.

Disposal of investments

21. On disposal of an investment, the difference between the carrying amount and the disposal proceeds, net of expenses, is recognised in the profit and loss statement.
22. When disposing of a part of the holding of an individual investment, the carrying amount to be allocated to that part is to be determined on the basis of the average carrying amount of the total holding of the investment.

Reclassification of investments

23. Where long-term investments are reclassified as current investments, transfers are made at the lower of cost and carrying amount at the date of transfer.
24. Where investments are reclassified from current to long-term, transfers are made at the lower of cost and fair value at the date of transfer.

Disclosure

25. The following disclosures in financial statements in relation to investments are appropriate:
    a) the accounting policies for the determination of carrying amount of investments;
    b) the amounts included in profit and loss statement for:
        i) interest, dividends (showing separately dividends from subsidiary companies), and rentals on investments showing separately such income from long term and current investments. Gross income should be stated, the amount of income tax deducted at source being included under Advance Taxes Paid;
        ii) profits and losses on disposal of current investments and changes in carrying amount of such investments;

iii) profits and losses on disposal of long term investments and changes in the carrying amount of such investments;

c) significant restrictions on the right of ownership, realisability of investments or the remittance of income and proceeds of disposal;

d) the aggregate amount of quoted and unquoted investments, giving the aggregate market value of quoted investments;

e) other disclosures as specifically required by the relevant statute governing the enterprise.

Accounting standard

(The Accounting Standard comprises paragraphs 26–35 of this Statement. The Standard should be read in the context of paragraphs 1–25 of this Statement and of the 'Preface to the Statements of Accounting Standards'.)

Classification of investments

26. An enterprise should disclose current investments and long term investments distinctly in its financial statements.

27. Further classification of current and long-term investments should be as specified in the statute governing the enterprise. In the absence of a statutory requirement, such further classification should disclose, where applicable, investments in:

a) Government or Trust securities

b) Shares, debentures or bonds

c) Investment properties

d) Others—specifying nature.

Cost of investments

28. The cost of an investment should include acquisition charges such as brokerage, fees and duties.

29. If an investment is acquired, or partly acquired, by the issue of shares or other securities, the acquisition cost should be the fair value of the securities issued (which in appropriate cases may be indicated by the issue price as determined by statutory authorities). The fair value may not necessarily be equal to the nominal or par value of the securities issued. If an investment is acquired in exchange for another asset, the acquisition cost of the investment should be determined by reference to the fair value of the asset given up. Alternatively, the acquisition cost of the investment may be determined with reference to the fair value of the investment acquired if it is more clearly evident.

Investment properties

30. An enterprise holding investment properties should account for them as long term investments.

Carrying amount of investments

31. Investments classified as current investments should be carried in the financial statements at the lower of cost and fair value determined either on an individual investment basis or by category of investment, but not on an overall (or global) basis.

32. Investments classified as long term investments should be carried in the financial statements at cost. However, provision for diminution shall be made to recognise a decline, other than temporary, in the value of the investments, such reduction being determined and made for each investment individually.

Changes in carrying amounts of investments

33. Any reduction in the carrying amount and any reversals of such reductions should be charged or credited to the profit and loss statement.

Disposal of investments

34. On disposal of an investment, the difference between the carrying amount and net disposal proceeds should be charged or credited to the profit and loss statement.

Disclosure

35. The following information should be disclosed in the financial statements:
    a) the accounting policies for determination of carrying amount of investments;
    b) classification of investments as specified in paragraphs 26 and 27 above;
    c) the amounts included in profit and loss statement for:
        i) interest, dividends (showing separately dividends from subsidiary companies), and rentals on investments showing separately such income from long term and current investments. Gross income should be stated, the amount of income tax deducted at source being included under Advance Taxes Paid;
        ii) profits and losses on disposal of current investments and changes in the carrying amount of such investments; and
        iii) profits and losses on disposal of long term investments and changes in the carrying amount of such investments;

d) significant restrictions on the right of ownership, realisability of investments or the remittance of income and proceeds of disposal;

e) the aggregate amount of quoted and unquoted investments, giving the aggregate market value of quoted investments;

f) other disclosures as specifically required by the relevant statute governing the enterprise.

Effective date

36. This Accounting Standard comes into effect for financial statements covering periods commencing on or after April 1, 1995.



6.1

Accounting Aspects of Construction Business

If only life were like *Monopoly*, where real estate transactions form with a roll of the dice or the flick of a playing card. Unfortunately, in real life accounting for real estate is a bit more complicated than just adding it to the community chest. Properly recognizing and reporting of transactions is a must.

Every business needs to maintain books of accounts and records using a method of accounting in accordance with the laws of the land. An accounting method is a set of rules used to determine when and how to report income and expenses.

There should be consistency in the method and it should be appropriate to the nature of business.

Usually in a construction activity the date of commencement and date of completion fall in different accounting periods. The key issue is the allocation of revenues and costs to the different accounting periods in which the contract work is performed. This necessitates specialized principles for its accounting. Worldwide accounting bodies have prescribed separate accounting standards for accounting for construction contracts.

Accounting and taxation of construction business often pose serious problems due to the following factors:

1. There are various methods of accounting—cash vs. mercantile; completed contract vs. progressive completion;
2. Projects usually range over a long period, often more than one or two years and there is an element of uncertainty in determination of profits.
3. Various events are to be reconciled with each other, viz. entering into of agreements, execution of agreement, handing over of possession, progressive payments, concepts of FSI, TDR, roles of builder–developers vis-à-vis contractors.
4. Amounts involved are usually quite high and even a small error in judgment may have serious repercussions.
5. Accounting standards also elude simplicity.
6. Motivations of Revenue authorities are also vicious.

Now let us the difference in accounting treatment of construction business and other business:

Revenue recognition and accounting for construction business is different from other businesses because unlike most other businesses, there can be a long gap between the commencement of work in a construction business and its completion. This gap can sometimes spread over various accounting periods also.

Besides this, various legal agreements form the basis for the business. These agreements can vary for almost each contract entered into for construction activities and the entire accounting and tax treatment of the transactions depends on the terms and conditions contained in the said agreements.

Accounting method

Under section 145 of the Income Tax Act 1961, an assessee can maintain accounts either on cash or mercantile basis. If any other method is followed by an assessee, it will entitle the assessing officers to reject the book results and to make the best judgment

assessments under section 144. The same consequence will follow if there is non compliance with the standards notified by the Central Government.

Builders or promoters may own the land and then construct the property. In such a case the accounting method to be used will be in accordance with Accounting Standards that are applicable to other business.

Currently, there is no prescribed method of accounting of revenue and cost for companies engaged in real estate development under Indian GAAP. The Accounting Standard 7 ("AS-7") issued by the Institute of Chartered Accountants of India is applicable to entities in the business of construction contracts and entities engaged in real estate development business are not required to comply with AS-7.

However, when they undertake construction activity under a contract from another entity AS 7 Construction Contracts will apply.

Accounting for construction activity not in the nature of contract

AS-9. Revenue Recognition (for accounting for revenue).

AS-2. Valuation of Inventories (for accounting for inventories}.

AS-9: Revenue recognition

This standard deals with recognition of revenue arising in the course of ordinary activities of the business arising from

- ✦ sale of goods
- ✦ rendering of services
- ✦ use by others of enterprise resources yielding interest, royalties and dividends

It provides for recognition of revenue when:

1. Seller has transferred significant risks and rewards of ownership to buyer

2. No significant uncertainty regarding amount of consideration that will be derived from sale of goods

Revenue arising from the sale of goods should be recognized when all of the following criteria have been satisfied: (Acronym: CREAM)

C — Cost incurred can be measured reliably

R — Significant Risks and rewards of ownership has been be transferred to the buyer

E — Economic benefits will flow to the entity

A — Amount of revenue can be measured reliably

M — Entity does not have continuous Managerial involvement or effective control

Disclosure

- ✦ Accounting policy for recognizing revenue
- ✦ Amount of each significant category of revenue which includes sale of goods
- ✦ Amount of revenue arising from exchange of goods or services

However, many builders and developers have been following the revenue recognition method provided in AS 7 though it is not required .The method of recognizing revenue under percentage completion method (provided in AS 7) also finds favour with tax and regulatory authorities.

B. Accounting for construction activity in the nature of contracts

AS-7 Construction Contracts by Institute of Chartered Accountants of India will apply in this case. Let us understand definition of some terms in AS 7

Construction contract

A construction contract is a contract specifically negotiated for the construction of an asset or a combination of an asset or

combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.

It includes contracts for rendering of service which are directly related to the construction of an asset example, services of architects and contracts destruction or restoration of asset and restoration of environment following demolition of assets.

A fixed price contract is a construction contract in which the contractor agrees to a fixed contract price or a fixed rate per unit of output which in some cases is subject to cost escalation clauses.

A cost plus contract is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs plus percentage of these costs or a fixed fee.

Contract revenue

Contract revenue should include the amount agreed in the initial contract, revenue from alternations in the original contract work and claims and incentive payments that (a) are expected to be collected and (b) that can be measured reliably.

Estimates of contract revenues would need to be revised as events occur and uncertainties are resolved. The revenue may vary due to mutual agreement to change, cost escalation clause, penalties, variation in work, claims, incentive payments etc.

Measurement of contract revenue

The measurement of contract revenue as above can be affected by a variety of uncertainties. Thus, depending on the outcome of future events and as and when uncertainties are resolved, contract revenue may increase or decrease. Such increase or decrease also can be due to:

Claims made by the contractor for extra work done or on account of incentive payments or

Penalties agreed to be paid by the contractor due to delays cost in the completion of the contract.

There can be even a variation in the contract revenue, which can arise when there is a change in the scope of the work to be performed under the contract.

Measurement of contract revenue-reimbursements and additional incentives

The contractor may seek to collect from the customer for reimbursements of extra costs not forming part of the contract price. Such claims can be due to customer caused delays, errors in specification of design and disputed variations in the contract work. Since the recoverability of such claims is highly uncertain, they can be included in contract revenue only when:

Negotiations have reached an advanced stage such that it is probable that the customer will accept the claim and

The amount of the claim fulfills the conditions of the definition of contract revenue.

There can also be incentive payments that are additional payments payable to the contractor if the specified standards are met or exceeded. For example, an incentive of 2% of the contract price if the work is completed 1 month before the stipulated time. Such incentive payments can be included in the contract revenue only when:

The contract is sufficiently advanced which makes it probable that the specified performance standards will be met or exceeded and

The amount of the incentive payment can be measured reliably.

Contract costs

Contract costs should include costs that relate directly to the specific contract, costs that are attributable to the contractor's general contracting activity to the extent that they can be reasonably allocated to the contract and such other costs that can be specifically charged to the customer under the terms of the

contract. The allocation of costs should be consistent from year to year.

Costs would include labour, materials, and subcontractor expenses that can be traced directly to the construction project. The wage paid to a site manger is an example of a direct labour cost. Other costs would be

- ✦ Repair and maintenance expenses for equipment and facilities.
- ✦ Rent of equipment and facilities.
- ✦ Quality control.
- ✦ Taxes relating to labour, materials, supplies, equipment or facilities.
- ✦ Indirect materials and supplies.
- ✦ Tools and equipment.
- ✦ Depreciation.
- ✦ Insurance on equipment and machinery.
- ✦ Indirect labor and contract supervisory wages.
- ✦ Claims from third parties.

Other costs should be included if the contract specifically allows for the recharge of such costs. General overhead costs, research and development costs, selling costs not specifically rechargeable under the terms of the contract should not be included. Costs relating to inefficiencies, for example the depreciation cost of idle plant should also be excluded.

An entity may include construction overheads like preparation and processing of payroll and borrowing costs (as per AS 16)

Following costs cannot be attributed to contract activity

a) General administration contract for which reimbursement is not specified in the contract
b) Selling costs
c) Research and development costs for which reimbursement is not specified in the contract

d) Depreciation of idle pant and equipment that is not used on a particular contract

Cost of variations and claims

A variation is a modification of the original construction contract that may lead to an increase or decrease in the amount of work (costs) and contract revenue.

A claim relates to additional amounts sought by the contractor as compensation for cost overruns.

Costs a contractor incurs with respect to variations and claims should be accounted for as contract costs and included in work in progress; however, the costs of the variations and claims should only be reflected in contract revenue to the extent that the amounts are expected to be recoverable.

Construction of many assets-treatment

Construction contracts can be combined or segmented in certain cases. Paragraph 7 of AS 7 (revised) provides that when the contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when certain criteria are met. Guidance is also provided for a group of contracts, whether with a single customer or with several customers, which are to be treated as a single construction contract.

Construction of additional assets-treatment

A contract may provide for construction of an additional asset at the option of the customer or the same maybe amended to include the construction of an additional asset. In such cases also, guidance is provided as to when the construction of the additional asset should be treated as a separate construction contract.

How is recognition of contract costs and revenue to be done?

AS 7 (revised) permits recognition of revenue and expenses only

by the "Percentage of Completion Method".

Here, contract revenue is recognised as revenue in the statement of profit and loss in the accounting periods in which the work is performed.

Paragraph 21 of AS 7 (revised)When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity and the reporting date.

The contract costs are also to be recognised in normal cases as expenses in the statement of profit and loss in the accounting periods in which the work to which they relate is performed.

In other words, the contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit that can be attributed to the proportion of work completed.

Revenue recognition-fixed price contracts

The outcome of a construction contract can be estimated reliably when all the following conditions are satisfied:

Total contract revenue can be measured reliably;

It is probable that the economic benefits associated with the contract will flow to the enterprise;

Both the contract costs to complete the contract and the stage of contract completion at the reporting date can be measured reliably; and

The contract costs attributable to the contract can be clearly identified and measured reliably so that actual contract costs incurred can be compared with prior estimates.

Revenue recognition-cost plus contracts

The outcome of a construction contract can be estimated reliably when all the following conditions are satisfied:

It is probable that the economic benefits associated with the contract will flow to the enterprise; and

The contract costs attributable to the contract, whether or not specifically reimbursable, can be clearly identified and measured reliably.

To make reliable estimates for contract revenue and costs, the enterprise should have an effective internal reporting system, which will also make, review and revise estimates as and when required.

Reliable estimates

As a guideline, the standard mentions that an enterprise is generally able to make reliable estimates when the contract establishes:

Each party's enforceable rights regarding the asset to be constructed;

The consideration to be exchanged and

The manner and terms of settlement.

What happens when the outcome cannot be estimated reliably?

Revenues should be recognised only to the extent of contract costs incurred of which recovery is probable; and

Contract costs should be recognised as an expense in the period in which they are incurred.

If, during the early stages of a contract, the outcome of the contract cannot be estimated reliably, but it is probable that the enterprise will recover the contract costs, contract revenue is recognised only to the extent of costs incurred that are expected to be recovered.

In such cases, no profit can also be recognised. In all such cases also, if there is an excess of the contract costs over contract revenues the same is to be immediately recognised as an expense.

What happens when contracts costs are not recoverable?

Contract costs whose recovery is not probable are recognised as an expense immediately. Such circumstances can arise when:

- The contract is not fully enforceable and its validity is in question;
- The completion of the contract is subject to the outcome of pending litigation or legislation;
- Contracts relating to properties are likely to be condemned or expropriated;
- When the customer is unable to meet its obligations; or
- Where the contractor is unable to complete the contract or meet its obligations under the contract.

Recognition of expected losses

A loss is expected if estimated total contract cost exceeds estimated contract revenue. The entire loss should be recognized as an expense immediately if at any stage a contractor expects to incur a loss on completion of a construction contract. The loss is to be determined even if work has not commenced on the contract or there is profit on other contracts.

When it is probable that the total contract costs will exceed the total contract revenue, the expected loss should be immediately recognised as an expense. Such loss is to be determined irrespective of:

- Whether or not work has commenced on the contract;
- The stage of completion of contract activity; or
- The amount of profits expected to rise on other contracts that are not treated as a single construction contract.

Treatment of land cost

The deals of purchase of land are seldom simple and straightforward.

The cost of the land is added to the total cost of project proportionate to the construction completed vis-à-vis the total construction.

In case the plot of land is introduced by the partner as his capital contributions, as per section 45(3), the value of asset recorded in the books of accounts of the firm is to be taken as the full value of consideration received or accrued as a result of the transfer of land. As a corollary, the same will be treated as cost in the hands of the firm.

Many times, the land is purchased where there are already unauthorized dwelling units. Certain amount of compensation or similar other cost is required to be incurred for clearing such encroachments. Such costs form part of the cost of the land.

Accounting

If the outcome of a construction contract can be estimated reliably, revenue and costs should be recognized in proportion to the stage of completion of contract activity. This is the percentage of completion method of accounting. To be able to estimate the outcome of a contract reliably, the enterprise must be able to make a reliable estimate of total contract revenue, the stage of completion, and the costs to complete the contract.

If the outcome cannot be estimated reliably, no profit should be recognized. Instead, contract revenue should be recognized only to the extent that contract costs incurred are expected to be recoverable and contract costs should be expensed as incurred. An expected loss on a construction contract should be recognized as an expense as soon as such loss is probable

Case law on method of accounting

Happy home developers vs. asstt. cit-115 taxman 309–(Mum)

Facts: The assessee was a builder who sold two buildings in two assessment years. In the third year, there were major receipts from the projects. The assessee offered the income of all the three

years in the third year since he was following Project Completion Method. The AO estimated the income for the first two years. It was also argued by the Revenue that the assessee was not a builder but was only a financier/Supervisor of the building. The land was also not transferred to the assessee.

Held: The tribunal held that the assessee was entitled to follow the project–completion method and estimation of profits for first two years was deleted.

Greater ashok land and dev. co. (p) ltd. vs. asstt. cit–79 itd 595–Delhi

Facts: The assessee was engaged in the business of development of land and sale of plots. It sold some plots during the year. However, no profit was offered to tax on the ground that the assessee was following single venture method of accounting.

Held: It was held that though section 145 permits the adoption of the method of accounting for the income computed under the head Business Income and Income from other sources, the method which allows the assessee to defer the accrued income of a particular year to future year, can not be said to be a proper method of accounting. It will come in the way of section 4 since such profits would not belong to the last year.

Stage of completion

The stage of completion of a contract can be determined in a variety of ways including the proportion that contract costs incurred for work performed to date bear to the estimated total contract costs, surveys of work performed, or completion of a physical proportion of the contract work. In case the stage of completion is determined by cost incurred till date materials to be used in future and advance payments should be excluded.

Work in progress

Construction contract work in progress (WIP) balances represent those costs incurred in respect of construction contracts as at the

balance sheet date that will be recovered in future periods. Costs incurred after the date when it is probable that they will be recovered, should be included in WIP. Any uncertainty regarding collectivity of amount after that day should be recognized as expense and is not be adjusted to contract revenue.

Retention money-treatment

It should be offered to tax as and when received.

In case the retention amount is not received, the TDS amount on the retention money may have to be forgone.

It is worth noting that the old Accounting Standard (AS-7) permitted both the treatments namely recognition of Income on accrual basis or on receipt basis. However, the revised AS-7 is silent on this issue.

Statutory disallowances

Sec. 40A (3): The very nature and magnitude of transactions is such that payments of expenditure in cash exceeding Rs. 20,000/- become almost inevitable.

Explanation to Sec.37: Payments of protection money, speed money etc are the open secrets of the construction business. These may attract disallowance on the ground that the payments are for a purpose which is an offence or which is prohibited by law.

Sec. 40 (a): Payments to non-residents without TDS. This may be relevant if land is purchased from an NRI; or where foreign experts are hired (e.g. construction of bridges, dams, etc)

Sec. 43B: Statutory and other payments like interest to Banks; as contemplated in sec. 43B, if not paid within prescribed time, will be disallowed. Works Contract Tax may also be a sizeable amount.

Disclosure

An enterprise needs to disclose:

- ✦ contract revenue recognized as revenue in the period;

- ✦ contract costs incurred and recognized profits (less recognized losses) to date
- ✦ advances received before work is performed. (Include within trade and other payables)
- ✦ retentions.(in current assets)
- ✦ details of methods used to determine contract revenue.
- ✦ details of methods used to determine stage of completion.

Presentation

- ✦ The gross amount due from customers is asset.
- ✦ The gross amount due to customers is liability.

Calculation of work in progress

The gross amount due from customers for contract work is the net amount of:

a) costs incurred plus recognized profits; less
b) the sum of recognized losses and progress billings
c) for all contracts in progress for which costs incurred plus recognized profits (less recognized losses) exceed progress billings.

This amount is included in the balance sheet as Construction contract WIP. Where progress billing exceeds cost incurred plus recognized profit (less recognized loss), the balance will be a net credit balance and represents deferred revenue. This is included in liabilities as amount due to customers for contract work. The negative balance is not offset against positive work in progress balances on other contracts.

Retentions are the amounts of progress billings that are not paid until conditions specified in the contract have been met with respect to the satisfactory construction of the asset.



6.2

Service Tax on Construction Contractor

Applicability of service tax on construction contractors

The taxable services as defined in Section 65 clause (105) of the Finance Act, 1994 that could be applicable to construction contractors are:

1. Commercial or industrial construction services
2. Construction of complex services
3. Site formation and clearance services
4. Consulting engineer services
5. Erection, commissioning or installation services
6. Maintenance or repair services
7. Architect's services

We are going to discuss these services one by one in this section. The general rules as described elsewhere in this book for service tax shall apply.

Commercial or Industrial Construction Services

Section 65(25b) defines "commercial or industrial construction service" means:

a) Construction of a new building or a civil structure or a part thereof; or

b) Construction of pipeline or conduit; or

c) Completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

d) Repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is:

   i) used, or to be used, primarily for; or

   ii) occupied, or to be occupied, primarily with; or

   iii) engaged, or to be engaged, primarily in,

   commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

   The completion and finishing services indicated in the definition are not exhaustive but only indicative. They shall apply to both existing as well as new constructions.

   The services are chargeable under this head only when the building or civil structure or the pipeline is used, occupied, engaged or to be used, primarily for or to be occupied, primarily with or to be engaged primarily in commerce or industry, or work intended for commerce or industry. Activities performed on existing old pipelines or conduits are also covered.

However there is a specific exemption in the charging definition itself for services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Notification 16/2005 dated July 6, 05 excludes construction of ports or other ports as well.

The above services have been made taxable by adding clause (zzq) to the definition of taxable service contained in section 65(105) of the Finance Act, 1994 (hereinafter referred to as the act). The clause reads as:

"taxable service means any service provided or to be provided :

(a) - - -

(zzq) to any person, by any person, in relation to commercial or industrial construction service

and the term "service provider" shall be construed accordingly."

All services provided to any person by any person are chargeable to service tax if they are in a relation to commercial or industrial construction service. It is thus clear that services provided by contractors and sub contractors to builders and developers will be chargeable to tax. The only phrase that needs definition and has been defined in the act is commercial or industrial construction service.

The following clarifications have been issued by the department:

1. when services provided under a contract consist of a number of elements a view has to be taken on the facts and circumstances of each case as to whether the service provider has made a single overall supply or a supply of different services which are to be treated differently.
2. what is roads are also constructed as a part of the construction? if the contract is a single contract and the construction of roads is not recognised as a separate activity in the contract, service tax would be leviable on the gross amount charged for construction including the value of construction of roads
3. estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or selling it subsequently) are not taxable service providers

4. if real estate owners hire contractor(s), the payment made to such contractor(s) would be subject to service tax
5. the information whether the structure is for commerce or industry has to be gathered from the approved plan of the building or civil structure
6. constructions for the use of organisations or institutions being solely for educational, religious, charitable, health, sanitation or philanthropic purpose and not for the purpose of profit is not taxable
7. in case of multi purpose buildings such as residential cum commercial buildings, tax would be levied where the immovable property is treated as commercial property under the local/municipal laws

Specific exemption

Notification 1/2006–ST dated March 1, 2006 exempts commercial or industrial construction service to the extent of 67% of the gross amount charged subject to the following conditions:

1. the service provider has not availed Cenvat Credit on inputs or capital goods
2. the service provider has not availed the exemption benefit under Notification 12/2003–ST dated June 20, 2003 in respect of value of goods and materials sold during the course of providing the service
3. the service provider is not exclusively providing completion and finishing services and no other service in relation to building or civil structure
4. the gross amount charged shall include the value of goods and materials supplied or provided or used by the service provider for providing the construction service

Construction of Complex Services

With the introduction of these services, almost all aspects of the

construction industry are covered under the service tax net. These services have been added through a sub-clause (zzzh) of the sub section 105 of the section 65 of the Finance Act, 1994 that reads as

"Taxable service means any service provided or to be provided:

(a) - - -

(zzzh) to any person by any other person, in relation to construction of complex,

and the term "service provider" shall be construed accordingly.

The charging clause is clear and covers all service providers and all persons receiving the service. Unlike some other services where the service is taxable only if provided to a client or customer, in the case of commercial complex the service is taxable when it is offered to any other person. This means that even subcontractors providing services to a contractor or builder will have to collect and deposit service tax and will have to do all the compliances. The main contractor can take Cenvat credit for the same.

What is construction of a complex?

The term has been defined in the sub clause (30a) of Section 65 of the Finance Act, 1994 as:

30(a) 'Construction of a complex' means

a) Construction of new residential complex or a part thereof; or

b) Completion and furnishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

c) Repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

In all the above 3 sub clauses (a), (b) and (c) there is a common phrase which also needs proper definition for clear understanding.

What is a residential complex?

(91a) "residential complex" means any complex comprising of:

a) a building or buildings, having more than twelve residential units;
b) a common area; and
c) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system.

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging a person or planning the layout, and the construction of such complex is intended for personal use as residence by such person.

As is clear, the 3 conditions given above should be satisfied cumulatively for the construction service to be termed as residential complex. Firstly, there must be At least 13 residential units in one single building or in more than one building. The term residential unit for this purpose as defined in the explanation following the above definition means a single house or a single apartment intended for use as a place of residence. The intention as required by this definition can be ascertained from the approval to the plan granted by the appropriate authorities.

Secondly there must be a common area. All areas other than those which are sold in the form of the residential unit by the builder to the purchaser like a common passage, entrance, staircases, lifts etc can be said to be a common area. Will then complexes that do not have common areas to be used by all covered under this definition? Well we will discuss that a little later.

Lastly, there should be at least one common facility or service such as park, lift, parking space etc.

The definition further specifically excludes any complex that has been constructed by a person exclusively for personal use. Personal use again has been said to include in the explanation referred to above as permitting other person to use it as residence on rent or without consideration. Thus bungalows are excluded from service tax.

Approval by a statutory authority of the layout of the premises is also required.

Having established firmly what a residential complex is, we will now comeback to what is construction of a complex or what services are chargeable to tax. The definition seeks to cover all activities that can be done in relation to construction of a new residential complex. Also it covers everything such as repair, restoration, alteration or renovation in relation to any old residential complex.

Specific exemption

Notification 1/2006 dated March 1. 2006 grants abatement of 67% of the gross amount charged by the service provider from any person for providing such service is allowed provided that:

1. The exemption available under Notification No. 12/2003 dt June 20, 2003 has not been availed
2. No credit on duty paid on inputs or capital goods has been taken under the provisions of Cenvat Credit Rules, 2004.
3. This abatement will be allowed only if there is a composite contract, i.e. the gross amount billed includes value of goods and materials supplied or provided or used by the service provider.
4. This exemption will not be available if only completion and finishing services such as glazing, plastering, tiling, painting etc were carried out in relation to the residential complex.

The clarifications regarding this service are given in Circular F. No. B1/6/2005–TRU. Dated July 27, 2005

Site Formation and Clearance Services

These services generally activities preceding the construction activity. These have been included in the tax net with effect from June 16, 2005.

What is site formation and clearance, excavation and earthmoving and demolition?

Clause (97a) of section 65 defines the term as

site formation and clearance, excavation and earthmoving and demolition includes

i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or
ii) soil stabilization; or
iii) horizontal drilling for the passage of cables or drain pipes; or
iv) land reclamation work; or
v) contaminated top soil stripping work; or
vi) demolition and wrecking of building, structure or road,

but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies.

This definition is not exhaustive and is only inclusive.

Notification 17/2005 exempts this service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, major and minor ports.

Taxable service

Sub-clause (zzza) of the sub section 105 of the section 65 of the Finance Act, 1994 defines taxable service as

"Taxable service means any service provided or to be provided:

(a) - - -

(zzza) to any person by any other person, in relation to site formation, clearance, excavation and earthmoving and demolition and such other similar activities, and the term "service provider" shall be construed accordingly.

Consulting Engineer Services

These services have been made taxable from 7 July 1997.

Who is a consulting engineer?

Clause (31) of section 65 defines the term as

Consulting engineer means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.

Hence, the key ingredients required to be chargeable as a service provider are:

- ✦ The taxable entity shall be a professionally qualified engineer or an engineering firm.
- ✦ The entity must render service in the nature of advice, consultancy or technical assistance in any manner.
- ✦ Such service must be rendered to a client.
- ✦ The service so rendered must be related to one or more disciplines of engineering.

The services which attract the levy include all the services which are rendered in the capacity of a professional person and specifically include the services pertaining to structural engineering works, civil/mechanical/electrical engineering works or

relating to construction management. All services rendered within the scope of the term engineering attract Service Tax provided they are rendered in the capacity of a consulting engineer. The scope of the services of a consultant may include any one or more of the following categories:

i) Feasibility study;
ii) Pre-design services/project report;
iii) Basic design engineering;
iv) Detailed design engineering;
v) Procurement;
vi) Construction supervision and project management;
vii) Supervision of commissioning and initial operation;
viii) Manpower planning and training;
ix) Post-operation and management;
x) Trouble shooting and technical services, including establishing systems and procedures for an existing plant.

The above list is only indicative and not exhaustive.

The condition of professional qualification is necessary for a person to be considered as a qualified engineer. In the case of Petrofac International Limited v. CCE&C (2006), the contractors who were not qualified engineers but whose work was supervised by qualified engineers were considered as not covered by the definition of consulting engineer and hence not liable.

Even body corporates and firms are covered by the definition.

Some important points in regard to this service are:

1. foreign companies rendering engineering consulting services in India are covered. If they do not have an office in India, the receiver of the service is liable to pay tax
2. the service rendered should be to a client. Thus where services are rendered in the capacity of a sub consultant or an associate consultant to another consulting engineer, only the prime consultant is liable to pay tax for services

rendered to his client. The sub consultant or the associate consultant shall not be liable.

3) where consulting engineers provide services in the nature of insurance surveyors or loss assessors, they will not be liable to service tax as a consulting engineer. However, they may be taxed under insurance auxiliary services.

4) the terms advice, consultancy or technical assistance has been used with respect to a consulting engineer. Thus each case has to be looked into to ascertain its taxability. Mere certification as required by a statute would thus not be a taxable service in the absence of any advice, consultancy or technical assistance.

Specific exemption

Notification 18/2002 – ST dated 16-12-2002 specifically exempts services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the cess paid on the transfer of technology under section 3 of the Research and Development Cess Act, 1986. Section 3 of such Act provides for levy and collection of a cess on all payments made towards the import of technology as the Central Government may from time to time notify in the Official Gazette. The cess paid may be deducted by the consulting engineer from his fees when raising the bill on the client.

A milestone case of Daelim Industrial Company v. CESTAT, New Delhi should be discussed here. In the said case, IOC awarded a contract to the appellant for the construction of a DHD plant and utilities. The contract involved 'residual process design, detailed engineering, procurement, supply, construction, fabrication, erection, installation, testing commissioning and mechanical guarantee'. The department intended to levy service tax on residual process design and detailed engineering as consulting engineer services.

It was held that the appellant's contract was a work contract on a turnkey basis and not a consultancy contract. A work

contract cannot be vivisected and part of it subjected to service tax.

Erection, Commissioning or Installation Services

Such services offered by a consulting engineer or any other person would be taxed under this head.

Clause (39a) of Section 65 defines such services as:

Erection, commissioning or installation means any service provided by a commissioning and installation agency, in relation to,

i) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre fabricated or otherwise; or

ii) installation of

a) electrical and electronic devices, including wirings or fitting therefor; or

b) plumbing, drain laying or other installation for transport of fluids; or

c) heating, ventilation or air conditioning including related pipe work, ductwork ans sheet metal work; or

d) thermal insulation, sound insulation, fire proofing or water proofing; or

e) lift and escalator, fire escape staircases or travelators; or

f) such other similar services

Clause (29) defines a commissioning and installation agency as commissioning and installation agency means any agency providing service in relation to erection, commissioning or installation.

Thus the following can be said to be covered:

1. erection commissioning or installation of

a) plant
b) machinery
c) equipment
d) structures

2. installation of specific items included

   Now erection includes certain work which would fall under construction service. However, where there is a composite contract for erection, commissioning and installation, it would be taxed under this category.

Specific exemption

Notification 1/2006 dated 1-3-2006 grants abatement of 67% of the gross amount charged by the service provider from any person for providing such service is allowed provided that

1. the exemption available under Notification No. 12/2003 dt 20/6/2003 has not been availed
2. no credit on duty paid on inputs or capital goods has been taken under the provisions of Cenvat Credit Rules, 2004.
3. This abatement will be allowed only if there is a composite contract, i.e. the gross amount charged from the customer includes the value of the plant, machinery, equipment, parts and machinery or equipment, any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.

Maintenance or Repair Services

It is a convenient and common practice to contract a specialized agency to maintain and manage the facilities provide in a housing facility. The earlier definition of maintenance or repair services did not include immovable property. The Finance Act, 2005 w.e.f 16/6/2005 has extended the scope of the service to include maintenance or management of immovable property.

Clause (64) of Section 65 defines management, maintenance or repair as

Management, maintenance or repair means any service provided by

i) any person under a contract or an agreement; or

ii) a manufacturer or any person authorized by him,

in relation to

a) management of properties, whether immovable or not;

b) maintenance or repair of properties, whether immovable or not; or

maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle

The important points to be noted with respect to this service are:

1. there should be a contract or agreement. Now it is not necessary that such contract or agreement be in writing. Even oral agreements are taxable
2. the contract or agreement need not necessarily a maintenance contract or agreement. Such services may be undertaken as a part of any other contract or agreement
3. services provided by a manufacturer or any person authorized by him are taxable even if there is no contract or agreement
4. maintenance or repair of all goods except motor vehicles are covered. Motor vehicles are covered under the service of authorized service stations
5. management, maintenance or repair of all properties (movable or immovable) are covered

Taxable service

Sub clause (zzg) of clause (105) of section 65 defines a taxable service as any service provided or to be provided, to a customer, by any person in relation to management, maintenance or repair.

What if the service provider outsources some of the functions to a sub contractor?

Service tax is to be paid by main service provider who provides the service to the customer.

However, in Circular F.No B-11/3/98-TRU, dated 7 October 1998, the government has clarified if sub-contracting of work is under different category of taxable service, the service tax will be required to be paid.

Architect

The services of an Architect are required by the Industry at every stage. New buildings require drawing and designing and the older residential buildings with the passage of time and the vagaries of nature, need rework and maintenance from time to time. This would entail availing the services of an Architect.

Clause (6) of Section 65 defines an architect as

Architect means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture.

The manner of rendering service is immaterial. It is not necessary that the architect's degree must be obtained from an Indian institution. As long as he is included in the register of architects, he is liable to charge service tax.

What if the industry avails of certain taxable services from an architect, whose name is not entered in the register of architects?

An architect whose name is not entered in the register of architects maintained under section 23 of the Architects Act, 1972 is not an architect as defined by section 65(6) of the Act. Hence he shall not charge service tax on professional services rendered by

him. However, any commercial concern rendering services in the field of architecture, whether employing qualified architects or not shall be covered by the definition of an architect. The presence of profit motive should be there for a commercial concern.

Gross amount charged by the architect or the commercial concern is liable to service tax under section 67. It is possible that the client may reimburse the architect on actuals, for conveyance to the site and such other incidental expenses. These reimbursements will not form part of the gross amount charged *vide* Trade Notice No. 7/98-ST dt.13/10/1998 issued by Mumbai Commissionerate. If the architect presents a consolidated bill without a split up of reimbursement on actual basis and professional charges, the tax will be levied on the gross amount so presented. No deductions are allowed from the gross amount. The tax is on architect's service only so value of goods sold in the course of rendering such service must also be excluded. Since the industry will be the paying party, it is in their interest to ask for a bifurcation between professional and other charges presented on the bill. Nowadays, it is quite common for the architect's fee to be agreed as percentage of contract value. In such cases the percentage so calculated will be the value of taxable service rendered. If reimbursements form part of the agreed percentage, it should be paid only against documentary evidence. The bottom line is that service tax is levied on the value of taxable service rendered. It is not the aim of the Act to charge all payments made to the architect by the society to service tax.

Amount paid to any sub contractor shall not be allowed to be deducted. Liability to tax arises only if the service is provided by the architect in his **professional capacity** to a **client.** The services rendered by an employee shall not be taxable as an employee is not a separate entity. However, in group concerns, services rendered by one concern to another shall be taxable.



6.3

Other Issues Relating to Construction Business

There are four important issues relating to construction business. They are:

- Issues with respect to partnership.
- Whether construction activity amounts to manufacture.
- Redevelopment of old societies.
- Applicability of Section 50C

Issue with respect to partnership

In some cases, the flats etc. unsold are distributed among the partners and the firm is dissolved. In the case of V. Chandraprakasa Nadar & Co. (107 Taxman 31-Madras), it was held that closing stock which is distributed to the partners on dissolution of the firm is to be valued at market value on the date of dissolution and hence when some of the partners in the dissolved firm come together and form a new firm, opening stock of new firm has to be valued at the market price.

Whether construction activity amounts to manufacture?

There was a controversy whether construction activity amounts to manufacture and whether it would be eligible for the benefit of Investment Allowance. However, the Hon'ble Supreme Court in the case of N. C. Budharaj & Co. (204 ITR 412) (SC), held that investment allowance is not available to construction activity.

Redevelopment of old societies

In Mumbai, there are number of old housing societies. These societies demolish the old structure and construct the new one. TDR is purchased for construction of the additional area. This additional area is sold and cost of construction of the new structure is met. This activity of the housing society can be considered as business activity and the profit should be computed accordingly.

Applicability of Section 50C

Section 50C applies only to capital assets and not to stock in trade. Since the profit from construction activity is income under the head profits/gains from business, the provisions of Section 50C will not be applicable.



6.4

Construction Contractor's Agreement

Agreement for Construction of Building between the Owners and the Contractors

THIS CONSTRUCTION AGREEMENT is executed at _____ on this _____ day of _____ 2007

BETWEEN

A s/o B resident of _____ (hereinafter referred to as "the Owner", which expression shall unless repugnant to the context or meaning thereof, be deemed to include his heirs, legal representatives, executors and administrators) of the ONE PART

AND

M/s XYZ Constructions, a registered Partnership firm having its registered office at _____ (hereinafter referred to as "the Contractors" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the OTHER PART.

WHEREAS the Owner is desirous of constructing Plot and its vacant land bearing Plot No. _____. Survey No. _____ Khasra No. _____ situate, lying and being at _____ Tehsil and District _____ (hereinafter referred to as "the said property") and the contractors have offered to construct the same and also prepare

the site layout plans, preliminary sketch designs, architectural drawings, structural drawings, service drawings and all other detailed plans and drawings as may be necessary for the proper construction and completion of the said works and also obtain necessary permissions from the Municipal Corporation _____ and other local authorities for executing and completing the said works as hereinafter specified upon and subject to the terms and conditions set forth herein and the conditions set forth in the special conditions hereto annexed and marked as Annexure 1 (all of which are collectively hereinafter referred to as "the said works") at the rate of Rs _____ per sq. ft. of the built up area of the buildings (hereinafter referred to as "the said contract amount").

AND WHEREAS The Owner has agreed to appoint the contractors for the said works; and

AND WHEREAS the contractors have requested the Owner to execute these presents which he has agreed to do so.

Now this agreement witnesseth as follows:

1. In consideration of the said contract amount to be paid at the times and in the manner set forth in the Schedule of Payments hereto annexed, the contractors shall on and subject to the said conditions, execute and complete the said works more particularly described in Schedule 1 annexed hereto and shown on the said drawings, strictly in accordance with the general specifications annexed hereto and marked as Annexure III.
2. The Owner shall pay the contractors the said contract amount or such other sum as shall become payable at the times and in the manner specified in Annexure II.
3. For the purposes of this contract, "built up area" means the total a covered area of the building at floor level out-to-out measurement of wall surface (architectural projection excepted) and shall be inclusive of staircase and balconies.
4. The contractors shall prepare layout plans and general

building plans in consultation with the Owner and get the same approved by the Municipal Corporation of _____.

5. It is hereby agreed that the contract amount shall be inclusive of

6. a) Preparation of the layout plans, general building plans, detailed architectural drawings, sketches, structural drawings and designs for execution.
   b) Technical supervision of the works.
   c) Obtaining of permission and approvals from all the authorities for the construction, supply of power, water, drainage and other services for the said works.
   d) Cost of all materials for construction.
   e) Wages of labour, technical supervisors, all other workers and staff required for execution of the said works in accordance with the general specifications in Annexure Ill.
   f) Cost of all electrical, sanitary, and plumbing fittings.
   g) Cost of all other items as mentioned in special conditions in Annexure I hereto.

7. The layout plans, general building plans, detailed architectural drawings and other drawings shall be and remain the property of the Owner. All the drawings shall remain in custody of the contractors during the progress of the work and they shall deliver them to the Owner on the performance of the said works or termination of the contract.

8. The Owner may require alteration of the drawings and the nature of the work by adding or omitting any items of work or having portions of the same carried out. The Owner shall make payment for the alterations at such rates as may be mutually agreed upon.

9. The contractors shall commence the work within 15 days of the handing over of the site to them and complete the entire work within _____ months thereafter, subject

nevertheless to the provision for extension of time as provided in the said conditions.

10. The contractors, while carrying out the said works, shall comply with the provisions of all laws, rules and bye-laws for the time being in force affecting the said works and will give all necessary notices to and obtain the requisite sanction of the concerned local authorities in respect of the said works and will comply with the building and other regulations of such authority and will keep the Owner indemnified against all fines, penalties and losses incurred by reason of the breach of the contractors of any such laws, bye-laws and regulations.
11. The Owner shall make all payments under this contract at _____
12. All disputes or differences relating to the specifications, designs, drawings and as to quality of workmanship or material used in the work or as to any other question arising out of or relating to the contract, design, drawings, specifications, orders or otherwise in connection with the agreement or the carrying out of the works, whether during the progress of the work or after the completion or abandonment thereof shall be referred to the arbitral tribunal as per the following terms and condition:
    a) Each party shall appoint one arbitrator.
    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
    d) The Arbitration proceedings shall take place at _____, Delhi.
    e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been

called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the

proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

13. This agreement shall be executed in duplicate. The original shall be retained by the Owner and the duplicate by the contractors.

IN WITNESS WHEREOF the Owner has set his hands to these presents and a duplicate hereof and the contractors have caused its common seal to be affixed hereunto and a duplicate hereof the day and the year first hereinabove written.

Signed and delivered by the hand of Shri A

Signed and delivered by Mr. X
Partner of M/s XYZ Constructions,
Signatures
WITNESSES:
1.

2.

Building Agreement between the Owners and the Contractor on Fee plus Cost of Labour and Materials

THIS AGREEMENT made at_____ on this _____ day of _____ 2000, between ABC Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at _____ (hereinafter called the "owners", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the ONE PART and XYZ Co. Ltd., a company incorporated under the Companies Act, 1956, and having its registered office at _____ (hereinafter called the "Contractors", which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the OTHER PART.

WHEREAS the owners are absolutely seized and possessed of the plot of land or otherwise well and sufficiently entitled to the plot of land bearing No. _____ City Survey No. _____ Khasra No. _____ Tehsil and District _____, which land, is more particularly described in the First Schedule hereunder written and referred to as "the said land".

AND WHEREAS the owners are desirous of constructing flats for its executives to as per site plans prepared by _____ the architects and approved by the Municipal Corporation of _____ true copies whereof are annexed hereto, and marked as Annexure A for the purpose of reference.

AND WHEREAS the contractors have offered to construct the said flats according to the said plan (hereinafter referred to as the said works) on the fee plus cost system and on the terms and conditions mentioned hereafter.

NOW IT IS AGREED BETWEEN THE PARTIES AS UNDER:

1. That the contractors agree to construct the flats in accordance with the site plans annexed hereto and marked as Annexure A, strictly in accordance with the specifications and conditions of contract set out in Second and Third Schedules hereunder written; provided that the

owners shall be entitled to require such changes or alterations in the said plans, as they may deem necessary to suit their requirements and the contractors agree to undertake to get the said alterations or changes approved by the Municipal Corporation _____ and execute the said alterations or changes.

2. The contractors will abide by the directions of _____ Architects, during the progress of the said works and will complete the said works agreed to be done on or before the expiry of _____ months from the date of execution of these presents. The contractors undertake that they will execute the said works in the best and soundest way and in the most economical manner keeping the interest of the owners in view.
3. The owners agree to pay to the contractors the remuneration of Rs. _____ and shall reimburse them the expenses incurred by them in connection with the completion of the said works such costs to include the following items:
   i) Material for construction such as cement, steel, lime, wood, plumbing materials, etc.
   ii) Wages paid to the workmen labour and employees employed for the execution of the works.
   iii) Salaries of artisans, overseers and engineers employed for the execution of the works.
   iv) Expenses incurred by staff, overseers and engineers for travelling, transporting and hotel bills in discharge of duties in connection with the construction.
   v) Obtaining of permission and approvals from all the authorities concerned for the construction, supply of power, drainage and other services for the said works.
   vi) Cost of tools not owned by the workmen, canvas and plank, etc., consumed or rendered unfit during the execution of the said work.

vii) Other incidental expenses relating to the execution of the said works.

The cost of the above items shall not be higher than the market rates paid in the locality of the work. The cost reimbursable to the contractors shall not include the salary of the regular employees of the contractors or interest on capital employed by the contractors for the execution of the said work.

4. The contractors shall keep full and regular account of all materials brought on the site, consumed and balance lying on the site. The said account books shall be open to inspection to the owners or their representatives at all reasonable times, who shall be entitled to take the copy of any document, register, correspondence or account maintained by the contractors.
5. The contractors shall submit a bill on 10th of each month to the architect showing in detail the moneys paid by them on account of the cost of the work during the previous month for which they have to be reimbursed under the agreement, with original receipted bills and original rolls for labour checked and certified by the contractor's Chartered Accountants.
6. The architect will certify the reasonableness of each bill supported by the vouchers of expenses and the certificate of architect as to the reasonableness or otherwise shall be final on the contractors. If the architect certifies that any bill submitted by the contractors is on higher side, then he (the architect) shall certify the market rate of the items of the said bill, (which shall be based on quotations from three reputed dealers) and the owners shall make payment of that bill in terms of the architect's certificate.
7. The owners will pay the amount of each bill within a period of 15 days from the date of receipt of the bill duly certified by the architect, in their office.

8. The contractors shall be responsible for injury to persons, animals or things and for all structural damages to the property which may arise from the operation or neglect of the contractors or their employees, nominees, sub-contractors or their employees, whether such injury or damages arises from carelessness, accident or any other cause whatsoever in any way connected with the carrying out of construction pursuant to these presents.
9. The contractors shall indemnify and keep the owners harmless against any claims, demands, actions or proceedings that may be made or adopted against the owners or that may be suffered by the owners by reason of anything done by the contractors pursuant to any work done by them in execution of the said works.
10. The contractors shall during the execution of the said works insure them against destruction or damage by fire, earthquake, flood, cyclone, etc., to its full insurable value and keep insured until the possession of the buildings complete in all respects and fit for occupation is handed over to the owners.
11. If the contractors fail to commence the work or without any lawful excuse under these conditions suspend the progress of the works for fourteen days after receiving from the architect the notice to proceed or persistently or repeatedly refuse or fail to supply properly skilled workmen to proper material or persistently disregard the regulations, instructions or directions of the local or other authority or violate the terms of this agreement or fail to proceed the works with such due diligence and fail to make such due progress as would enable the works to be completed within the time agreed upon and the architect has certified that sufficient causes exist to justify the termination of the contract, then the owners may terminate the contract after giving the contractors seven days notice of their intention to do so. On such termination, the owners or their servants may enter

upon and take possession of the works and tools, scaffolding, sheds and other materials lying upon the premises and use the same as their own property or may employ the same by means of its own servants and workmen in carrying on and completing the works or by employing any other contractor or other person or persons to complete the works and the contractors shall not in any way interrupt or do any act, matter or thing to prevent or hinder such other contractors or other person or persons employed for completing and finishing the said works or using the materials and plant for the said works.

In case of termination of the contract, the architect shall thereafter ascertain and certify in writing under his hand what shall be due or payable to or by the owners, for the value of the said plant and materials so taken possession of the owners and the expense or loss which the owners shall have been put to in procuring the said works to be completed and the amount, if any, owing to the contractors and the amount which shall be so certified shall thereupon be paid by the owners to the contractors or by the contractors to the owners, as the case may be, and the certificate of the architect shall be final and conclusive between the parties.

12. In case any dispute or difference should arise between the parties, whether in respect of quality of material used by the contractors, or work done or in respect of delay in completion of work or any other matter arising out of or in connection with agreement or the carrying out of works, shall be referred to and settled by the architect, who shall state his decision in writing. If any party is dissatisfied with the decision of the architect, either party (the owners or the contractors) may give a written notice to the other party through the architect that the matters in dispute be referred to the arbitration and final decision of an arbitrator to be agreed upon and appointed by both the parties or

in case of disagreement as to the appointment of a single arbitrator to the appointment of two arbitrators, one to be appointed by each party which arbitrators shall before taking upon themselves the burden of reference appoint an umpire. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The award of the arbitrator or arbitrators, as the case may be, shall be final and binding on the parties. The fees of the arbitrator appointed by a party shall be paid by the party so appointing and the fees of the umpire and other arbitration expenses shall be borne half and half by the parties. The owners and the contractors hereby also agree that arbitration under this clause shall be, a condition precedent to any right of action under the contract.

13. All disputes or differences relating to the specifications, designs, drawings and as to quality of workmanship or material used in the work or as to any other question arising out of or relating to the contract, design, drawings, specifications, orders or otherwise in connection with the agreement or the carrying out of the works, whether during the progress of the work or after the completion or abandonment thereof shall be referred to the arbitral tribunal as per the following terms and condition:
    a) Each party shall appoint one arbitrator.
    b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
    c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
    d) The Arbitration proceedings shall take place at _____, Delhi.
    e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months

after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.

f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

14. This agreement shall be executed in duplicate. The original shall be retained by the owners and the duplicate by the contractors.

IN WITNESS WHEREOF the parties have signed these presents and a duplicate hereof, the day and year first hereinabove written.

Signed and delivered by ABC Co Ltd., the within named owners by its Managing Director Mr. _____

Signed and delivered by XYZ Co. Ltd., the within named contractors by its Managing Director Mr. _____

WITNESSES:

1.

2.

Agreement between Owners and Labour Contractor

For supply of labour

THIS AGREEMENT made between A, son of B, resident's of _____ hereinafter referred to as the owner of the ONE PART and C, son of D, resident of _____ hereinafter referred to as the contractors of the OTHER PART.

WHEREAS the owner is getting the construction of building on the land bearing Plot No. _____ Survey No. _____ House No._____ situate, lying and being in village _____ Tehsil _____ District _____ hereinafter referred to as the 'said work' and is desirous of availing of labour for the said work.

AND WHEREAS the contractors are the contractor for the supply of all types of labour required for the construction work and offered their services to the owner, which the owner has agreed on the terms and conditions hereafter set forth.

NOW IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS UNDER:

1. The contractors will supply all labour viz. masons, labourers, water carriers and other necessary workers required for the said work to the owner at site provided that the requisition thereof is made _____ hours in advance.
2. The labour shall be paid at the prevailing market rate. The present prevailing market rate of labour of all type has been given in the Schedule hereunder written. The said rates may be changed by the mutual consent of the parties.
3. The contractors will be entitled to a commission of _____ on the total disbursement made to the labour so supplied by them. The said _____ commission shall be payable to the contractors every week _____
4. The contractors will be liable for and make good any loss or damage, caused by any act or default on the part of the labour supplied by them.

5. If the contractors fail to supply necessary labour on a requisition made by the owner in time, they will be liable to pay a sum of Rs _____ as liquidated damages per labourer, mason, water carrier or any other worker not supplied by them in accordance with the requisition by the owner
6. All disputes or differences relating to the specifications, designs, drawings and as to quality of workmanship or material used in the work or as to any other question arising out of or relating to the contract, design, drawings, specifications, orders or otherwise in connection with the agreement or the carrying out of the works, whether during the progress of the work or after the completion or abandonment thereof shall be referred to the arbitral tribunal as per the following terms and condition:
   a) Each party shall appoint one arbitrator.
   b) The arbitrator appointed by each party shall be a practicing CA and a member of ICAI.
   c) English shall be used as the language for all the arbitration proceedings and the award of Arbitration.
   d) The Arbitration proceedings shall take place at _____, Delhi.
   e) The Arbitral Tribunal shall enter upon the reference and decide the aforesaid matters. The Arbitral Tribunal shall make their award within three months after entering upon the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the Arbitral Tribunal by any writing signed by them may from time to time enlarge the time in making the award.
   f) The Arbitral Tribunal shall to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

g) The Arbitral Tribunal may proceed ex parte in case either party fails to appear after reasonable notice.

h) This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

i) The Arbitral Tribunal may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

j) In case the Arbitral Tribunal awards that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

k) The provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply to this reference.

l) The parties would cooperate and lead evidence, etc. with the arbitral tribunal and if one of the parties does not cooperate or remains absent at the reference, the tribunal would be at liberty to proceed with the reference *ex-parte*.

m) The fees of the reference to Arbitral Tribunal shall be Rs _____ which shall be inclusive of costs of all the proceedings before the tribunal and shall be borne by both the parties equally.

n) The Arbitral Tribunal shall make their award, with reasons for the decision, within three months from the date of entering upon the reference.

o) The award of the Arbitral Tribunal, shall be final, conclusive and binding on the parties and shall not be

challenged on any ground except collusion, fraud or an error apparent on the face of the award.

p) This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

q) No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

IN WITNESS WHEREOF the parties hereto have set their respective hands to these presents on the date, month and year hereinabove written.

Signed and delivered by
the within named owner A

Signed and delivered by
the within named contractors C

WITNESSES;
1.
2.

Agreement for Construction of Building between the Owners and the Contractors on Turnkey Basis

THIS AGREEMENT made at _____ on this _____ day of _____ 2000, between A s/o B resident of _____ (hereinafter referred to as "the Employer", which expression shall unless repugnant to the context or meaning thereof, be deemed to include his heirs, legal representatives, executors and administrators) of the ONE PART and XYZ Co. Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at _____

(hereinafter referred to as "the Contractors" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the OTHER PART.

WHEREAS the employer is desirous of constructing XYZ Bungalow and its vacant land bearing Final Plot No. _____ Survey No. _____ Khasra No. _____ situate, lying and being at _____ Tehsil and District _____ (hereinafter referred to as "the said property") and the contractors have offered to construct the same on a "turnkey basis' and also to prepare the site layout plans, preliminary sketch designs, architectural drawings, structural drawings, service drawings and all other detailed plans and drawings as may be necessary for the proper construction and completion of the said works and also obtain necessary permissions from the Municipal Corporation _____ and other local authorities for executing and completing the said works as hereinafter specified upon and subject to the terms and conditions set forth herein and the conditions set forth in the special conditions hereto annexed and marked as Annexure 1 (all of which are collectively hereinafter referred to as "the said works") at the rate of Rs _____ per sq. ft. of the built up area of the buildings (hereinafter referred to as "the said contract amount").

AND WHEREAS The employer has agreed to appoint the contractors for the said works; and

AND WHEREAS the contractors have requested the employer to execute these presents which he has agreed to do so.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In consideration of the said contract amount to be paid at the times and in the manner set forth in the Schedule of Payments hereto annexed, the contractors shall on and subject to the said conditions, execute and complete the said works more particularly described in Schedule 1 annexed hereto and shown on the said drawings, strictly in accordance with the general specifications annexed hereto and marked as Annexure III.

2. The employer shall pay the contractors the said contract amount or such other sum as shall become payable at the times and in the manner specified in Annexure II.
3. For the purposes of this contract, "built up area" means the total a covered area of the building at floor level out-to-out measurement of wall surface (architectural projection excepted) and shall be inclusive of staircase and balconies.
4. The contractors shall prepare layout plans and general building plans in consultation with the employer and get the same approved by the Municipal Corporation of _____
5. It is hereby agreed that the contract amount shall be inclusive of-
   a) Preparation of the layout plans, general building plans, detailed architectural drawings, sketches, structural drawings and designs for execution.
   (b) Technical supervision of the works.
   (c) Obtaining of permission and approvals from all the authorities for the construction, supply of power, water, drainage and other services for the said works.
   (d) Cost of all materials for construction.
   (e) Wages of labour, technical supervisors, all other workers and staff required for execution of the said works in accordance with the general specifications in Annexure Ill.
   (f) Cost of all electrical, sanitary, and plumbing fittings.
   (g) Cost of all other items as mentioned in special conditions in Annexure I hereto.
6. The layout plans, general building plans, detailed architectural drawings and other drawings shall be and remain the property of the employer. All the drawings shall remain in custody of the contractors during the progress of the work and they shall deliver them to the employer on the performance of the said works or termination of the contract.

7. The employer may require alteration of the drawings and the nature of the work by adding or omitting any items of work or having portions of the same carried out. The employer shall make payment for the alterations at such rates as may be mutually agreed upon.
8. The contractors shall commence the work within 15 days of the handing over of the site to them and complete the entire work within _____ months thereafter, subject nevertheless to the provision for extension of time as provided in the said conditions.
9. The contractors, while carrying out the said works, shall comply with the provisions of all laws, rules and bye-laws for the time being in force affecting the said works and will give all necessary notices to and obtain the requisite sanction of the concerned local authorities in respect of the said works and will comply with the building and other regulations of such authority and will keep the employer indemnified against all fines, penalties and losses incurred by reason of the breach of the contractors of any such laws, bye-laws and regulations.
10. The employer shall make all payments under this contract at _____
11. In case any dispute or difference should arise between the parties, whether in respect of quality of material used by the contractors or work done or in respect of delay in completion of works or in respect of payment of extra work required to be done and so executed or in respect of measurement of work done or in respect of delay of payment to the contractors or touching the interpretation, fulfillment of any of the terms of these presents or any other matter arising out of or in connection with these presents or the carrying out of the work, shall be referred to arbitration of two arbitrators, one to be appointed by each party. The arbitrators shall appoint an umpire before entering upon the reference. The arbitrators shall make

their award within six months from the date of entering on the reference. If the arbitrators do not make their award within the stipulated period or have delivered to any party or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference and shall make his award within three months of entering on the reference or within such extended time as the parties may agree and in the absence of such agreement, as the Court may allow. The arbitrators or umpire, as the case may be, shall be entitled to consult any expert, after previous notice to the parties, the cost whereof shall be borne by the parties equally. The proceedings of the arbitrators shall be recorded in English, a copy whereof shall be furnished to each party. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and are not inconsistent or repugnant to these presents, shall apply to this reference to arbitration. The cost of the reference and award shall be in the discretion of the arbitrators, who may direct by whom and in what manner, the same or any part thereof shall be paid. The award of the arbitrators or umpire shall be final and binding on the parties and the parties, their executors and administrators shall on their respective parts obey, abide by the award and shall not challenge on any ground excepting fraud or collusion or error apparent on the face of the award. It is hereby agreed between the parties that the parties shall resort to arbitration, before filing any suit for the enforcement of any right under these presents.

12. This agreement shall be executed in duplicate. The original shall be retained by the employer and the duplicate by the contractors.

IN WITNESS WHEREOF the employer has set his hands to these presents and a duplicate hereof and the contractors have caused its common seal to be affixed hereunto and a duplicate hereof the day and the year first hereinabove written.

Signed and delivered by the hand of Shri A

The common seal of XYZ Co. Ltd. was hereunto affixed pursuant to the resolution passed by the Board of Directors at the meeting held on _____ in the presence of Shri _____ a director of the company, who has signed in token thereof

Seal

Signatures

WITNESSES
1.
2.



7.1

Types of Land

India covers a land area of 3,287,263 sq. km. There are different types of land in India. Nearly 55% of it is cultivated land. The several types of land available in India are:

1. Agricultural Land
2. Barren Land
2. Real Estate Land
4. Commercial Land
5. Farm Land
6. Residential Land

Agricultural land

Indian people are mainly employed in agricultural activities thus agricultural land is almost 54.7% of the total landmass. The agricultural lands are located on the outskirts of the Metro cities. Usually the agricultural land shares space with the industrial areas outside the city. There are agricultural lands in almost all the states of India.

Barren land

Within the landmass of India, mainly the land areas of Rajasthan, parts of Jammu, Leh, and parts where snowfall prevent any cultivation are barren.

Real estate lands

Real estate lands are growing at a tremendous rate in India. All metro cities have huge boom of real estate properties, due to the growth of economy, new industries, information technology and business outsourcing. With the people becoming mobile due to transferable jobs, the growth of houses and apartments have increased manifold all over India. In addition, the NRI and the mercantile groups have found real estate lands as good investment sectors.

Commercial land

Commercial land is becoming pricier day in and day out. All the Indian cities are suddenly experiencing a boom in marts, market plazas, malls, shopping complexes as all international brands are making their presence felt in India in a big way with along many new local retailers.

Farm lands

Farm lands are becoming the exclusive property of the rich and famous as of late they have realized the unique qualities of farm lands. There is a stiff competition in acquiring the best of farmlands, as they can be in the lap of picturesque valleys replete with streams, private piece of beach in Goa, Pondicherry etc or private Havelis in Rajasthan. The trend of love for nature and due to less available space in city apartments, farm land is fast becoming the best option for investment.

Residential land

Residential land is fast becoming scarce in the mad rush to stay near work places and near to city centre. Thus, posh places or places with less of space have developed apartments to cater to more people.



7.2

Agricultural Land—its Uses and Conversion

With the advent of Special Economic Zones, the number of instances where agricultural lands are being converted to industrial lands have increased shockingly. Suddenly, agricultural lands have become gold mines. In Maharashtra alone, a total of 41 SEZs are at present being proposed, and the amount of land to be acquired ranges from 2,500 hectares to 10,000 hectares of land per SEZ. India is an agri-based economy. Keeping this in mind, certain guidelines were proposed by the National Land Use and Waste Land Development Council in 1986. These guidelines have a clause that states, "urban policy must be restructured so as to ensure that highly productive land is not taken away. Town planning should also provide for green belts". This could be a model for development.

Since all states have different agrarian and land use scenarios, it was left to them to evolve a set of rules governing the land use options that served their interests. Land, thus, became a state subject. As yet no state has come out with a concrete land use policy. Kerala is the first state to have a Land Use Act, empowering the government to prevent the holder of land from using it to cultivate anything other than food crops, or for any

other purposes. This was necessitated because of the large-scale conversions of paddy lands to plantation crops for economic gain.

Most urban master plans have a provision for the conversion of agriculture lands to non-agriculture use. Similarly there are legislations like the Karnataka Act 31 of 1974, which deal with the issue of the conversion of land use from agriculture to non-agriculture. But their approach is largely revenue-oriented. No attempt is made to approach the land problem from the point of view that it is a finite natural resource, and which takes its quality into consideration.

However, in September 2006, the Commerce Minister Mr. Kamal Nath directed the State Governments to ensure that prime agricultural land is not given to SEZs. It is clear now that SEZs can be established only on waste lands and not cultivable lands. Thus the Government is making the rules stringent for conversion of agricultural land for non-agricultural use.

Factors that Determine Approval for Change of Land Use

Generally, there are certain factors that the Government considers while approving the change of land use. They are:

1. Public interest
2. Use of land
3. Acquisition hierarchy
4. Compensation

Public interest

The change of land use should be clearly be in "public interest". There could be three criteria for defining "public interest". One, the level of investment that is being proposed. Two, the numbers of jobs to be created directly and indirectly. And three, land required to facilitate and implement infrastructure projects like building roads, ports, airports, power plants and similar public utilities.

Use of land

Economists consider land to be one of the three factors of production, along with labour and capital. For a car factory, or a steel plant, land is only one of the factors of production. There is nothing wrong in state governments buying land to ensure that it is used as a factor of production whenever it meets the 'public good' criteria mentioned above.

For example, in the case of a real estate company, for whom land is 'stock-in-trade', the Government does not allot land as the main intention of such companies is only to make profit by selling such land.

Acquisition hierarchy

The first priority is to allocate wasteland. If wasteland is not suitable government moves to the next category unused land. For instance, many states have industrial development authorities that own industrial estates, many defunct. Similarly, irrigation departments, housing boards and so on, have land that could be considered before moving on to farmland. In farmland too, single-cropped land is prioritised over double-cropped land.

Compensation

Most important is the issue of innovative compensation to farmers. The farmers who give up land should be adequately compensated not just monetarily but in other ways too, if possible. For example, offering jobs to eligible and skilled farmers in exchange for the land they give up is a good reason for the Government to show interest in change of land use.

Procedure for Permission of Change of Land Use and Sanction of Building Plans in Controlled Areas

Any person in seeking change of land use of his land situated in Controlled Area required permission of the Director, Town and Country Planning of his state.

Application for change of land use is to be made in the appropriate form specified by the respective state's land reform/ revenue Act and submitted in the office of District Town Planner concerned along with the following documents:

a) Survey plan of the land on a scale 1":40 showing the existing means of access to the land and building and the use of land falling in 100 yards of the property of said land (in triplicate)
b) Copy of sale deed showing title of the land and the copy of Jamabandi and intqual etc.
c) Dimensioned sazra of the land.
d) Land utilization plan and project report, justifying the requirement of land for the project, article of memorandum and authorization to deal with department(if any)
e) No objection certificate from the Haryana State Pollution Control Board, if the site falls within the agricultural zone
f) Registration of unit with Industrial Dept.
g) Any other document, which may be, required by the department specifically in the particular case.
h) A demand draft in favour of Director, Town and Country Planning concerned state drawn on any scheduled back on account of scrutiny fee at the rate fixed by the State Government.

In case the required site fulfills the parameters in the zoning regulation of the development plan of controlled area, permission is granted and the applicant shall have to start the construction after getting the building plans sanctioned within a period of six months, from the date of grant of permission for change of land use and complete the construction within two years from the date of permission. However, this time limit varies from state to state. The procedure for getting sanction of building plans is given as below.

Application on form specified by the relevant state revenue Act accompanied by the following documents/plans is to be submitted in the office of District Town Planner concerned.

a) Form specified by the relevant State Revenue Act
b) Copy of the permission letter
c) Demand draft for scrutiny fee @ rate fixed by the State Government per sq. meter of covered area.
d) Building plans showing public health services in triplicate of which two sets to be mounted on cloth.

Decision on the request for permission for change of land and sanction of building plans to be conveyed within 90 day from the date of submission of request.

The following is the format of a standard application form which needs to be submitted to the appropriate land reforms officer in order to obtain conversion certificate for agricultural land into non-agricultural land.

Application for conversion of land for setting up of industries/ housing complex (court fee of Rs 10 to be affixed)

To
The District Land and Land Reforms Officer,
_____

Sub: *Prayer for conversion of Land.*

Dear Sir,

I/we shall be very much glad if you kindly arrange to convert the following schedule of land to Non-agri land for setting up of Industries/ Housing Complex.

Schedule of Land

a) Name of Mouza: _____
b) J.L.No.: _____
c) Khatian No. (R.S. & L.R.): _____
d) Plot No. (R.S. & L.R.): _____

e) Recorded classification: _____
f) Area of Land: _____
g) Police Station: _____
h) District. _____

The following documents in 5 copies are enclosed.

1. Declaration
2. Copy of Mutation Certificate.
3. Copy of current Record-of-Right.
4. Site plan in duplicate.
5. Certificate regarding industries issued by the DIC/Dte of Industries/Dept. of Industry.
6. Copy of the project report duly vetted by the Competent Authority.

I/we further undertake to the effect that I/we will have no claim over the said land if in future the land (s) vests in the State in any proceeding under any provision of law. I/we also undertake to the effect that if the land in question is found to be vested. I/we will apply to the State Govt. for Long Term Settlement of the same under usual terms and conditions on payment of Rent and Salami etc. as will be determined by the State Govt. That in case of my failure to apply Long Term Settlement within the period of one month. I shall be liable to be evicted from the land as a trespasser and shall also be liable to payment of damage for the use and occupation of the said land. That I have taken over possession of the land and the said land is free from encumbrances.

I/we also declare that none of the land is recorded as Tank/Orchard or cultivated by Bargadar.

Yours faithfully,
Date:



7.3

Land Conversion Table

Total extent of the site may be given in sq. ft., sq. m, grounds, acres, cents or square yards. The extent given is converted into square feet by using the following conversion table to convert values in other units to sq. ft.

1 ground	2400 sq. ft
1 square metre	10.76 sq. ft.
1 acre	43560 sq. ft.
1 cent	435.6 sq. ft.
1 square yard	9 sq. ft.



7.4

What is Transferable Development Right?

Transfer of Development Rights (TDR) means making available certain amount of additional built-up area in lieu of the area relinquished or surrendered by the owner of the land, so that he can use extra built-up area either himself or transfer it to another in need of the extra built-up area for an agreed sum of money.

Purpose of TDR

The process of land acquisition in urban areas for public purpose especially for road widening, parks and play grounds, schools etc., is complicated, costly and time consuming. In order to minimize the time needed and to enable a process, which could be advantageously put into practice to acquire land for reservation purposes mentioned above.

Development Rights Certificate (DRC), whether transferable/ Inheritable: If the owner of any land which is required for road widening for formation of new roads or development of parks, play grounds, civic amenities etc., those proposed in the plan shall be eligible for the award of Transferable Development Rights. Such award will entitle the owner of the land in the form of a

Development Rights Certificate (DRC), which he may use for himself or transfer to any other person.

Calculation of Development Right (DR)

Illustration for use of transfer of development rights

Illustration No. 1: In a plot area of 500 sq. meters at road "A", where floor area ratio is 1.5:

1. Plot area: 500 sq. m
2. Permissible floor area: 1.5
3. Buildable Floor Area: 500 × 1.5 sq. m = 750 sq. m
4. Area surrendered: 100 sq. m
5. Additional floor area in the form of Development rights: 150 sq. m
6. Plot area after surrender: 500 – 100 = 400 sq. m
7. Buildable floor area in plot area of 400 sq. m (after surrender)
   a) If additional floor area is not utilized in the same plot: 750 sq. m
   b) If additional floor area is utilized in the same plot:750 + 150 = 900 sq. m

Illustration No. 2: In a plot area of 500 sq. meters at road "B", where floor area ratio is 0.75:

1. Plot area: 500 sq. m
2. Permissible floor area: 0.75
3. Buildable Floor Area: 500 × 0.75 = 375 sq. m
4. Area surrendered: 100 sq. m
5. Additional floor area in the form of Development rights: 150 sq. m
6. Plot area after surrender: 500 – 100 = 400 sq. m
7. Buildable floor area in plot area of 400 sq. m (after surrender)

c) If Additional Floor area is not utilized in the same plot: 375 sq. m

d) If Additional Floor area is utilized in the same plot: 375 + 150 = 525 sq. m

Illustration No. 3: In a plot area of 500 sq. meters at road "C", where floor area ratio is 0.75 and Development right of 150 sq. m originated at road "A" is transferred:

1. Plot area: 500 sq. m
2. Permissible floor area: 0.75
3. Buildable Floor Area: 500 × 0.75 = 375 sq. m
4. Additional floor area transferred for road "A": 150 sq. m
5. Total Buildable floor area: 375 + 150 = 525 sq. m



7.5

Service Tax: Basic Concepts and Routine Procedure

Introduction

Introduction to service tax

Like the tax on sale of goods, service tax is a tax on the sale of services. It is an indirect tax collected by the service provider on behalf of the government. Though service tax is a type of sales tax on services rendered, it is administered by the Department of Excise and Customs working under Department of Revenue, Ministry of Finance, Government of India. The responsibility of administration and collection of service tax has been vested with CBEC (Central Board of Excise and Customs)

Tax on various services has been gradually introduced since 1st July1994. Service tax was first introduced in the year 1994 vide Chapter V (section 64 to 96) of Finance Act 1994 and thereafter, Chapter V A (Section 96A to 96I) was inserted by Finance Act, 2003. Initially, only three services were covered and now, 99 services are covered under the tax net.

The system of charging service tax is similar to that of charging sales tax on goods. It is charged from consumer along with price for service rendered, collected by the service provider (barring some exceptional cases) and deposited in the government treasury. The basic objective of levying the service tax is to broaden the tax base, augment revenue and involve larger participation of citizens in the economic development of the country.

The Constitutional validity of service tax was upheld in the following cases:

1. Service tax is distinct and separate from Professional Tax and Parliament is competent to levy service tax on services rendered by the Chartered Accountants. Jodhpur Chartered Accountants. Society v. Union of India (2002) 176 CTR 177(Rajasthan).
2. Service tax does not offend article 14 or 19 of the constitution and therefore service tax on Chartered Accountants is constitutionally valid—All Kerala Chartered Accountants Association v. Union of India (2002) 121 Taxman 486 (Ker.)
3. The legislature is always held to have wide discretion to choose the objects for taxation. Applying the principle of "Expressive Unions", it was observed that before a parliamentary legislation can be held to be beyond its legislative competence, the court must hold that there is an express and specific bar or bar by a necessary implication against Parliament enacting a law on the topic in question, i.e. Service Tax—Chartered Accountants Association v. Union of India (1994-2006) STT 64/(2001) 251 ITR 53/115 Taxmann 543 (Gujarat).

Relevant Laws

The important legislations in relation to the service tax are:

1. Applicable provisions of The Finance Act, 1994:

Chapter V provides for the extent, commencement and applicability of the Chapter. It gives the definition of the words used in the legislation. Chapter VA also specifies the authority in deciding applicability / liability of service tax of an assessee; the powers of various authorities and the procedure of their functioning.

Chapter VA inserted w.e.f.14-5-2003 by the Finance Act, 2003 contains provisions pertaining to Advance Rulings.

2. Service Tax Rules, 1994:

   These rules provide for the procedure for the assessment and collection of service tax; the definitions used in the rules, appointment of authority, procedure for registration, mode of payment of tax, filing of returns, procedure and form of appeals to respective authorities in form ST-1 to ST-7.

3. Export of Services Rules, 2005:

   These rules provide the rules applicable for those exporting services to other countries; and the exemptions and rebates for the same.

4. CENVAT Credit Rules, 2004:

   These rules have been made in lieu of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002. They provide for the provisions pertaining to CENVAT Credit; conditions for allowing such credit; refund of the same; procedural aspects in relation to credit; documentation and accounting; information, transfer of credit, transition, deemed credit, recovery, confiscation and penalty provisions of CENVAT transactions.

5. Service tax (Advance Rulings) Rules, 2003:

   These rules provide for the form and application of obtaining advance rulings and subsequent certification of the same. Form AAR (ST) is applicable.

6. Authority for Advance Rulings (Customs, Central Excise & Service Tax) Procedure Regulations, 2005:

These rulings are to regulate the procedure of the Authority for Advance Rulings (Customs, Central Excise and Service Tax) in regard to the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994, in supersession of the Authority for Advance Rulings (Procedural) Rules, 2003. They define the various authorities; their powers, functions, internal working procedures, proceedings after the death of the assessee, hearings in the matter, inspection of records, and the prohibitions applicable to them in relation to dress, carrying of arms, mobile phones, etc.

7. Service Tax (Registration of Special Category of Persons) Rules, 2005:

   Issued under notification no.27 of 2005, these rules are in line with the CENVAT Credit Rules, 2004. They provide for registration of and filing of returns by specific assessee. Form ST -1 is applicable to these.

8. Service Tax (Determination of Value) Rules, 2006:

   Issued under notification no 12 of 2006, these rules provide for the method of determination of the value of service liable to service tax, inclusion and exclusion of certain items from the total value.

9. Taxation of Services (provided from outside India and received in India) Rules, 2006:

   Issued under notification no 11 of 2006, as the name suggests, these rules provide for tax payable on services rendered outside India and the benefits out of which are received in India. It provides for the specific services, which are taxable, procedure for registration, payment of tax etc.

10. Service Tax (Removal of Difficulty) Order, 2002

Service Providers

Determination of taxability of service

The acid test

The acid test to decide taxability requires the fulfillment of the following conditions:

1. Service
2. Taxable service
3. Service provider
4. Recipient of service
5. Place where service is delivered
6. Aggregate value not exceeding rupees four lakhs

Service

A service should have been provided or to be provided to attract taxability.

Services provided in the real estate industry normally include construction of complex (residential or commercial) services, real estate agent's services, services of an architect, maintenance or repair services and consulting engineer's services.

Each service rendered can be an input service as well as an output service.

Input service

Rule 2(l) of Cenvat Credit Rules, 2004 defines an input service as: "input service means any service,

i) used by a provider of taxable service for providing an output service

ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and inward transportation up to the place of removal."

Output service

Rule 2(p) of Cenvat Credit Rules, 2004 defines an output service as

"output service means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions "provider" and "provided" shall be construed accordingly."

Taxable service

The service provided or to be provided should be taxable service as defined in Section 65(105).

Service provider

There should be a service provider. Service tax is leviable only when there is a service provider.

Generally the Service tax is payable by the Service provider as per section 68 of the Finance Act-1994 though exceptionally this responsibility is given to the persons other than the service provider as per the provisions of Section 68(2) by issuing a Notification in this respect.

Recipient of service

Clause (105) of Section 65 uses different titles to describe recipient of service for different services provided; client, customer, any person, etc. While making a judgement as to whether a particular receiver of service is to be considered for the purpose of taxability, the meaning of such term should be looked into. For example, an employee would not be covered by the term "client".

In the case of a group of concerns, services rendered by one concern to another concern will be liable to service tax since the two concerns are separate legal entities.

Place where service is delivered

Import of services

With effect from April 18, 2006, new provisions relating to import of services apply (Notification No 14/2006 dt April 19, 2006, Finance Act, 2006 introduced section 66A, Taxation of Services (Provided from Outside India & Received in India) Rules, 2006, Notification No. 11/2006- Service tax dated April 19, 2006)

Criteria for taxation of services imported in India Section 66A(1)

Where taxable services are

a) provided or to be provided by a person who has established a business or has a fixed establishment from which service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India

b) to a person who has place of business or fixed establishment or permanent address or usual place of residence, in India

Such service shall be taxable service and shall be treated as if the recipient has provided the service in India (hence recipient is liable to pay tax).

Points to be noted

1. If the recipient of service is an individual and such service

received by him is not for the purpose of use in business or commerce then the provisions of Section 66A will not apply

2. The country where, the establishment of the provider of service directly concerned with the provision of service is located shall be treated as the country from which service is provided or to be provided. A person having business establishments in more than one country, the country where the provision of the service is directly concerned shall be treated as the country from where the service is provided or to be provided.
3. Permanent Establishments in different countries to be treated as separate persons.
4. A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.
5. Usual place of residence in relation to a body corporate shall mean the place where it is incorporated or otherwise legally constituted.

Taxation of services (provided from outside India and received in India) rules, 2006

Property related services in relation to immovable property which is situated in India shall be taken as received in India. In other words, location of immovable property shall be the criteria for determining the place of service. Such services are

1. architect's service
2. commercial or industrial construction service
3. interior decorator's service
4. real estate agent's service
5. site formation and clearance, excavation and earthmoving and demolition service
6. dredging service
7. construction of complex service

8. auctioneer's service
9. survey and map making service
10. general insurance service

For 50 other services including erection, commissioning and installation service; management, maintenance and repair service, the performance of service is the criterion. Even if part of services are rendered in India, they shall be treated as received in India.

In respect of other services including consulting engineer's services; intellectual property services, location of service receiver and use of service in commerce or industry is the criterion. The recipient of the service should be located in India and the service should have been used for business or commerce to treat the service as received in India.

Part performance in India is equivalent to performance in India and value of service shall be determined under Section 67 of the Act and Rules made thereunder.

Scheme of taxation

Rule 4: The recipient of taxable service provided from outside India and received in India shall apply for service tax registration as provided in Section 69 of the Service Tax Act

Rule 5: The taxable service provided from outside India and received in India shall not be treated as output service to avail of Cenvat credit on the input or input services. However, where such services are used as an input for providing any taxable output, service tax paid on such service can be taken as input credit.

Export of services

With effect from 15-03-2005 new provisions relating to export of services apply (Export of Services Rules, 2005 vide Notification No. 9/2005 dt. March 3 2005 as amended by Export of Services (Amendment) Rules, 2005 vide Notification 28/2005 dated 7th

June 2005 and Export of Services (Amendment) Rules, 2006 vide Notification No 13/2006 dated April 19, 2006)

As per these rules, any service may be exported without payment of service tax. Different criteria have been laid down for different services to be treated as an export of taxable service.

For following services,

1. architect's service
2. commercial or industrial construction service
3. interior decorator's service
4. real estate agent's service
5. site formation and clearance, excavation and earthmoving and demolition service
6. dredging service
7. construction of complex service
8. auctioneer's service
9. survey and map making service
10. general insurance service

the criteria are

a) the services must have been provided in relation to immovable property which is situated outside India
b) the service should be delivered outside India and used outside India
c) payment for such service provided outside India is received by the service provider in convertible foreign exchange

For 50 other services including erection, commissioning and installation service; management, maintenance and repair service, the conditions to be satisfied are:

1. they must have been performed, either fully or partly, outside India
2. they must have been delivered outside India and used outside India and

3. payment for such service provided outside India should be received by the service provider in convertible foreign exchange

In respect of other services including consulting engineer's services; intellectual property services, the criteria are

1. provision of service must be to a recipient located outside India
2. such service is delivered outside India and used outside India and
3. payment for such service provided outside India should be received by the service provider in convertible foreign exchange.

If such recipient has any commercial establishment or any office relating thereto, in India, such taxable services shall be treated as export only if

1. order for provision of such service is made by the recipient of such service from any of his commercial establishment or any office located outside India
2. service is delivered outside India and used outside India and
3. payment for such service provided outside India should be received by the service provider in convertible foreign exchange.

Service provided other than in relation to commerce or industry will be treated as export if

1. provision of service is to a recipient located outside India at the time of provision of such service
2. such service is delivered outside India and used outside India and
3. payment for such service provided outside India should be received by the service provider in convertible foreign exchange.

Options to exporter of service

a) Export without payment of service tax and utilise Cenvat Credit for payment of service tax on other services
b) Export without payment of service tax and claim rebate of service tax paid on input services and excise duty paid on inputs under Rule 5
c) Pay service tax on exported services and claim rebate (by this, he can utilise his input credit)

Aggregate value not exceeding rupees four lakhs

A threshold limit of Rs 4 lakh has been prescribed, up to which the value of all taxable services provided during the financial year is exempt from tax

What Amount is Taxable

Services provided in real estate industry

The taxable services as defined in clause (105) of section 65 are taxable. Each of the service relating to the real estate industry has been discussed in detail in relevant sections of this book.

General exemptions

The following general exemptions are provided for through various notifications issued:

a) All the taxable services provided by any person, to the United Nations or an International Organisation (Notification 16/2002 dated 2nd Aug 2002)
b) Any service provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, (Notification 4/2004 dated March 31, 2004)
c) Any service may be exported without payment of service tax (Notification 9/2005 dated May 3, 2005)

d) Small service providers. With effect from April 1, 2005 a threshold limit of Rs 4 lakh has been prescribed, up to which the value of all taxable services provided during the financial year is exempt from tax (Notification No 6/2005 dated March 1, 2005)

Following persons are excluded from the exemption

1. Persons using brand name /trade name of another person
2. In case where service tax is payable by person other than the service provider - Proviso (ii) of Paragraph 1

Aggregate value not exceeding four lakh rupees means

a) the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act,
b) charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees
c) but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.

Conditions to be fulfilled to avail the threshold exemption of rupees four lakhs

1. Provider of taxable service has the option not to avail the exemption and such option can not be withdrawn Paragraph 2(i)
2. The provider of taxable service shall not avail the Cenvat credit of service tax paid on any input service used for providing the taxable service for which exemption is sought under notification Paragraph 2(ii)

The aggregate value of taxable services rendered by provider of taxable services from one or more premises does not exceed Rs 4 lakh in the preceding Financial Year–Paragraph 2(viii)

Valuation of Services

Determination of value

Value of taxable service has to be determined as per:

a) Section 67

b) Service Tax (Determination of Value) Rules, 2006

Section 67 of the Finance Act 1944 lays down the manner of valuation of taxable services for charging service tax.

Finance Act, 2006 substituted Section 67 for a new Section and w.e.f 18-4-06 all earlier circulars on valuation were withdrawn and Service Tax (Determination of Value) Rules, 2006 were notified.

As per the new Section, the value shall be determined as under:

Clause	Situation where consideration is	Taxable value of services
(i)	in money	the gross amount charged by the service provider
(ii)	not wholly or partly consisting of money	such amount in money, with the addition of service tax charged, is equivalent to the consideration
(iii)	not ascertainable	amount as may be determined in the prescribed manner.

Where the *gross amount charged* by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of the tax payable, is equal to the gross amount charged.

Further, the gross amount charged shall include any amount received towards the taxable service before, during or after the provision of such service. Gross amount charged includes payment by cheque, credit card, deduction from account, and any

form of payment by issue of credit notes or debit notes and book adjustment.

Consideration includes any amount that is payable for the taxable services provided or to be provided.

Money includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.The Service Tax (Determination of Value) Rules, 2006 lay down the principles to determine taxable value of services and were introduced vide Notification No.12/2006 ST dated 19.04.2006 under Section 94(2)(aa) of Finance Act, 1994.

Rule 3 lays down the manner of determination of value subject to the provisions of Section 67. Where the consideration received is not wholly or partly consisting of money, value shall be:

a) the value of similar services;
b) where the value cannot be determined in accordance with clause (a), equivalent money value of such consideration

Value of similar service (Rule 3(a))

Value of similar service is the amount charged for providing similar service to any other person in the ordinary course of trade where the gross amount so charged is the sole consideration

Equivalent value (Rule 3(b))

Equivalent money value of such consideration is to be determined by the service provider such that it cannot be less than cost.

Inclusions and exclusions from value

Inclusion in value (Rule 5(1))

All expenditure or costs incurred by the service provider in the course of providing taxable service shall be included in the value for the purpose of charging service tax on the said service.

Exclusion from value (Rule 5(2))

The expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service

Treatment of out of pocket expenses or reimbursements

Explanation 2 to Rule 5

The value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration are indicated separately in the invoice.

All out of pocket expenses shall be included in value of taxable service.

Conditions for exclusion of out of pocket expenses or reimbursements from value when service provider acts as pure agent.

a) Service provider acts a pure agent of the recipient of service when he makes third party payments for goods or services received
b) The recipient of service receives and uses goods or services
c) The recipient of service is liable for payment to third party
d) The recipient of service authorizes the service provider to make payment on his behalf
e) The recipient of service knows that the goods and services paid for shall be provided by the third party
f) The invoice issued by the service provider to the recipient of service indicates the payment made by him on behalf of the service recipient
g) The service provider recovers only such amount as has been paid to third party
h) The goods or services procured from third party are in addition to services provided by service provider on his own account.

Pure agent

Explanation 1 to Rule 5 defines a pure agent as a person who:

a) enters into a contractual agreement with the recipient of service to act as his pure agent in order to incur expenditures or costs in the course of providing services
b) neither intends to hold nor holds any title to goods or services procured or provided as a pure agent of the recipient of services
c) does not use such goods or services and
d) receives only the actual amount incurred to procure such goods or services

Value of taxable service provided from outside India–Rule 7

Section 66A provides for charge of service tax on services received from outside India

Sub rule (1) of Rule 7 provides that the value of such services shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

Clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 provides for services for which criterion of performing the service at least in part, in India is prescribed for such services to be received in India

Sub rule (2) of Rule 7 provides that the value of such services shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.

Registration

Who must obtain registration?

With effect from June 16, 2005, it is mandatory for the following to obtain registration:

a) Every person liable to pay service tax
b) An input service distributor
c) Every provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs 3 lakh.

(a) Every person liable to pay service tax

Section 69(1) requires every person liable to pay the service tax to apply for registration in the prescribed manner. Section 68(1) makes every person providing taxable service liable to pay service tax.

The application has to be made within 30 days from the date of notification levying tax on the relevant service or within 30 days from the date on which the service provider starts providing the taxable service, whichever is later.

(b) An input service distributor

Rule 2(m) of the Cenvat Credit Rules, 2004 defines an input service distributor as:

"an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill, or as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be."

The procedure for registration to be followed by an input service distributor is laid down in Service Tax (Registration of Special Category of Persons) Rules, 2005.

The input service distributor shall apply for registration within a period of thirty days of the commencement of business or the 16th day of June 2005, whichever is later.

(c) Small scale service providers

The service providers whose aggregate value of taxable service does not exceed Rupees four lakhs are exempted from payment of tax w.e.f. April 1, 2005 and hence not liable to apply for registration till the exemption limit is crossed. However, such service providers are required to apply for registration within a period of thirty days of the date in the financial year on which the exceeding the aggregate value of taxable service exceeds three lakh rupees.

The procedure for registration to be followed by such service providers is laid down in Service Tax (Registration of Special Category of Persons) Rules, 2005.

Aggregate value of taxable service

"aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount as prescribed under Section 67 (on valuation), charged by the service provider towards taxable services but does not include such gross amount which is exempt from the whole of the service tax leviable thereon under Section 66 under any notification other than notification 6/2005-ST dt March 1, 05.

Manner of registration

Rule 4 of the Service Tax Rules, 1994 provides for the manner of registration. The assessee has to make an application for registration in form ST-1 in duplicate, as taxpayer. The Form is available at the CBEC website and also with the jurisdictional Commissionerates.

Where an assessee is providing taxable service from more than one premise or office, and does not have any centralized billing systems or centralized accounting systems, he shall make separate applications for registration in respect of each such premises or offices. In case centralized billing system is there, a single application may be made.

On 2nd November, 2006 Notification No. 29/2006. Service Tax was issued to amend rule 4 and 5 of the Service Tax Rules, 1994 with effect from that date. In rule 4, for sub-rules (2) and (3), the following sub-rules shall be substituted, namely:

Where a person, liable for paying service tax on a taxable service,

i) provides such service from more than one premises or offices; or

ii) receives such service in more than one premises or offices; or,

iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.";

Where the service provider is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

The process of registration has been simplified now. Bowing to the demand from trade and industry that service providers are facing difficulty in furnishing information and documents

required for registration, the Finance Ministry has reduced the information required from 22 different areas to only 11 specified areas. The Ministry has curtailed the information required to a large extent saying that more details could be obtained from the service providers during verification.

Whom to apply to?

If the service provider is having a centralized billing system the application has to be made to the Chief Commissioner or the Commissioner of Central Excise in whose jurisdiction the premises falls.

In other cases, the application has to be made to the jurisdictional Superintendent of Central Excise, within whose jurisdiction the premises of business falls.

Generally, all Commissionerates of Central Excise, have a Service Tax Cell, headed by Assistant Commissioner/Deputy Commissioner. The work is also delegated to Central Excise Divisions in many Commissionerates. As such, one can approach the nearest Central Excise Authority.

Documents to be submitted with ST-1

As per Hyderabad-IV, Trade Notice No. 76/2003, dated 6-11-2003, the following documents have to be submitted with ST-1:

a) Proof of address of the premises office sought to be registered
b) PAN number of the service provider
c) List of Branches offices or premises of the service provider
d) Brief note on accounting system adopted by the service provider
e) Branch-wise series of invoices maintained along with a sample copy thereof
f) Previous year's audited balance sheet along with gross trial balance of different branches

g) Details of records accounts maintained at different branches and Central Office

h) Bank account numbers of the Branches and Central Office through which the receipts are deposited transacted.

Grant of certificate

The superintendent will grant a registration certificate in Form ST-2 after scrutiny of the application. The service provider will be given a 15-digit code (STP), which he has to quote on all transactions.

The certificate has to be granted by the Department within 7 days of the receipt of the application. In case of failure to issue registration certificate within 7 days, the registration applied for is deemed to have been granted and the service provider can carry on with his activities.

Effect of changes in the details

Any change in the details of the application has to be informed to the respective authorities within a period of 30 days.

If the place of business is changed, the service provider has to obtain a new certificate of registration.

If any service provider stops providing the service for which he has obtained a certificate, he has to surrender it to the authority.

When a registered service provider transfers his business to another person the transferee should obtain a fresh certificate of registration.

When a registered service provider ceases to carry on the service activity for which he is registered, he should surrender his registration certificate to the Central Excise authorities.

Points to be noted with respect to registration

1. Service provider can pay service tax and file returns immediately after applying for registration (even if the registration certificate has not been received).

2. Prior to September 10, 2004, Section 75A provided for a penalty of Rs 500 for failure to obtain registration. The said section has been deleted w.e.f. September 10, 2004. However, new Section 77 has been inserted providing for a penalty which may extend up to Rs 1000 where no penalty has been prescribed for contravention of any of the provisions of the Act or rules made thereunder. However, under Section 80, no penalty shall be imposed where reasonable cause is proved.
3. It is not mandatory to have a PAN for obtaining registration in Service Tax. However, it is advisable for Service providers to have a PAN No. as Service Tax Code (STC) Number based on PAN allotted by Income Tax Deptt. has been introduced in Service Tax also. The main objective of allocating a number is to identify the concerned person's location and place of registration. [circular no. 35/3/2001-CX 4, dt. Aug 27, 2001 and circular no. 40/3/2002, dt. Feb 21, 2002]
4. Where a sole proprietor is carrying on business in the same premises in two different names, he has to obtain separate registration for each business.
5. The registration number has to be mentioned in the invoices issued by the service provider

Documents and Records

Documents to be issued

Every service provider is required to issue a bill/invoice/challan for every service provided to the service receiver specifying the details stated in the rules (Rule 4A(1) of the Service Tax Rules, 1994).

Time limit for issue of the document

The document should be issued not later than 14 days from the date of completion of the said taxable service or receipt of ant payment towards the value of such taxable services, whichever is earlier.

With effect from June 16, 2005, where any payment towards the value of the taxable service has not been received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, the document should be issued not later than 14 days from the last day of the said period.

Contents of the document

Such invoice/bill/challan should be serially numbered and should contain the following particulars:

1. the name, address and registration number of such person;
2. the name and address of the service receiver;
3. description, classification and value of the taxable service provided or to be provided; and
4. the service tax payable thereon.

Signature on the document

The document should be signed by the service provider or any person authorized by him.

Documents to be issued by input service provider

Every input service distributor distributing credit of taxable services is required to issue an invoice, bill or challan in respect of such credit. (Rule 4A(2) of the Service Tax Rules, 1994)

Contents of the document

Such invoice/bill/challan should be serially numbered and should contain the following particulars:

1. the name and address of the person providing input services;
2. the serial number and date of the invoice/bill/challan issued by such person under sub rule (1) of Rule 4A;
3. the name and address of such input distributor;
4. the name and address of the recipient of such credit; and
5. the amount of credit distributed.

Signature on the document

The document should be signed by the input service distributor or any person authorized by him.

Records to be maintained (Rule 5)

No specific records are prescribed by the Act to be maintained. Rule 5 (1) states that records maintained under any law in force, whether computerized or written manually, shall be acceptable.

The service provider should maintain records, which contain the data of amounts received in lieu of services with the details of services provided, etc. The records should be neatly maintained and preserved.

Where the assessee is availing Cenvat Credit, Rule 9(5) of the Cenvat Credit Rules 2004 requires the following records to be maintained:

a) Receipt, consumption, disposal and inventory
b) With value, duty paid, credit taken and utilized
c) Person from whom procured

At the time of filing his return for the first time, the assessee should furnish to the Superintendent of Central Excise, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.

Maintenance of records

With effect from March 1, 2006, the records maintained by the service provider should be maintained for a period of 5 years immediately after the financial year to which such records pertain.

Such records have to be made available for inspection and examination by the Central Excise Officer authorized in writing by the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, or, by the audit party deputed by the Comptroller and Auditor General of India.

Such availability should be made at the registered premises of the assessee at all reasonable times.

Registered premises include all premises or offices from where an assessee is providing taxable services.

Payment of Service Tax

Liability to pay tax

Section 68(1) requires every person providing taxable service to any person to pay service tax at the prescribed rate (12% advalorem and education cess 2% on 12%) and in the prescribed manner. Rule 6 of the Service Tax Rules, 1994 lay down the manner and time limit for payment of tax.

The tax has to be paid in TR-6 challans in any bank designated by the CBEC. Payment in a non designated bank would amount to non payment of tax. However, it has been held in certain cases like ***Nisa Industrial Service (P) Ltd v CCE 2003 (157) ELT 66 (Mumbai – CEGAT)*** that payment of tax in a non designated bank would not amount to non payment of tax.

In case of individuals, partnership and proprietary firms

1. The service tax has to be paid every quarter. A quarter begins from 1st January, 1st April, 1st July, and 1st October.

2. The due date is 5th of the month immediately following the said quarter.
3. The due date for service tax on the value of taxable services received during the month of March shall be 31st of March

In case of others,

1. The service tax has to be paid every calendar month.
2. The due date is 5th of the month immediately following the said calendar month.
3. The due date for service tax on the value of taxable services received during the month of March shall be 31st of March

No service tax shall be payable for the part or the whole of the value of the services, which is attributable to services provided during the period when such services were not taxable, irrespective of the time of receipt of payment therefore. (Second proviso to Rule 6(1))

Thus, where any service was not taxable before 1st March 2006 and was provided before 1st March 2006, the same will not be taxable even if the payment for the service has been received after such date.

With effect from 1st October 2006, the assessee, who has paid service tax of rupees fifty lakh or above in the preceding financial year or has already paid service tax of rupees fifty lakh in the current financial year, shall deposit the service tax liable to be paid by him electronically, through internet banking. Notification 27/2006 – ST dt. September 21, 2006.

A circular has been issued as F. No. 137/127/2006-CX.4 regarding Mandatory E-Payment of Service Tax for major assesses.

It has been clarified that keeping in view the systemic and procedural problems during initial phase of implementation of this scheme, the field formation may take a lenient view in such case where there is reasonable cause for failure to make

mandatory e-payment and penal action may not be initiated. At the same time, such assesses should expeditiously complete the procedural formalities for availing internet banking facility from designated banks and comply with the requirement of mandatory e-payment.

Further,

1. For a person providing taxable service from more than one premises, where each such premises is separately registered with the department for payment of service tax, the criterion of Rs 50 lakh would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him. However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of Rs 50 lakh.
2. If a person pays service tax from a registered premises for both the taxable services provided by him and the taxable service received by him on which he is liable to pay service tax, the cumulative service tax paid, i.e., service tax paid on taxable service provided from and service tax paid on taxable service received in such registered premises would be taken into account for the purposes of satisfaction of criterion of payment of service tax amount of Rs 50 lakh.
3. Further, for the purposes of calculation of this amount of Rs 50 lakh the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount. Therefore, if an assessee has paid service tax of Rs 50 lakh (in preceding financial year or the current year) in cash plus CENVAT credit, such assessee, if he pays any further service tax in cash, would be required to make mandatory e-payment.

The assessee being a resident Indian has to deposit the service tax into the government treasury irrespective of the fact whether or not he has collected it himself. It is the responsibility of the service provider to pay tax.

If any taxable service is provided by any person from outside India, to a person residing in India, the payment of service tax is to be made by the residing Indian who has received such services.

However, if the service from outside India is received by an assessee for any non commercial or business use, the provisions of service tax do not apply.

Generally the Service tax is payable by the Service provider as per section 68 of the Finance Act-1994 though exceptionally this responsibility is given to the persons other than the service provider as per the provisions of Section 68(2) by issuing a Notification in this respect. Such services are:

1. services in relation to a telephone connection or a pager or a telegraph/telex/facsimile communication or a leased circuit, the Director General of Posts and Telegraph, or the Chairman or MD of the MTNL or any other person who has been granted a license by the Central Government under section 4(1) of the Indian Telegraphs Act, 1885 is liable.
2. services in relation to general insurance business: the Chairman cum Managing Directors of the General Insurance or the National Insurance or the New India Assurance Company Limited or the Oriental Insurance Company Limited or the United India Insurance Company Limited, or any other person carrying on the general insurance business after obtaining a certificate of registration under section 3 of the Insurance Act, 1938 is liable.
3. services in relation to insurance auxiliary services by an insurance agent: any person carrying on general insurance business or life insurance business in India is liable.

4. services in relation to transport of goods by road in a goods carriage, where the consignor or consignee of goods is
   a) any registered factory or
   b) any company or
   c) any statutory corporation or
   d) a registered society or
   e) any cooperative society or
   f) any dealer of excisable goods who is registered under the central excise law or
   g) any body corporate established by any law or
   h) a partnership firm

   any person who pays or is liable to pay freight either himself or through his agent for the transport of such goods by road in a goods carriage is liable.
5. business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent: mutual fund or the asset management company, as the case may be, is liable
6. sponsorship services provided to any body corporate or firm: body corporate or firm who receives such sponsorship services is liable.

Accounting code numbers

While making the payment of service tax, the head of account should be properly indicated under major and minor heads and sub heads to avoid misclassification.

The relevant Codes allotted by the CBE for various services are given in excel format.

EDUCATION CESS: 00440297

(Other Receipts refer to the interest/penalty on delayed payment.)

The code numbers must be correctly used on the TR 6 challans.

CBEC circular no. 58/05/2003-CX(ST), dt. May 20, 2003 clarifies on wrong use of accounting codes:

"the assessee need not be asked to pay the service tax again. In such cased the matter should be sorted with the P.A.O. As regards to the cases where the assessee was asked to pay service tax again, the amount thus paid may be refunded by the concerned divisional Asst. Commissioner/Deputy Commissioner."

Adjustment of excess service tax paid (Rule 6(3))

Where any service tax has been paid to the credit of the Government for any service that has not been provided, wholly or partly, the assessee may adjust the excess tax paid against his service tax liability of subsequent period if the value of the service along with the service tax has been refunded to the person from whom it has been received. If any of the conditions is not satisfied, the assessee can file a refund claim as per section 11B of the Central Excise Act, 1944

Adjustment by an input service distributor (Rule 6(4A) inserted w.e.f. June 16, 05)

Where an assessee has opted for registration as an input service distributor and has paid to the credit of the Central Government an excess of service tax on account of not having received details of payments received towards the value of taxable services at his other premises or offices, he may adjust such excess against his service tax liability of subsequent period. The details of such adjustment have to be intimated to the jurisdictional Superintendent of Central Excise within 15 days of such adjustment.

Application for provisional assessment

If the assessee is not able to correctly estimate the actual amount of service tax payable on the date of deposit, he may make a written request to the Assistant Commissioner or Deputy Commissioner of Central Excise for provisional assessment. The assessee should state the reasons for payment of service tax on a provisional basis.

The provisions of Central Excise (No. 2) Rules, 2001 shall apply to such provisional assessment except so far as they relate to execution of a bond.

The assessee shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in Form ST 3A accompanying the quarterly/half yearly return.

Points to be noted with respect to payment of tax

The following points should be noted with respect to payment of tax:

1. Service Tax can be paid either by TR-6 challans or by utilizing Cenvat Credit
2. Duty should be rounded off to nearest Rupee
3. Payment shall be made in respect of payment received
4. The value of taxable services has to be computed in the manner laid down in Section 67 of Finance Act, 1994 and the service tax thereon calculated @ 12% advalorem and education tax 2% on 12%. The gross amount charged or billed to the client is not relevant.
5. Accounting Codes must be used correctly
6. Payment should be deposited in the designated banks only. For the list of designated banks you may logon to www.exciseandservicetax.nic.in. The list is also available at every Commissionerate of Central Excise
7. In case of deposit of service tax by cheque, the date of presentation of cheque to the bank designated by the CBEC for this purpose shall be deemed to be the date of payment of service tax, subject to realization of the cheque.
8. A service tax receiver is not liable to service tax if it is not raised in the bill raised by service provider.
9. Service tax is liable to be paid even if not collected from client

10. Service tax is liable to be paid in case it is received from clients even without being due
11. Services performed before the date of taxability are not liable for payment of service tax
12. Multiple service providers can use a single challan for paying service tax. Amount and account code for each service should be indicated separately on the TR-6 challan
13. Being a service provider it is advisable to include a clause in the contract that all future liabilities in regards to service tax will be of the recipient
14. Service tax is payable on the amount received in advance
15. No service tax is to be paid when services are provided free of cost

Returns

Who has to file returns, when and with whom?

Every person liable to pay service tax shall himself assess the tax due on the services provided by him and submit a half yearly return in form ST – 3 or 3A, as the case may be. The period of half year will be calculated between 1st April to 30th September and 1st October to 31st March every year.

The half yearly return has to be submitted by the 25th of the month following the particular half year. If such last date is a public holiday, the returns can be filed on the immediately succeeding working day.

The return has to be submitted to the Superintendent of Central Excise.

Every assessee has to furnish the list of accounts maintained by him in relation to the service tax. However, this list is to be given only at the time of filing of the 1st return.

Every input service distributor is required to furnish a half yearly return in Form ST 3 to the jurisdictional Superintendent of Central Excise not later than the last day of the month following

the half year period. The return gives the details of the credit received nad distributed during the said period.

Documents to be filed with the returns

1. Copies of TR-6 challans of the relevant months
2. Memorandum in Form ST-3A (where applicable)
3. List of all accounts maintained including memoranda received from branch offices, in case of first return

E-filing

Introduction

Initially the government introduced E-Filing on service tax returns only on 10 services from April 2003 vide circular No 52/1/2003 dated March 11, 2003. The Government has extended E-filing of service tax returns facility to all 58 taxable services existing on 2nd Jan 2004 vide circular No 71/1/2004 dated 02nd Jan 2004. Now it is extended for all services. E-filing of service tax returns is not mandatory.

E filing of returns is an assessee facilitation measure of the department in continuation of its modernization and simplification program. It is an alternative to the manual filing of returns.

E-filing can be done through the website http://www.servicetaxefiling.nic.in. All details pertaining to e-filing are provided on this website.

Prerequisites for e-filing

1. Must be the provider of one of the eligible services
2. The assessee should have 15 digit STP Code (PAN based or Temp No.). The fifteen digit STP code can be obtained from the jurisdictional Central Excise/ Service Tax Office.
3. Assessee should have indicated 15 digit STP code in the challans used by him for the period for which return are being filed

4. One should have a valid e-mail Address.

The Board through its circular No. 35/3/2001-CX.4 dt. Aug 8, 2001 has instructed that every Service Tax Payer should be allotted a PAN based code. However since some assesses are still not having PAN numbers, a provision has also been made in the Computer System for issuing a 15 digit temporary (TMPR) STP code. When the assessee gets his PAN number, he should immediately inform the department about the number, and the new STP code will be issued incorporating his PAN number. He need not file any new returns for the past period just because of his new STP code.

Separate returns have to be provided for each of the services provided by multiple service providers.

Procedure for e-filing

1. File an application to jurisdictional AC / DC as laid out in Trade Notice issued in this regard to the concerned excise formation at least one month in advance before the due date of filing of the return.
2. Mention a trusted e-mail address in their application, so that the department can send them their user word and password to help them file their return.
3. User 'id' and 'password' for the assessee will be communicated to him within ten days after filing the application along with technical details required for accessing the relevant site and the procedure for making entries and other guidance as may be necessary.
4. Log on to the Service Tax E-filing Home Page using the Internet at http://www.servicetaxefiling.nic.in.
5. On entering their User word (15 digit STP Code) and password in the place provided on the Home Page they will be permitted access to the E-filing facility.
6. The essential inputs for successful e-filing are:-
   a) Assessee code (15 digit)

b) Location code (6 digit)
c) Challan no
d) Bank branch code (7 digit)
e) Accounting code (8 digit)

7. Follow the instructions given on the website.
   a) Enter the details of the ST-3 return using the 'Entry/amend of Original ST-3 form' button
   b) Enter the details of TR-6 challan for the same period using option 'Entry/amend of original TR-6 challan'
   c) After entering the data and ensuring the values entered are correct, the assesse has to confirm the ST-3 form. To confirm the ST-3 form, press the 'Confirm Original ST-3 Return' button
   d) After pressing the button, the system generates an acknowledgement number as a confirmation of the filing.
   e) The acknowledgement number generated on confirmation, has to be noted down by the assessee and should be quoted for future correspondence. The assessee should take a print out of the ST-3 return along with the acknowledgement slip as a proof of e-filling
   f) If the assessee wants to file a revised ST-3 return, it can be done by selecting 'Entry/Amend of Revised ST-3 form'. Enter the revised data and then press the 'Confirm Revised ST-3 return' button. Steps 5 and 6 are applicable for the revised return also. A new acknowledgement number is generated for the revised return.

Immediately upon receipt of the email containing the user word and password, the assessee should change the password by logging on to the Service Tax E-filing Home Page either directly or through http://www.cbec.gov.in. Keeping the password

confidential is the responsibility of the assessee. No one can be authorized to file return on his behalf.

When the assessee changes his e-mail address he should intimate the department of his new e-mail address. This will help him in continuing to receive messages from the department electronically.

Any person can seek a clarification on problems relating to e-filing of ST 3 returns, by sending an e-mail or contacting the designated officer in the Commissionerate as per details intimated in the Trade Notice issued by the Commissionerate in this regard.

General points pertaining to filing of returns

1. Filing of returns by post

   Trade Notice No. 6/2002, dt 23-1-2002 allows filing of service tax returns in Form ST 3 by registered post.

   The assessee should ensure that the return reaches the Divisional Office on or before the due date.
2. A single return can be filed for multiple services provided by the assessee. Details in each of the columns of Form ST 3 should be separately given for each service.
3. Where no services have been provided in a half year, the assessee is required to file a NIL return within the prescribed time limit.

Assessment and Recovery

Section 70(1) requires every assessee to himself assess the tax due on the services provided by him and to furnish a return to the Superintendent of Central Excise in the prescribed manner.

Provisional assessment can be made where the assessee is not able to correctly estimate the actual amount of service tax payable on the date of deposit by making an application in

writing to the Assistant Commissioner/Deputy Commissioner of Central Excise.

The Assistant Commissioner may initiate recovery proceedings where:

1. The service tax has not been levied or has been short levied
2. The service tax has not been paid or has been short paid
3. The service tax has been erroneously refunded.

The time limit for issue of show cause notice for recovery is

1. Where there is fraud, collusion, willful misstatement, suppression of facts, or contravention of any of the provisions of the Act or rules made thereunder; with the intent to evade payment of service tax, five years from the relevant date
2. In any other case, one year from the relevant date

Relevant date

1. Where service tax has not been levied or paid or has been short levied or paid:
   a) Where a return has been filed, the date on which the return is filed
   b) Where a return is not filed but was required, the last date on which the return is to be filed
   c) In any other case, the date on which service tax is required to be paid

2. Where service tax is provisionally assessed, date of adjustment of service tax after final assessment thereof.

3. Where service tax has been erroneously refunded, the date of refund.

Interest and Penal Provisions

Interest

Any person who fails to pay the tax as per the Act or any rules

made thereunder is liable for a penalty for each day of default. From 10-9-2004 the rate of interest prescribed is 13% per annum.

Where interest has been paid by cheque, the date of presentation of the cheque to the designated bank shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.

Appeals

The assessee can make an appeal to the concerned authorities and tribunal in Form ST – 4 / 5 / 7 as the case may be.

Penalties

1. Penalty for failure to pay service tax

   Section 76, as amended with effect from 18-4-2006, prescribes a penalty of not less than Rs 200 per day during which the failure continues, or two per cent per month of the tax due, whichever is higher. The period of default starts with the first day after the due date and end with the date of payment.

   Maximum penalty that can be levied is the amount of service tax payable.

   No penalty is levied if the assessee proves a reasonable cause for failure.

2. General penalty

   Section 77 prescribes a penalty that of an amount not exceeding Rs 1000 for any contravention under the Act or Rules made thereunder for which no penalty has been described elsewhere.

   No penalty is levied if the assessee proves a reasonable cause for failure.

3. Penalty for suppressing value of taxable service

   Penalty for suppressing value of taxable service is not less than value not levied/not paid/short levied/short paid/ erroneously refunded and not more than twice such

amount. No penalty is levied if the assessee proves a reasonable cause for failure.

Section 73D empowers the Central Government to publish information in respect of defaulters subject to conditions

Cenvat Credit Rules, 2004

What is cenvat credit?

Cenvat is Central Value Added Tax, which is based on the VAT system of taxation. New Cenvat Credit Rules, 2004 vide Notification No. 23/2004-C.E.(N.T.) 10/9/2004 supercede Cenvat Credit Rules, 2002 and Service Tax Credit Rules, 2002 and extend the credit of service tax and excise duty across goods and services. i.e. input credit shall be available across the board on both goods and services including the capital goods. These rules have been made applicable to whole of India except the State of Jammu & Kashmir. Cenvat Credit Rules, 2004 are applicable w.e.f. 10th September 2004, i.e., provision of service should be on or after 10th September 2004.

Documentary evidence shall be the basis for availing CENVAT credit.

Cenvat credit is available to:

1. Manufacturer/producer of final products
2. Provider of taxable service
3. Input service distributor (Rule 3)

Cenvat credit is available on:

1. Input or capital goods received in the manufacture of final product/premises of provider of output service
2. Input service received
3. Stock in hand or in process or inputs contained in finished stock in hand where such goods cease to be exempted or otherwise become excisable (Rule 3)

Documentary evidence

1. Invoice of Manufacturer from factory/depot/premises of consignment agent.
2. Invoice issued by an importer.
3. Invoice issued by importer from his premises or of his consignment agent registered with Central Excise.
4. Invoice issued by registered first stage or second stage dealer.
5. Supplementary Invoice.
6. Bill of Entry.
7. Certificate issued by an appraiser of customs in respect of goods imported through foreign post office.
8. Challan of payment of tax where service tax is payable by other than input service provider.
9. Invoice, bill or challan issued by provider of input service on or after September 10, 2004.
10. Invoice, Bill or Challan issued by input service provider under rule 4A of Service Tax Rules.

The format of invoice should confirm to the requirements of Rule 11 of the Central Excise Rules.

Cenvat credit is not denied for defects in documents Rule 9(2) if the following essential details are provided:

1. payment of duty/service tax
2. description of the goods or taxable service
3. assessable value (for inputs/capital goods)
4. name and address of the input service provider

Duties and taxes eligible for availing cenvat credit

1. the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;
2. the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

3. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978
4. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
5. the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001
6. the Education Cess on excisable goods leviable under section 91 read with section 93 of Finance (No.2) Act, 2004
7. the additional duty leviable under section 3 of the Customs Tariff Act,
8. the additional duty of excise leviable under section 157 of the Finance Act, 2003
9. the service tax leviable under section 66 of the Finance Act; and
10. the Education Cess on taxable services leviable under section 91 read with section 95 of Finance (No.2) Act, 2004,
11. the additional duty of excise leviable under clause 85 of the Finance Act, 2005

Credit is not allowed on duty on such amount of capital goods as the manufacturer/output service provider claims as depreciation (Rule 4(4))

Credit of education cess can be utilised for payment of education cess only and not against any other duty or service tax. Likewise Cenvat Credit of other taxes cannot be utilised for payment of Education Cess.(proviso to Rule 3(7)(b))

Utility of cenvat credit (rule 4)

The CENVAT credit may be utilized for payment of

a) any duty of excise on any final product; or

b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such after being partially processed; or

c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

e) service tax on any output service:

Inputs Rule 2(k)

All goods used for providing any output service except Light diesel oil, High speed diesel oil, Motor spirit commonly known as petrol.

There should be a direct use of the inputs or capital goods for providing output service as against for manufacture, where they can be used "in or in relation to" manufacture

Input service (Rule 2 (l))

Input service means any service used by a provider of taxable service for providing an output service.

Output service (Rule 2(p))

Output service means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly

Provider of taxable service include a person liable for paying service tax Rule 2(r)

Utilisation of CENVAT Credit where output service includes both taxable and exempted service (Rule 6)

Two options are available for provider of output service:

Option 1

He may maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

Option 2

He may opt not to maintain two separate books of accounts. In such a case he may utilise CENVAT credit only to the extent of 20% of the amount of service tax payable on taxable output service. He will remain liable to pay remaining 80% of service tax.

In respect of certain specified services the credit of the whole of service tax paid on these specified services shall be allowed even if they are used partly for exempted service and partly for providing taxable service. Chartered accountant's services are not covered under these services.

Condition for allowing Cenvat credit

The CENVAT credit in respect of input service shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, challan (Rule 4(7))

CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be (Proviso to Rule 3(4))

When is Cenvat Credit allowed?

Cenvat credit on inputs is allowed immediately on receipt

Cenvat credit on input service is allowed on or after the day which payment is made of the value of the input service and the service tax paid or payable as is indicated in the invoice/bill/challan. (Rule 4)

Cenvat Credit on Capital goods is allowed as under:

1. 50% in current Financial Year (unless the capital goods are cleared as such in the same financial year)
2. additional duty under Customs Tariff Act – immediately on receipt
3. remaining in any subsequent Financial Year where they are in possession of the output service provider
4. In case of capital sent out for providing output services, it should be brought back within 180 days.
5. Capital goods obtained on lease/hire purchase/loan agreement are eligible for taking Cenvat credit

Input service distributor

Input service distributor means an office of the manufacturer or office of the producer of final products or office of the provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be (Rule 2(m) of CENVAT Credit Rules ,2004)

Service Tax (Registration of Special Category of Persons) Rules, 2005 provide for registration, returns and documentation, etc in respect of input service distributor.

Manner of distribution of credit by Input service distributor Rule 7

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its

manufacturing units or units providing output service, subject to the following condition, namely:

a) the credit distributed does not exceed the amount of service tax paid in respect of a particular document; or

b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed (Rule 7 of CENVAT Credit Rules, 2004).

Refund of cenvat credit (Rule 5)

Where the output service is exported without payment of tax, the cenvat credit in respect of input/input service used in providing such output service may be utilised towards payment of service tax on output service

If such adjustment is not possible refund shall be allowed if drawback/rebate has not been claimed.

Safeguards, conditions and limitations for allowing refund of cenvat credit (Notification No.05/2006 Central Excise 14.3.06)

1. Export is in accordance with the procedure mentioned in the Central Excise Rules 2002 or Export of Services Rules 2005
2. Claim for refund is submitted not more than once for any quarter in a calendar year except in case if the average export clearances in value is 50% more than the total clearances of the preceding quarter or incase of claim filed by EOU then such claims can be submitted every month
3. Refund application in Form A must be made to the Dep. Comm/Asst. Comm. of Central Excise, in whose jurisdiction the factory from which final goods are exported, along with shipping bill/bill of export certified by customs that goods have been exported or the registered premises of service provider from which output service is exported along with copy of invoice and bank certificate of receipt of export proceeds

4. Such application is submitted before the expiry of period specified in section 11B of the Central Excise Act, 1944
5. Refund is allowed only if the input credit is not fully utilized against the exports made during the quarter/ month to which the refund claim relates
6. Refund of unutilised input credit is restricted to the extent of the ratio of export sales to total sales for the given period i.e. Maximum Refund </= Total input credit for the period × export turnover/total turnover
7. Refund is allowed by the DC of Central Excise or the AC of CE, as the case may be.

Other points relating to cenvat credit

1. Burden of proof - Rule 9(3) requires the manufacturer or output service provider or input service distributor to take all reasonable steps to ensure the duty for which he has taken credit has been paid.

Meaning of reasonable steps

Satisfy himself about the identity and address of the supplier/manufacturer or output service provider issued the documents from

Personal knowledge could be gained from

a) Certificate by a person whose handwriting or signature he is familiar with
b) Certificate by Supt. Of Central Excise

The assessee should retain such certificate for production on demand.

2. Transfer of Cenvat credit (Rule10)

On shifting or transfer of business, the stock of inputs as such or in process, or capital goods should be transferred to the new site, or ownership and duly accounted for to the satisfaction of the adjudicating officer

Special provisions relating to large taxpayers

Notification No. 28/2006 ST dt. September 30, 2006 amends Service Tax Rules, 1994 and provides for provisions for large tax payers.

Sub-rule (cccc) has been inserted in Rule 2 to define a large taxpayer as under:-

'(cccc) "large taxpayer" shall have the meaning assigned to it in the Central Excise Rules, 2002.'

Notification No. 20/2006Central Excise (N.T.) dated 30th September, 2006 lay down the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer,

1. Conditions: Any person, engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985 (5 of 1986), or a provider of taxable service, has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application under para 3(i),:

- duties of excise of more than rupees five hundred lakhs in cash or through account current; or
- service tax of more than rupees five hundred lakhs in cash or through account current; or
- advance tax of more than rupees ten hundred lakhs, under the Income Tax Act, 1961(43 of 1961),

and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of Chief Commissioner of Income Tax – I, Bangalore (other than revenue district of Tumkur) and Chief Commissioner of Income Tax – II, Bangalore (other than district of Kolar).

2. Procedure: A large taxpayer who satisfies the conditions mentioned above may file an application form in the format annexed duly completed in all respects to the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the

large taxpayer is presently assessed to income tax or corporate tax indicating his willingness to be a large taxpayer.

A person willing to operate as large taxpayer shall furnish details of each of the premises already registered under the Central Excise Act, 1944(1 of 1944) including the premises of first and second stage dealers and each of the premises registered under Chapter V of the Finance Act, 1994 including the premises of input service distributor.

The Chief Commissioner of Central Excise, Large Taxpayer Unit may after due verification of the application form, grant the acceptance in writing.

Existing registrations under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 shall continue. However, in case a new factory or service provider, input credit distributor or first or second stage dealer which becomes liable to be registered, after opting as large taxpayer, the application for such new registration shall be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

Annexure

Consent form for companies opting to function as a large taxpayer

M/s _____, hereby gives consent to be administered as a large taxpayer under the Large Taxpayer Unit situated at _____ (Bangalore/Chennai/Delhi/Kolkata/Mumbai). Following information regarding the company is furnished.

PAN: _____

Address as in last income-tax return filed : _____

Jurisdiction of Assessing Officer before whom income-tax return is filed: _____

Details of registration (under Central Excise Rules, 2002, and Service Tax Rules, 1994) : _____

Name and address of the Unit Excise Registration No. and particulars of present jurisdiction Dealer Registration No. and particulars of present jurisdiction EOU Registration and

particulars of present jurisdiction Service tax Registration and particulars of present jurisdiction Input Service Distribution Registration No. (ISDN) and particulars of present jurisdiction Others* (please specify including particulars of present jurisdiction)

(*including exempted units)

Details of TAN allotted and TDS returns filed in the following format:

S.No. Name and address of the Deductor TAN TDS effected under section(s) _____ of the IT Act, 1961 Jurisdiction of CIT before whom TDS return filed

1

2

Details of total taxes paid by the company during financial year 2004-05 or any subsequent financial year preceding the year of filing of consent form.

i) Financial year

ii) Excise duty through cash (account current)

iii) Service tax through cash (account current)

iv) Advance tax (income tax/corporation tax)

Name, designation, phone and fax numbers and e-mail address of the contact person(s) of the company (to be authorized by the company)

(Signature)

(Name and Designation of the person authorized u/s 140 of the IT Act, 1961)

F.No. 201/24/2006-CX.6

Further, following rule has been inserted in Service Tax Rules, 1994 after Rule 9:

"10. Procedure and facilities for large taxpayer. Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer,

1. A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.

   Explanation: A large taxpayer who has obtained a centralized registration under sub rule (2) of rule 4, shall submit a consolidated return for all such premises.
2. A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
3. A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.
4. Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.
5. Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer."

Summary

1. Conditions for taxability

a. all services as defined in clause (105) of Section 65
b) threshold exemption of rupees four lakhs available
c) services provided
   i) to the United Nations or an International Organisation
   ii) to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone,

iii) exported

are not taxable

2. Registration

a) Is required if:
   i) value of services in a financial year is more than rupees three lakhs
   ii) you are an input service provider
   iii) you are otherwise liable to pay tax

b) Apply in Form ST 1 (See CBEC website for form) in duplicate with:
   i) Proof of address of the premises office sought to be registered
   ii) PAN number of the service provider
   iii) List of Branches offices or premises of the service provider
   iv) Brief note on accounting system adopted by the service provider
   v) Branch-wise series of invoices maintained along with a sample copy thereof
   vi) Previous year's audited balance sheet along with gross trial balance of different branches
   vii) Details of records accounts maintained at different branches and Central Office
   viii) Bank account numbers of the Branches and Central Office through which the receipts are deposited transacted.

c) You can pay tax immediately after application and need not wait for the registration certificate

d) If you have centralized billing system,
   i) a single application can be made for all premises

ii) apply to the Chief Commissioner or the Commissioner of Central Excise in whose jurisdiction the premises falls.

e) Where there is no centralized accounting system
   i) make separate applications for registration in respect of each premises or offices.
   ii) apply to the jurisdictional Superintendent of Central Excise, within whose jurisdiction the premises of business falls.

f) If you provide multiple services, you may make a single application, mentioning therein all the taxable services provided

g) Any change in the details of the application has to be informed to the respective authorities within a period of 30 days.

3. Valuation

a) Services to be valued as per
   i) Section 67
   ii) Service Tax (Determination of Value) Rules, 2006

b) All expenditure or costs incurred by the service provider in the course of providing taxable service shall be included in the value for the purpose of charging service tax on the said service.

c) The expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service

d) Conditions for exclusion of out of pocket expenses or reimbursements from value when service provider acts as pure agent
   i) Service provider acts a pure agent of the recipient of service when he makes third party payments for goods or services received

ii) The recipient of service receives and uses goods or services
iii) The recipient of service is liable for payment to third party
iv) The recipient of service authorizes the service provider to make payment on his behalf
v) The recipient of service knows that the goods and services paid for shall be provided by the third party
vi) The invoice issued by the service provider to the recipient of service indicates the payment made by him on behalf of the service recipient
vii) The service provider recovers only such amount as has been paid to third party
viii) The goods or services procured from third party are in addition to services provided by service provider on his own account

4. Documents to be issued

a) issue a bill/invoice/challan duly signed for every service provided to the service receiver not later than 14 days from the date of completion of the said taxable service or receipt of any payment towards the value of such taxable services, whichever is earlier.
b) Such invoice/bill/challan should be serially numbered and should contain the following particulars:
   i) the name, address and registration number of such person;
   ii) the name and address of the service receiver;
   iii) description, classification and value of the taxable service provided or to be provided; and
   iv) the service tax payable thereon.
c) Invoice/bill/challan to be issued by input service provider should contain the following particulars:

i) the name and address of the person providing input services;
ii) the serial number and date of the invoice/bill/challan issued by such person under sub rule (1) of Rule 4A;
iii) the name and address of such input distributor;
iv) the name and address of the recipient of such credit; and
v) the amount of credit distributed.

5. Records to be maintained

a) Which contain the data of amounts received in lieu of services with the details of services provided, etc. for a period of 5 years immediately after the financial year to which such records pertain. The records should be neatly maintained and preserved.
b) At the time of filing his return for the first time, the assessee should furnish to the Superintendent of Central Excise, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.
c) Such records have to be made available at the registered premises at all reasonable times for inspection and examination by the Central Excise Officer authorized in writing by the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Registered premises include all premises or offices from where an assessee is providing taxable services.

6. Payment of service tax

a) @ 12% plus 2% education cess
b) in Form TR 6 challan
c) in any bank designated by CBEC
d) payment to be made for every quarter by 5th of the following month in case of individuals, proprietary firms or

partnership firms and in case of others, for every calendar month by 5th of the following month.

7. Returns

a) submit a half yearly return in form ST–3 or 3A, as the case may be. The period of half year will be calculated between 1st April to 30th September and 1st October to 31st March every year.

b) by the 25th of the month following the particular half year. If such last date is a public holiday, the returns can be filed on the immediately succeeding working day.

c) to the Superintendent of Central Excise.

d) With
   i) Copies of TR-6 challans of the relevant months
   ii) Memorandum in Form ST-3A (where applicable)
   iii) List of all accounts maintained including memoranda received from branch offices, in case of first return

e) E-filing
   i) not compulsory
   ii) Separate returns have to be provided for each of the services provided by multiple service providers.
   iii) File an application to jurisdictional AC/DC as laid out in Trade Notice issued in this regard to the concerned excise formation at least one month in advance before the due date of filing of the return. Mention e-mail address.
   iv) Once user id and password is received, log on to the Service Tax E-filing Home Page using the Internet at http://www.servicetaxefiling.nic.in and follow the instructions
   v) The essential inputs for successful e-filing are:-
      1) Assessee code (15 digit)
      2) Location code (6 digit)

3) Challan no
4) Bank branch code (7 digit)
5) Accounting code (8 digit)

8. Interest

a) Interest for failure to pay the tax as per the Act or any rules made thereunder is 13% per annum for each day of default.
b) Where any amount has been collected in excess, interest at the rate of 13% per annum has to be paid.
c) Where interest has been paid by cheque, the date of presentation of the cheque to the designated bank shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.

9. Penalties

a) Penalty for failure to pay service tax (with effect from 18-4-2006) is not less than Rs 200 per day during which the failure continues, or two per cent per month of the tax due, whichever is higher. The period of default starts with the first day after the due date and end with the date of payment. Maximum penalty that can be levied is the amount of service tax payable. No penalty is levied if the assessee proves a reasonable cause for failure.
b) General of an amount not exceeding Rs 1000 for any contravention under the Act or Rules made thereunder for which no penalty has been described elsewhere. No penalty is levied if the assessee proves a reasonable cause for failure.
c) Penalty for suppressing value of taxable service is not less than value not levied/not paid/short levied/short paid/ erroneously refunded and not more than twice such amount. No penalty is levied if the assessee proves a reasonable cause for failure.

A. Service receivers

Service receivers should ensure that any service tax charged from them is properly computed as per valuation provided for in the law and charged at the correct rate. Small service providers availing the exemption of rupees four lakhs would not charge service tax.

If the service receiver is entitled to receive cenvat credit, he should ensure that proper documentation, etc is done as per the Cenvat credit Rules. The various provisions of Cenvat credit have been described earlier in the book.

If he is not eligible to Cenvat credit, he should enter into agreements with small service providers as far as possible.

When service receiver has to pay tax:

If you are a service receiver, you need not pay service tax except in specific circumstances.

Section 66A - The service receiver will be treated as if he has provided a service and accordingly he shall be liable to pay tax in certain situations. These have been discussed earlier.

Such service receiver has to get himself registered and has to comply with the provisions pertaining to payment of tax and filing of returns, and maintenance of records.

He is entitled to take Canvat credit.

The threshold exemption of rupees four lakhs shall apply.

B. Text of some important notifications

You can see the text of the following circulars and notifications

1. Notification No. 29/2006 dated 2nd November 2006
2. Notification No.28/2006 dated 30th September 2006
3. Notification No. 27/2006 dated 21st September 2006
4. Notification No.20/2006 dated 30th September 2006
5. Notification No.17/2005 dated 7th June 2005
6. Notification No. 16/2005 dated 7th June 2005
7. Circular No.79/11/2002-ST dated 18th December 2002

8. Circular No.49/11/2002-ST dated 18th December 2002

Notification no. 29/2006service tax

In exercise of the powers conferred by section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:

1. i) These rules may be called the Service Tax (Sixth Amendment) Rules, 2006.
   ii) They shall come into force on the 2nd day of November, 2006.
2. In the Service Tax Rules, 1994, (hereinafter referred to as the said rules), in rule 4, for sub-rules (2) and (3), the following sub-rules shall be substituted, namely:

   "(2) Where a person, liable for paying service tax on a taxable service,

   i) provides such service from more than one premises or offices; or

   ii) receives such service in more than one premises or offices; or,

   iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

   and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

   The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the

premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006."

3. In rule 5 of the said rules, in sub-rule (4), for the words " as the case may be", the words "as the case may be, or, by the audit party deputed by the Comptroller and Auditor General of India." shall be substituted.

F. No. 137/50/2005-CX.4

30th September 2006

Notification no.28/2006service tax

G.S.R. (E).- In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:

1. i) These rules may be called the Service Tax (Fifth Amendment) Rules, 2006.
   ii) They shall come into force on the date of their publication in the Official Gazette.
2. In the Service Tax Rules 1994 (hereinafter referred to as the said rules), in rule 2 after sub-rule (ccc), the following sub-rule (cccc) shall be inserted, namely:

   '(cccc) "large taxpayer" shall have the meaning assigned to it in the Central Excise Rules, 2002.'
3. In the said rules, after rule 9, the following rule shall be inserted, namely:

   "10. Procedure and facilities for large taxpayer. Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer,

1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.

   Explanation: A large taxpayer who has obtained a centralized registration under sub rule (2) of rule 4, shall submit a consolidated return for all such premises.

2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.

3) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

4) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.

5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer."

F.No.201/24/2006-CX.6

21st September, 2006

Notification no. 27/2006-service tax

G.S.R. (E)In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :

1. i) These rules may be called the Service Tax (Fourth Amendment) Rules, 2006.

ii) They shall come into force on the 1st day of October, 2006.

2. In the Service Tax Rules, 1994, in rule 6, in sub-rule (2), the following proviso shall be inserted, namely:

"Provided that the assessee, who has paid service tax of rupees fifty lakh or above in the preceding financial year or has already paid service tax of rupees fifty lakh in the current financial year, shall deposit the service tax liable to be paid by him electronically, through internet banking."

Notification no. 20/2006central excise (n.t.)

30th September, 2006

G.S.R. (E) In exercise of the powers conferred by sub rule (ea) of rule 2 of the Central Excise Rules, 2002 and sub-rule(cccc) of rule 2 of the Service Tax Rules 1994, the Central Government hereby notifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer,

2. Conditions: Any person, engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985 (5 of 1986), or a provider of taxable service, has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application under para 3(i),

duties of excise of more than rupees five hundred lakhs in cash or through account current; or

service tax of more than rupees five hundred lakhs in cash or through account current; or

advance tax of more than rupees ten hundred lakhs, under the Income Tax Act, 1961(43 of 1961),

and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of Chief Commissioner of Income Tax–I, Bangalore (other than revenue

district of Tumkur) and Chief Commissioner of Income Tax–II, Bangalore (other than district of Kolar).

3. Procedure: A large taxpayer who satisfies the conditions mentioned above may file an application form in the format annexed duly completed in all respects to the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the large taxpayer is presently assessed to income tax or corporate tax indicating his willingness to be a large taxpayer.

A person willing to operate as large taxpayer shall furnish details of each of the premises already registered under the Central Excise Act, 1944(1 of 1944) including the premises of first and second stage dealers and each of the premises registered under Chapter V of the Finance Act, 1994 including the premises of input service distributor.

The Chief Commissioner of Central Excise, Large Taxpayer Unit may after due verification of the application form, grant the acceptance in writing.

Existing registrations under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 shall continue. However, in case a new factory or service provider, input credit distributor or first or second stage dealer which becomes liable to be registered, after opting as large taxpayer, the application for such new registration shall be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

Annexure

Consent form for companies opting to function as a large taxpayer

M/s _____, hereby gives consent to be administered as a large taxpayer under the Large Taxpayer Unit situated at _____ (Bangalore/Chennai/Delhi/Kolkata/Mumbai). Following information regarding the company is furnished.

PAN: _____

Address as in last income-tax return filed: _____

Jurisdiction of Assessing Officer before whom income-tax return is filed: _____

Details of registration (under Central Excise Rules, 2002, and Service Tax Rules, 1994): _____

Name and address of the Unit Excise Registration No. and particulars of present jurisdiction Dealer Registration No. and particulars of present jurisdiction EOU Registration and particulars of present jurisdiction Service tax Registration and particulars of present jurisdiction Input Service Distribution Registration No. (ISDN) and particulars of present jurisdiction Others* (please specify including particulars of present jurisdiction)

(*including exempted units)

Details of TAN allotted and TDS returns filed in the following format:

S.No. Name and address of the Deductor TAN TDS effected under section(s) _____ of the IT Act, 1961 Jurisdiction of CIT before whom TDS return filed

1

2

Details of total taxes paid by the company during financial year 2004-05 or any subsequent financial year preceding the year of filing of consent form.

(i) Financial year

(ii) (ii) Excise duty through cash (account current)

(iii) (iii) Service tax through cash (account current)

(iv) (iv) Advance tax (income tax/corporation tax)

Name, designation, phone and fax numbers and e-mail address of the contact person(s) of the company (to be authorized by the company).

(Signature)

(Name and Designation of the person authorized u/s 140 of the IT Act, 1961)

F.No. 201/24/2006-CX.6
7th June, 2005

Notification No. 17/2005-service tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the site formation and clearance, excavation and earthmoving and demolition and such other similar activities, referred to in sub-clause (zzza) of clause (105) of section 65 of the Finance Act, provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU
Ajay
Under Secretary to the Government of India
7th June, 2005

Notification No. 16/2005-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the commercial or industrial construction service, referred to in sub-clause (zzq) of clause (105) of section 65 of the Finance Act, provided to any person by a commercial concern in relation to construction of port or other port, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay

Under Secretary to the Government of India

Circular No.: 79/9/2004-ST13th May 2004

F.NO.137/38/2003-CX.4
Government of India, Ministry of Finance
Department of Revenue. (Central Board of Excise & Customs)

Subject: application of service tax on activities of erection and commissioning.

I am directed to draw attention to the Circular No. 49/11/2002-ST dated 18.12.2002, whereby it was clarified that the work of Erection and Commissioning is in the nature of services provided by a "Consulting Engineer" and hence taxable under Service Tax. Also in the year 2003, Service Tax was imposed on Commissioning and Installation Service, effective from 1st July 2003. In terms of Circular No. 59/8/2003 dated 20 June 2003, issued from File no. B-3/7/2003-TRU, it was clarified that charges for erection of plant would not be covered under the Commissioning and Installation services.

In the light of above conflicting views, several representations have been received in the Board for clarification as to whether

- the charges for erection would be covered under Service Tax or not?
- the Commissioning or Installation service would be covered under Service Tax under Consulting Engineer service effective from 7.7.1997?

The issue has been examined by the Board in consultation with the Ministry of Law and Justice and in this regard I am directed to say that charges for erection, installation & commissioning are

not covered under the category of Consulting Engineer Services. Commissioning or Installation service will be separately taxable under relevant entry and are not chargeable under Consulting Engineer Services. Accordingly, the clarification issued vide the Circular No. 49/11/2002-ST dated December 18, 2002 stands modified to this extent.

2. Suitable trade notice may be issued.

3. Hindi version will follow.

MANISH MOHAN

Under Secretary to the Government of India

Phone No: 23094558

Circular No.49/11/2002-ST

F.No.137/13/2001-CX.4

Government of India

Ministry of Finance & Company Affairs Department of Revenue

18.12.2002.

Subject: service tax on consulting engineersregarding.

I am directed to invite your attention to Section 65(25) of the Finance Act, 1994 (as amended), which defines Consulting Engineer as "any professionally qualified engineer or an engineering firm, who, either directly or indirectly, renders, any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering." The types of services a consulting engineer normally renders are illustrated in Board's letter F.No.43/5/97-TRU dated July 2, 97, services relating to construction activities are covered therein.

2. Some construction agencies take up turnkey projects for construction of flats, administrative building, etc. For constructing these flats they have to do some designing, drawing and also provide advise and technical assistance. The contract is generally for a lumpsum amount with no separate allocation for the above

charges. Some field officers are taking part of the contract as a 'service' provided by a 'consulting engineer' and levying service tax on the same. Representations have been received that in respect of such turnkey contracts for carrying out construction activities, the designing and drawing work is a service provided to themselves in the course of the construction activity and there is, therefore, no question of charging any service tax on this amount.

3. This issue has been examined in the Board. For any civil construction work to commence, a lot of preparatory work is required, e.g. soil testing, survey, planning, designing, drawing, etc. Once the design and drawings are completed by the construction company, it always seeks the approval of the client before proceeding with the construction. If the client suggests some changes they are incorporated in the design. This portion of the work is provided to its client and the service is definitely of a 'consulting engineer' and hence taxable.

4. Another point raised is whether "erection & commissioning charges" are liable to service tax, or not. This matter has also been examined in the Board. The work of erection and commissioning of machineries and plants, is definitely one of providing "technical assistance" to buyer of plant/machinery and is, therefore, in the nature of services provided by a "Consulting Engineer" and hence taxable [Refer para 3 (vii) of Board's letter dated 2.7.97].

5. Trade Notice may be issued for information of the trade.

6. Receipt of this letter may please be acknowledged.

7. Hindi version will follow.

1. Some important forms

Some of the service tax forms are:

1. Form ST-1 (application form for registration under Section 69)
2. Form ST-3 (return under Section 70)

3. Form ST-3A (Memorandum for provisional deposit under rule 6 of the Service Tax Rules, 1994)
4. Form TR-6 (Service Tax Payment Challan)

FORM ST1

[Application form for registration under Section 69 of the Finance Act, 1994 (32 of 1994)]

(Please tick appropriate box below)

New Registration ☐

Amendments to information declared by the existing Registrant.

Registration Number in case of existing Registrant seeking Amendment _____

1. (a) Name of applicant

(b) Address of the applicant

2. Details of Permanent Account Number (PAN) of the applicant
   (a) Whether PAN has been issued by the Income Tax Department

   Yes No
   (b) If Yes, the PAN

   (c) Name of the applicant (as appearing in PAN)

3. (a) Constitution of applicant (Tick as applicable)
   (i) Proprietorship

   (ii) Partnership

☐

(iii) Registered Public Limited Company

☐

(iv) Registered Private Limited Company

☐

(v) Registered Trust

☐

(vi) Society/Cooperative society

☐

(vii) Others

☐

(b) Name, Address and Phone Number of Proprietor/ Partner/Director

(i) Name

(ii) Address

FORM ST-3

(Return under Section 70 of the Finance Act, 1994)

FINANCIAL YEAR_____

For the period: (Please tick appropriate box)

[April-September] ☐

[October-March] ☐

1. Name of the assessee

2. Registration Numbers of premises for which return is being filed

3. Category of taxable services for which return is being filed:
(Mention all the taxable services provided/received)

(1) _____
(2) _____
(3) _____

4. Payment of Service Tax

Category of Service: _____

(A) Payment details

	Apr/ Oct	May/ Nov	June/ Dec	July/ Jan	Aug/ Feb	Sept/ Mar	Total of column (2) to (7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Amount received towards taxable service(s) provided							
Amount received in advance towards taxable service(s) to be provided							
Amount Billed-gross							
Amount billed for exempted services other than export							

Amount billed for exported services, without payment of tax							
Amount billed for services on which tax is to be paid							
Abatement claimed-Value							
Notification number of Abatement							
Notification number of exemption							
Provisional Assessment order no.							
Service tax payable							
Education cess payable							
Service tax paid in cash							
Challan Number							
Challan date							
Service tax paid through cenvat credit							

Education cess paid in cash							
Education cess paid through education cess credit							

(To be repeated for every category of service provided /received, and for every registered premises separately)

(B) Details of other payments

	Amount-Cash	Challan Number	Date	Amount-Credit	Source Document No
(1)	(2)	(3)	(4)	(5)	(6)
Arrear of service tax					
Education cess					
Interest				Not applicable	
Penalty				Not applicable	
Miscellaneous				Not applicable	
Excess amount paid and adjusted subsequently**					
Total					

** Under rule 6(4A) of Service Tax Rules, 1994

(To be repeated for every category of service provided /received, and for every registered premises separately)

5. Credit details for Service Tax provider/recipient

(A) Cenvat credit details

Details of Credit	Apt/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Opening Balance						

Credit availed on inputs						
Credit availed on capital goods						
Credit availed on input services						
Credit received from inputs service distributor						
Total credit availed						
Credit utilized towards payment of service tax						
Closing balance						

(B) Education cess credit details

Details of Credit	Apt/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Opening Balance						
Credit of education cess availed on goods						

Credit of education cess availed on services						
Credit of education cess utilized for payment of service tax						
Closing Balance						

6. Credit details for Input service distributor

(A) Details of Cenvat credit received and distributed

Details of Credit	Apt/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Opening Balance						
Credit of service tax received						
Credit of service tax distributed						
Credit of service tax not eligible to be distributed*						
Closing Balance						

(B) Details of Education cess received and distributed

Details of Credit	Apt/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Opening Balance						

Credit of education cess received						
Credit of education cess distributed						
Credit of education cess not eligible to be distributed*						
Closing Balance						

*as per rule 7(b) of CENVAT Credit Rules, 2004

(C) The taxable services on which input service credit has been distributed during the half year period

_____

_____

_____

_____

7. Details of amount payable but not paid as on the last day of the period for which the

Return is filed _____

8. Self Assessment memorandum

a) I/We *declare* that the above particulars are in accordance with the records and books maintained by me/us and are correctly stated.

b) I/We have assessed and paid the service tax and/or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 and the rules made thereunder.

c) I/We have paid duty within the specified time limit and in case of delay, I/We have deposited the interest leviable thereon.

(Name and Signature of Assessee or Authorized Signatory)

Place: _____

Date: _____

ACKNOWLEGEMENT

I hereby acknowledge the receipt of your ST-3 return for the period_____

(Signature of the Officer of Central Excise & Service Tax)

With Name & Official Seal)

Date: _____

Place : _____

Form ST-3a

Memorandum for provisional deposit under rule 6 of the Service Tax Rules, 1994, for the month of _____ 19 _____

Sl. No	Provisional value of taxable service in terms of section 67 of the Act	Provisional amount of service tax @ 5% paid	Form TR-6 No. and date	Actual value of taxable service in terms of section 67	Actual amount of service tax payable	Difference between the amount of provisionally paid tax and the amount of service tax payable	Form TR-6 No. and date indicating payment under column (7)	Remarks
1	2	3	4	5	6	7	8	9

Reasons for making provisional deposit of Service Tax _____

* Attach separate sheet for each month.

Form TR-6 for payment of service tax (challan)

(Original)

Major Head 0044 service Tax

TR-6/GAR 7 Challan No. _____ (Treasury Rule 92/Receipt & Payment rules 26)

Challan of amount paid into The _____ (code No.)

Accounting Collectorate (Code No.)

Name of the Bank/Branch with Code No. _____

Division _____ (Code No.)
Range _____ (Code No.)

Name of the Focal Point Bank _____ (Code No.) _____

Name and address of the assessee _____

(Code No. _____) By whom tendered

Full Particulars of remittance and of authority	Head of accounts & Major Head (indicate against the appropriate Minor Head)	Accounting Code No.	By Cash Rs. Ps.	By Cheque Draft/Pay Order etc. Rs. Ps.	Counter Signature of the Departmental Officer (where required)
Total					

(in words) Rs. _____

Date_____

Signature of the tenderer

(To be filled by the Bank)

Received payment (in word) Stamp Rupee_____

Space for Focal Point Bank indicating the date, amount credited to Government Account.

Bank's Receipt Stamp:

Signature of the Authorised Officer of the Bank

Name of the Bank _____

(Please ensure that you have filled-in the correct details without which the department will not be responsible for proper adjustment of amount paid by you.)

4. Table showing tax on different services

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
1	A	in connection with the sale or purchase of securities listed on a recognised stock exchange	00440008	00440009	stock-broker	any person
2	b	in relation to a telephone connection	00440003	00440119	telegraph authority	subscriber
3	c	in relation to a pager	00440015	00440020	telegraph authority	subscriber
4	d	in relation to general insurance business	00440005	00440006	insurer, including re-insurer carrying on general insurance business	policy holder or any person
5	e	in relation to advertisement in any manner	00440013	00440016	advertising agency	client
6	f	in relation to door-to-door transportation of time-sensitive documents, goods or articles	00440014	00440018	courier agency	customer
7	g	relation to advice, consultancy or technical assistance in any manner in	00440057	00440058	consulting engineer	client

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
		one or more disciplines of engineering [but not in the discipline of computer hardware engineering or computer software engineering				
8	h	in relation to the entry or departure of conveyances or the import or export of goods	00440026	00440027	custom house agent	client
9	i	in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services	00440029	00440030	steamer agent	shipping line
10	j	clearing and forwarding operations	00440045	00440046	clearing and forwarding agent	client
11	k	manpower supply agency	00440060	00440061	manpower recruitment or supply agency	client
12	l	air travel agentin relation to the booking of passage for travel by air	00440032	00440033	air travel agent	customer

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
13	m	in relation to the use of mandap in any manner including the facilities [provided or to be provided to the client in relation to such use and also the services, if any, provided or to be provided as a caterer];	00440035	00440036	mandap keeper	client
14	n	in relation to a tour	00440063	00440064	tour operator	any person
15	o	in relation to the renting of a cab	00440048	00440049	rent-a-cab scheme operator	any person
16	p	in his professional capacity in any manner	00440072	00440073	architect	client
17	q	in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner	00440076	00440077	interior decorator	client
18	r	in connection with the management of any organisation, in any manner	00440116	00440117	management consultant	client
19	s	in his professional capacity in any manner	00440092	00440093	practising chartered accountant	client

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
20	t	in his professional capacity in any manner	00440096	00440097	practising cost accountant	client
21	u	in his professional capacity in any manner	00440100	00440101	practising company secretary	client
22	v	in relation to real estate	00440104	00440105	real estate agent	client
23	w	in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity	00440108	00440109	security agency	client
24	x	in relation to credit rating of any financial obligation, instrument or security	00440088	00440089	credit rating agency	client
25	y	in relation to market research of any product, service or utility, in any manner	00440112	00440113	market research agency	client
26	z	in relation to underwriting, in any manner	00440084	00440085	underwriter	client

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
27	za	in relation to scientific or technical consultancy	00440125	00440126	scientist or a technocrat, or any science or technology institution or organisation	client
28	zb	in relation to photography, in any manner	00440129	00440130	photography studio or agency	customer
29	zc	in relation to holding of a convention, in any manner	00440133	00440134	any person	client
30	zd	in relation to a leased circuit	00440137	00440138	telegraph authority	subscriber
31	ze	in relation to a communication through telegraph	00440141	00440142	telegraph authority	subscriber
32	zf	in relation to a communication through telex	00440145	00440146	telegraph authority	subscriber
33	zg	in relation to a facsimile (FAX) communication	00440149	00440150	telegraph authority	subscriber
34	zh	in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner	00440153	00440154	any person	customer
35	zi	in relation to video-tape production, in any manner	00440157	00440158	video production agency	client

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
36	zj	in relation to any kind of sound recording	00440161	00440162	sound recording studio or agency	client
37	zk	in relation to broadcasting in any manner	00440165	00440166	broadcasting agency or organisation	client
38	zl	in relation to insurance auxiliary services concerning general insurance business	00440169	00440170	an actuary, or intermediary or insurance intermediary or insurance agent	policy holder or insurer
39	zm	in relation to banking and other financial services	00440173	00440174	banking company or a financial institution including a non-banking financial company,	customer
40	zn	in relation to port services, in any manner	00440177	00440178	port or any person authorised by the port	any person
41	zo	in relation to any service or repair of motor cars or two wheeled motor vehicles, in any manner	00440181	00440182	authorised service station	customer
42	zq	in relation to beauty treatment	00440209	00440210	beauty parlour	customer
43	zr	in relation to cargo handling services	00440189	00440190	cargo handling agency	any person

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
44	zs	in relation to cable services	00440217	00440218	multisystem operator	any person
45	zt	in relation to dry cleaning	00440221	00440222	dry cleaner	customer
46	zu	in relation to event management	00440197	00440198	event manager	client
47	zv	in relation to fashion designing	00440213	00440214	fashion designer	any person
48	zw	in relation to health and fitness services	00440205	00440206	health club and fitness centre	any person
49	zx	in relation to the risk cover in life insurance	00440185	00440186	insurer carrying on life insurance business	policyholder
50	zy	in relation to insurance auxiliary services concerning life insurance business	00440169	00440170	actuary, or intermediary or insurance intermediary or insurance agent	policyholder or insurer
51	zz	in relation to booking of passage for travel by rail			rail travel agent	customer
52	zza	in relation to storage and warehousing of goods	00440193	00440194	storage or warehouse keeper	any person
53	zzb	in relation to business auxiliary service	00440225	00440226	any person	client
54	zzc	in relation to commercial training or coaching	00440229	00440230	commercial training or coaching centre	any person

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
55	zzd	in relation to installation of specified items	00440233	00440234	commissioning and installation agency	customer
56	zze	in relation to franchise	00440237	00440238	franchisor	franchisee
57	zzf	in relation to access of internet	00440241	00440242	internet café	any person
58	zzg	in relation to management, maintenance or repair	00440245	00440246	any person	customer
59	zzh	in relation to technical testing and analysis	00440249	00440250	technical testing and analysis agency	any person
60	zzi	in relation to technical inspection and certification	00440249	00440250	technical testing and analysis agency	any person
61	zzk	in relation to banking and other financial services referred to in [sub-clause (zm)]	00440173	00440174	foreign exchange broker other than those brokers in relation to banking and other financial services referred to in [sub-clause (zm	customer
62	zzl	any service	00440177	00440178	other port or any person authorised by that port in relation to port services	any person

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
63	zzm	in an airport or a civil enclave	00440258	00440259	airports authority or any person authorised by it	any person
64	zzn	in relation to transport of goods by aircraft	00440266	00440267	aircraft operator	any person
65	zzo	in relation to business exhibition	00440254	00440255	organiser of a business exhibition	exhibitor
66	zzp	in relation to transport of goods by road in a goods carriage	00440262	00440263	goods transport agency	customer
67	zzq	in relation to [commercial or industrial construction service	00440290	00440291	any person	any person
68	zzr	in relation to intellectual property service	00440278	00440279	holder of intellectual property right	any person
69	zzs	in relation to opinion poll	00440274	00440275	opinion poll agency	any person
70	zzt	any service	00440051	00440052	outdoor caterer	client
71	zzu	in relation to a programme	00440286	00440287	programme producer	any person
72	zzv	in relation to survey and exploration of mineral	00440270	00440271	any person	customer
73	zzw	in relation to a pandal or shamiana in any manner and also includes the services, if	00440054	00440055	pandal or shamiana contractor	client

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
		any, [provided or to be provided] as a caterer				
74	zzx	in relation to the booking of passage for travel	00440294	00440295	travel agent	customer
75	zzy	in relation to a forward contract	00440282	00440283	member of a recognised association or a registered association	any person
76	zzz	in relation to transport of goods other than water, through pipeline or other conduit	00440302	00440303	any person	any person
77	zzza	in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities	00440306	00440307	any person	any person
78	zzzb	in relation to dredging	00440310	00440311	any person	any person
79	zzzc	in relation to survey and map-making	00440314	00440315	any other person, other than by an agency under the control of, or authorised by, the Government	any person
80	zzzd	in relation to cleaning activity	00440318	00440319	any person	any person

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
81	zzze	in relation to provision of services, facilities or advantages for a subscription or any other amount	00440322	00440323	any club or association	its members
82	zzzf	in relation to packaging activity	00440326	00440327	any person	any person
83	zzzg	in relation to mailing list compilation and mailing	00440330	00440331	any person	any person
84	zzzh	in relation to construction of complex	00440334	00440335	any person	any person
85	zzzi	in relation to sale or purchase of securities	00440338	00440339	registrar to an issue	any person
86	zzzj	in relation to securities	00440342	00440343	share transfer agent	any person
87	zzzk	in relation to automated teller machine operations, maintenance or management service, in any manner	00440346	00440347	any person	any person
88	zzzl	in relation to recovery of any sums due to such banking company or financial institution, including a non-banking financial	00440350	00440351	any person	banking company or a financial institution including a non-banking financial company or any other body corporate or a

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
		company, or any other body corporate or a firm, in any manner				firm
89	zzzm	in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation	00440354	00440355	any person	any person
90	zzzn	in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events	00440358	00440359	any person receiving sponsorship	any body corporate or firm
91	zzzo	in relation to scheduled or non-scheduled air transport of such passenger embarking in India for international journey, in any class other than economy class	00440362	00440363	aircraft operator	passenger

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
92	zzzp	in relation to transport of goods in containers by rail, in any manner	00440390	00440391	any other person other than Government railway	any person
93	zzzq	in relation to support services of business or commerce, in any manner	00440366	00440367	any person	any person
94	zzzr	in relation to auction of property, movable or immovable, tangible or intangible, in any manner, but does not include auction of property under the directions or orders of a court of law or auction by the Government	00440370	00440371	any person	any person
95	zzzs	in relation to managing the public relations of such person, in any manner	00440374	00440375	any person	any person
96	zzzt	in relation to ship management service	00440378	00440379	any person	any person, under a contract or an agreement
97	zzzu	in relation to internet telephony	00440382	00440383	any person	any person

	65 (105) clause	What is taxable	A/c Head tax receipts	A/c Head other receipts	Service provider	Service receiver
98	zzzv	in relation to transport of such person embarking from any port or other port in India, by a cruise ship	00440386	00440387	any person	any person
99	zzzw	in relation to credit card, debit card, charge card or other payment card service, in any manner	00440394	00440395	any person	any person

Useful Websites

1. www.servicetax.gov.in
2. www.laws4india.com
3. www.indiataxes.com
4. www.indiabudget.nic.in
5. www.finmin.nic.in
6. www.taxsites.com
7. www.cbec.gov.in
8. www.servicetaxefiling.nic.in
9. www.exciseandservicetax.nic.in
10. www.taxmann.net



7.6

Accounting: Basic Concepts

Bookkeeping and Accounting Share Two Basic Goals

- To help the owner keep track of your income and expenses.
- To make financial reports for understanding the results of operations.

Sounds pretty simple, doesn't it? It can be, especially if you remind yourself of these two goals whenever you feel overwhelmed by the details of keeping your financial records.

The records should accurately reflect your business's income and expenses. There is a requirement, however, that some businesses use a certain method of *crediting* their accounts: the cash method or accrual method.

Three steps to keeping your books

The actual process of keeping your books is easy to understand when broken down into three steps.

1. Keep receipts/bills or other acceptable records of every transaction done by your business.
2. Summarize your income and expenditure records on some periodic basis (daily, weekly, or monthly depending on size and nature of business).

3. Use your summaries to create financial reports that will tell you specific information about your business, such as how much profit you're making or how much your business is worth at a specific point in time.

Whether you do your accounting by hand on ledger sheets or use accounting software, these principles are exactly the same.

Cash vs. accrual accounting

All businesses need to choose one of accounting methods.

There are two principal methods of keeping track of a business's income and expenses: cash method and accrual method (also called cash basis and accrual basis). The difference in these methods is in the timing of when transactions, including sales and purchases, are credited or debited to your accounts. The accrual method is the more commonly used method of accounting.

Under the accrual method, transactions are accounted when the order is made, the item is delivered, or the services occur, regardless of when the money for them (receivables) is actually received or paid. In other words, income is accounted when the sale occurs, and expenses are counted when you receive the goods or services.

Under the cash method, income is not accounted until payment is actually received, and expenses are not accounted until they are actually paid.

Example: Your sell a computer to HBL computers in February, and get paid in April. Under the cash method, you would record the payment in April. Under the accrual method, you would record the income in your books in February.

Determining the transaction date

With the accrual method, sometimes it's not so easy to know when the sale or purchase has occurred. The key date here is the job completion date. Not until you finish a service, or deliver all the goods a contract calls for, do you put the income down in your

books. Likewise, you don't record an item as an expense until the service is completed or all goods have been received and installed, if necessary.

Choosing an accounting method

Most small businesses are free to choose which accounting method to adopt. But larger businesses have to use the accrual method of accounting.

Whichever method you use, it's important to realize that either one gives you only a partial picture of the financial status of your business. While the accrual method shows the ups and downs of business income and debts more accurately, it gives no idea of the cash reserves available, which could result in a serious cash flow problem. For instance, your income ledger may show sales in thousands, while in reality your bank account is empty because your customers haven't paid you yet and you have made a lot of creditors.

And then the cash method will give you a truer idea of how much actual cash your business has, it may offer a misleading picture of profitability. Under the cash method, for instance, your books may show one month to be spectacularly profitable, when actually sales have been slow and, by coincidence, a lot of credit customers paid their bills in that month. To have a firm and true understanding of your business's finances, you need more than just a collection of monthly totals; you need to understand what your numbers mean and how to use them to answer specific financial questions.

To overcome this, businesses which use accrual method use the cash flow statements to keep track of their cash position.

Financial Statements

Financial statements are a record of a business' financial flows (revenues/expenses) and levels (assets/liabilities). Simply put,

financial statements are about money. They show you where a company's money came from, where it went, and where it is now.

There are four main financial statements. They are: (1) balance sheets; (2) income statements; (3) cash flow statements; and (4) statements of shareholders' equity.

Balance sheets show what a company owns and what it owes at a fixed point in time. Income statements describes a company's income, expenses and net income/loss over a period of time. Cash flow statements show the exchange of money between a company and the outside world also over a period of time. The "statement of shareholders' equity," shows changes in the interests of the company's shareholders over time.

Financial statements are vital sources of information for a wide variety of users. Users of financial statement information include company management, employees, investors, creditors, governmental oversight agencies and the tax departments. For many of them it is the major source of information and financial statements should be prepared and presented with their needs in view.

Users of financial statement information do not necessarily need to know all the accounting details. However, to effectively use financial statement information, it is essential that the financial statements meet the qualitative characteristics of basic financial statements and satisfy the underlying assumptions.

Fundamental Accounting Assumptions

Certain fundamental accounting assumptions underlie the preparation and presentation of financial statements. They are usually not specifically stated because their acceptance and use are assumed. Disclosure is necessary if they are not followed.

The following have been generally accepted as fundamental accounting assumptions:

a) Going concern

It is a straightforward concept but nonetheless very important. The enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations.

In this context, the foreseeable future is taken to be the next twelve months, unless the Financial Statements stipulate some shorter period of time.

If it were not the case, and the company was to be wound up, the assets of the company would be included at their realisable value (in a forced sale) net of any taxation implications which might arise. In a situation where the going concern concept is applicable, such assets are included at their original cost, net of any required depreciation. By having this as one of our fundamental concepts, it becomes implicit that any set of financial statements relates to a company, which will continue in operational existence for the foreseeable future, unless the contrary is stated.

b) Consistency

It is assumed that accounting policies are consistent from one period to another.

With the growing businesses and complexities, nothing is absolute. Even a seemingly straightforward issue like a company's profit is at the mercy of a whole range of accounting policy choices. This can be something as simple as the way it charges depreciation on its fixed assets or as complex as the way it recognises revenue on its contracts. In either case, a decision needs to be taken and adhered to, if the accounts are to be comparable. In other words, there must be a consistent application of accounting policies,

both within an accounting period and from one period to the next.

Without consistency we cannot have comparability; and without comparability, financial reporting is rather meaningless. For example, a profit for the year of Rs 100m may initially be perceived as good, but can only really be assessed when compared with last year and/or similar companies.

Finally, it must be noted that the consistency concept does not mean that no changes can be made. Clearly, as time goes by, new accounting practices will develop. However, as these are adopted two things must happen. First, they must be fully disclosed as a change in accounting policy. And second, the comparative figures for the previous year must be restated under the new policy so as to facilitate comparison.

c) Accrual

It is also known as the matching concept as it strives to match costs against the revenues generated by incurring those costs. Its basic tenet is that revenues and costs should be recognised (i.e. included in the Profit & Loss Account) in the period in which they are earned or incurred not necessarily when they money is received or paid. Thus, for example, a sale made to a customer on credit just before the year-end would be included in that year's Profit & Loss Account, even though the cash may not be received until the following year.

In the same way, an expense like electricity charges not paid by the year-end would still be charged in that year's Profit & Loss Account whereas expenses like insurance paid in advance would be charged only to the extent it is applicable to the current year and the rest will be held back to be charged in the next year. This concept is

all-pervasive and does provide guidance in many more complex scenarios.

One classic example of the accruals concept at work is fixed assets. Fixed assets are bought to provide benefit to the company i.e. help generate revenue, over several accounting periods. The accruals concept therefore requires us to estimate the net cost of the asset (i.e. cost less residual value) and charge it to the periods expected to benefit from its use (i.e. its useful economic life). In other words, we are trying to match the cost of using the asset with the revenue it helps to generate.

We can even go further. If we expect the revenue patterns to be other than even, we would charge depreciation in such a way as to charge more where revenues are greater and less where they are smaller.

Qualitative Characteristics of Financial Statements

These characteristics are the attributes that make the information in financial statements useful to investors, creditors, and others. The four principal qualitative characteristics are:

- Understandability
- Relevance
- Reliability
- Comparability

Understandability

Information should be presented in a way that is readily understandable by users who have a reasonable knowledge of business and economic activities and accounting and who are willing to study the information diligently. However, this does not mean that information about complex matters should be excluded just because users may find it difficult to understand.

Relevance

Information in financial statements is relevant when it influences the economic decisions of users. It can do that both by (a) helping them evaluate past, present, or future events relating to an enterprise and by (b) confirming or correcting past evaluations they have made.

Materiality is a component of relevance. Information is material if its omission or misstatement could influence the economic decisions of users. Materiality depends on the size or nature of the item or has o be judged according to the circumstances of a case. It has to be taken as a cut off point rather than a primary qualitative characteristic.

Timeliness is another component of relevance. To be useful, information must be provided to users within the time period in which it is most likely to bear on their decisions.

Reliability

Information in financial statements is reliable if it is free from material error and bias and can be depended upon by users to represent events and transactions faithfully. Information is not reliable when it is purposely designed to influence users' decisions in a particular direction.

There is sometimes a tradeoff between relevance and reliability and judgement is required to provide the appropriate balance.

Reliability is affected by the use of estimates and by uncertainties associated with items recognised and measured in financial statements. These uncertainties are dealt with, in part, by disclosure and, in part, by exercising prudence in preparing financial statements

Prudence is the inclusion of a degree of caution in the exercise of the judgements needed in making the estimates required under conditions of uncertainty, such that assets or income are not overstated and liabilities or expenses are not understated. However, prudence can only be exercised within the context of the

other qualitative characteristics, particularly relevance and the faithful representation of transactions in financial statements. Prudence does not justify deliberate overstatement of liabilities or expenses or deliberate understatement of assets or income, because the financial statements would not be neutral and, therefore, not have the quality of reliability.

Comparability

Users must be able to compare the financial statements of an enterprise over time so that they can identify trends in its financial position and performance. Users must also be able to compare the financial statements of different enterprises. Disclosure of accounting policies is essential for comparability.

Understanding financial statements

The reader who wants to get the big picture has to go through the accompanying information and statements. Provided below are some of the supplementary information available:

Management's discussion and analysis

This is a narrative explanation of company's financial performance by the management. Management seeks to explain and provide details on things which the financial statements show and do not show, as well as important trends and risks that have shaped the past or are reasonably likely to shape the company's future. It shows the performance and expectations through the eyes of management.

Management has to disclose trends, events or uncertainties which they feel would have a material impact on reported financial information. The purpose of MD&A is to provide investors with information that the company's management believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.

It is also intended to provide context for the financial statements and information about the company's earnings and cash flows.

Generally, it provides information on

- Industry structure and developments
- Opportunities, threats, risks and concerns
- Future expectations
- Internal control system
- Financial performance

Notes to Accounts

The notes to financial statements are packed with information. Here are some of the highlights:

- **Significant accounting policies and practices**: Companies are required to disclose the accounting policies that are most important to the portrayal of the company's financial condition and results. Any changes in the accounting policies and is impact is stated. Management justification for selecting/changing the policy is stated. These often require management's most difficult, subjective or complex judgments.
- **Stock options**: The notes also contain information about stock options granted to officers, employees and associates. It provides details of schemes, changes in options and method of accounting for stock-based compensation and the effect of the method on reported results especially profit and earnings per share .
- Acquisition or disposal of assets. Lik investments in associates, property etc.
- Details of related party transactions
- Details of commitment or contingencies
- **Income taxes**: They provide detailed information about the company's current and deferred income taxes.

- **Retirement and other superannuation plans**: The notes discuss the company's pension plans and other retirement or post-employment benefit programs. The notes contain specific information about the assets and costs of these programs.

Financial statement ratios and calculations

Many investors and other stakeholders evauate the company using these ratios. As a general rule, desirable ratios vary by industry.

- Debt-to-equity ratio compares a company's total debt to shareholders' equity. To calculate debt-to-equity ratio, you divide a company's total liabilities by its shareholder equity, or

  Debt-to-Equity Ratio = Total Liabilities/Shareholders' Equity

  If a company has a debt-to-equity ratio of 2 to 1, it means that the company has two rupees of debt to every rupee invested by shareholders in the company. In other words, the company is taking on debt at twice the rate that its owners are investing in the company.
- Inventory turnover ratio compares a company's cost of sales on its income statement with its average inventory balance for the period. To calculate the average inventory balance for the period, look at the inventory numbers listed on the balance sheet. Take the balance listed for the period of the report and add it to the balance listed for the previous comparable period, and then divide by two.

  Inventory Turnover Ratio = Cost of Sales/Average Inventory for the Period

  If a company has an inventory turnover ratio of 2 to 1, it means that the company's inventory turned over twice in the reporting period.

- Operating margin compares a company's operating income to net revenues. To calculate operating margin, you divide a company's income from operations (before interest and income tax expenses) by its net revenues, or

  Operating Margin = Income from Operations/Net Revenues

  Operating margin is usually expressed as a percentage. It shows, for each rupee of sales, what percentage was profit.
- P/E ratio compares a company's common stock price with its earnings per share. To calculate a company's P/E ratio, you divide a company's stock price by its earnings per share, or

  P/E Ratio = Price per share/Earnings per share

  If a company's stock is selling at Rs 120 per share and the company is earning Rs 12 per share, then the company's P/E Ratio is 10 to 1. The company's stock is selling at 10 times its earnings.
- Working capital is the money leftover if a company paid its current liabilities (that is, its debts due within one-year of the date of the balance sheet) from its current assets.

  Working Capital = Current Assets – Current Liabilities

Use of Accounting Software

Accounting software is computer software that records and processes accounting transactions. It functions as an accounting information system. An accounting software too can integrate and manage your transactions easily.

There are different types of accounting softwares to cater to different needs. It can be used by an individual to manage bank accounts, loans, investments, budgets etc. You can also manage them without accounting software. An accounting software will save time as well as remain free from unnecessary hassles.

The business organizations' need of accounting software is indisputable and undeniable. Every business whatever its size needs to do a lot of accounting. Accounting manages data and information relating to the different activities of the firm. In a nutshell, accounting encompasses financial statements such as balance sheet, profit and loss account, statements regarding revenues and loses of the organization etc. The ultimate purpose is the collection and presentation of financial data. With the coming of age of accounting software, the management of the firms' accounting hassles become a lot more easier.

Some accounting software is meant for performing some specific functions. These software cater to a very niche market. Such software include features specific to that particular industry.

Accounting software may be developed in-house by the company or organization using it, may be purchased from a third party, or may be a combination of a third-party application software package with local modifications. Depending on the type it varies in complexity and cost. The selection depends on the needs and the ability of the organisation.

Modules

Accounting software is typically composed of various modules, different sections dealing with particular areas of accounting. Among the most common are:

Accounts receivable—where the company enters money received from customers/debtors

Accounts payable—where the company enters its bills and pays money it owes

General ledger—the company's "books"

Billing—to raise invoices to clients/customers

Stock/Inventory—to maintain records and control inventory

Purchase Orders—where the company orders inventory

Sales Orders—where the company records customer order for the supply of inventory

Debt Collection—where the company tracks attempts to collect overdue bills (sometimes part of accounts receivable)

Expense—for entering business-related expenses are entered

Inquiries—for seeking information on screen without any edits or additions

Payroll—to track and maintain salary, wages, and related taxes

Reports—to print out data

Timesheet—where professionals (such as attorneys and consultants) record time worked so that it can be billed to clients

Specific software

Business accounting software can be designed for specific business types to include features that are specific to that industry.

The choice of whether to purchase an industry-specific application or a general-purpose application is often very difficult. Concerns over a custom-build application or one designed for a specific industry include:

- ✦ Smaller development team
- ✦ Increased risk of vendor business failing
- ✦ Reduced availability of support

However, there is:

- ✦ Less requirement for customisation
- ✦ Reduced implementation costs
- ✦ Reduced end-user training time and costs

Vertical accounting software are:

- ✦ Banking
- ✦ Construction
- ✦ Medical
- ✦ Point of Sale (Retail)

Software for the Construction Industry

Quadra Software Solutions has partnered with SAP India, to form SAP-Quadra, an ERP designed for the construction industry.

It has two solutions Contractor Suite and Builder Suite. Contractor Suite features pre and post tender estimation, labour management, purchase and inventory management, billing and MIS based solutions. Whereas the Builder Suite has estimation and costing, labour management, client management, billing and site management.

The construction industry needs to communicate on a large scale with other related businesses such as material and equipment suppliers, vendors, subcontractors and clients. SAP-Quadra can be used by construction companies to improve responsiveness in relation to customers, strengthen supply chain partnerships, enhance organizational flexibility, improve decision making capabilities and reduce project completion time and lower costs.

Quadra Contractor Suite

Pre-tender Estimation:	✦ Tender analysis ✦ Rate Analysis ✦ BOQ entry/analysis
Post-tender Estimation	✦ Auto generated BOM, labour and equipment estimate, project-wise and stage-wise. ✦ Comparisons of estimated and actuals. ✦ Revision of estimates.
Labour Management:	✦ Own/hired labour management. ✦ Time management with OT provision. ✦ Labour efficiency/ utilization analysis.

Sub-contractors Billing	✦ Tender management. ✦ Work order management with control aspects. ✦ Periodical billings of sub-contracts on M books.
Purchase & Inventory Management:	✦ Purchase order processing enga-ging the control aspects with quotation entry, analysis and vendor approval. ✦ Material estimated and standard consumption analysis. ✦ Stock movement analysis . ✦ Material transfer between warehouses/sites.
Resource Management:	✦ Asset purchase and depreciation. ✦ Asset tracking and maintenance. ✦ Resource utilization.
Site Management:	✦ Purchase request, material receipt and materials issue. ✦ Reports like stock register, stock report, pending orders etc. ✦ M Book, bill processing and reports like work orders & running bills.
Sales/Client Billing	✦ Work progress monitoring. ✦ Interim and final billing. ✦ Receivables management
Personnel and Administration:	✦ Personnel information. ✦ Travel management. ✦ Wages and salary processing. ✦ Loans/leaves/statutory labour welfare management. ✦ Office stationery management.
Financial Accounting:	✦ Integration with other modules-verification and posting of different journals from other modules. ✦ Standard reports like real time & retrospective trial balance, profit & loss account, balance sheet etc. ✦ Drill down facility of trial balance, profit & loss account, balance sheet

	etc. up to individual vouchers.
MIS (Management Information System):	✦ Project assessment report showing health of the project in terms of cash flow. ✦ Consolidated final accounts of the group. ✦ Remote connectivity to MIS reports. ✦ Consolidated Bank/Cash balances of the group.
User Administration:	✦ Layered security levels. ✦ User-friendly format. ✦ Rights assignment/borrowing.

Quadra Builder Suite

Estimation & Costing	✦ Auto generated BOM, labour and equipment estimate, project wise and stage-wise. ✦ Comparison of estimated and actuals. ✦ Revision of estimates.
Sub Contractors' Billing	✦ Tender management. ✦ Work order management with control aspects. ✦ Periodical billings of sub-contracts on M books
Purchase & Inventory Management	✦ Purchase order processing engaging the control aspects with quotation entry, analysis and vendor approval. ✦ Material estimated and standard consumption analysis. ✦ Stock movement analysis. ✦ Material transfer between warehouses/sites
Sales Enquiry Management:	✦ Project Enquiry Registration. ✦ Enquiry follow-ups. ✦ Mail merging and automated e-mail. ✦ Database archive
Unit Sales/Client	✦ Flat/unit-sales and transfers.

Management:	✦ Payment schedules and receivables management. ✦ Auto generated progressive demand letters. ✦ Handing over and society maintenance.
Payrolls & Personal Administration	✦ Personnel information. ✦ Travel management. ✦ Wages and salary processing. ✦ Loans/leaves/statutory labour welfare management. ✦ Office stationery management
Financial Accounting:	✦ Integration with other modules-verification and posting of different journals from other modules. ✦ Standard reports like real time and retrospective trial balance, profit and loss account, balance sheet etc. ✦ Drill down facility of trial balance, profit & loss account, balance sheet etc. up to individual vouchers
Site Management:	✦ Purchase request, material receipt and materials issue. ✦ Reports like stock register, stock report, pending orders etc. ✦ M Book, bill processing and reports like work orders & running bills.
User Administration:	✦ Layered security levels. ✦ User-friendly format. ✦ Rights assignment/borrowing
MIS (Management Information System):	✦ Project assessment report showing health the project in terms of cash flow. ✦ Consolidated final accounts of the group. ✦ Remote connectivity to MIS reports. ✦ Consolidated Bank/Cash balances of the group

Quadra-SAP

Quadra Software Solutions, pioneers in providing ERP solutions for the construction and real estate vertical in India, has partnered with SAPthe leading provider of business software solutionsto offer customized business software solutions for the construction and real estate vertical in India.

Under the partnership, Quadrautilizing the domain expertise developed over the yearswould offer a micro-vertical solution for the construction and real-estate vertical based on the my SAP All-in-One platform. This pre-configured solution would be 85% customized and can be implemented in a short span of 5-8 weeks time.

Software to Sniff out Fraud

Nowadays, technology is being used to uncover accounting fraud which has been growing in both sophistication and popularity. The growth hasn't really been stimulated by growing expansion, complex businesses and regulatory requirements; technological innovation is trying to provide sleuthing programs so that they issue fewer false alarms, customizing such programs for use with new industries, and upping raw computing power so the programs can crunch more data.

All of those threats "have made businesses more aware of the potential catastrophic damage to organizations that fraud presents," Accounting software uses techniques like benford's law which makes for a great way to check to see if numbers are fabricated. Then there are software like Fair Isaac's (FIC) Falcon Fraud Manager, which flags potentially bogus transactions at checkout based on analysis of past spending patterns by cardholders.

Large accounting firms tend to develop their own, proprietary software for forensic accounting that performs many of the same checks as off-the-shelf programs.



7.7

Capital Gains Tax—An Overview

Profit or gains arising from the transfer of a capital asset during the previous year is taxable as "Capital Gains" under section 45(1) of the Income Tax Act. The taxability of capital gains is in the year of transfer of the capital asset.

Capital asset

As defined in section 2(14) of the Income Tax Act, it means property of any kind held by the assessee except:

- Stock in trade, consumable stores or raw materials held for the purpose of business or profession.
- Personal effects, being moveable property (excluding Jewellery)held for personal use. Agricultural land, except
- land situated within or in area up to 8 km from a municipality, municipal corporation, notified area committee, town committee or a cantonment board with population of atleast 10,000.
- Six and half per cent Gold Bonds, National Defence Bonds and Special Bearer Bonds.

Type of Capital Gains

When a capital asset is transferred by an assessee after having

held it for at least 36 months, the capital gains arising from this transfer is known as Long Term Capital Gains. In case of shares of a company or unit of UTI or a unit of a Mutual Fund, the minimum period of holding for long term capital gains to arise is 12 months. If the period of holding is less than above, the capital gains arising therefrom are known as Short Term Capital Gains. It may be mentioned here that Long Term Capital Gains are taxed at a flat rate of 20%, the benefit of indexing the cost of acquisition is available and a number of exemptions therefrom are also available, specified in Section 54 to section 54G of the Income Tax Act. The Finance Act 1999 has provided that in case of transfer of a long term capital asset, being listed securities, if the tax payable exceeds 10% of the amount of capital gains computed without indexing the cost of acquisition, then such excess would be ignored for the purpose of computing the tax payable by the assessee.

Computation of Capital Gains (Sec. 48)

Capital gains is computed by deducting from the full value of consideration for the transfer of a capital asset, the following:

a) Cost of acquisition of the asset (COA): In case of Long Term Capital Gains, the cost of acquisition is indexed by a factor which is equal to the ratio of the cost inflation index of the year of transfer to the cost inflation index of the year of acquisition of the asset. Normally, the cost of acquisition is the cost that a person has incurred to acquire the capital asset. However in certain cases, it is taken as following:
    i) When the capital asset becomes a property of an assessee under a gift or will or by succession or inheritance or on partition of Hindu Undivided Family or on distribution of assets, or dissolution of a firm, or liquidation of a company, the COA shall be the cost for which the previous owner acquired it, as increased by

the cost of improvement till the date of acquisition of the asset by the assessee.

ii) When shares in an amalgamated Indian company had become the property of the assessee in a scheme of amalgamation, the COA shall be the cost of acquisition of shares in the amalgamating company.

iii) Where the capital asset is goodwill of a business, tenancy right, stage carriage permits or loom hours the COA is the purchase price paid, if any or else nil.

iv) The COA of rights shares is the amount which is paid by the subscriber to get them. In case of bonus shares, the COA is nil.

v) If a capital asset became the property of the assessee before 1 April 1981, the assessee may choose either the fair market value as on 1 April 1981 or the actual cost of acquisition of the asset as the COA.

b) Cost of improvement, if any such cost was incurred. In case of long term capital assets, the indexed cost of improvement will be taken.

c) Expenses connected exclusively with the transfer such as brokerage etc.

Some important exemptions from long term capital gains

a) Section 54: In case the asset transferred is a long term capital asset being a residential house, and if out of the capital gains, a new residential house is constructed within 3 years, or purchased 1 year before or 2 years after the date of transfer, then exemption on the LTCG is available on the amount of investment in the new asset to the extent of the capital gains. It may be noted that the amount of capital gains not appropriated towards purchase or construction may be deposited in the Capital Gains Account Scheme of a public sector bank before the due date of filing of Income

Tax Return. This amount should subsequently be used for purchase or construction of a new house within 3 years.

b) Section 54F: When the asset transferred is a long term capital asset other than a residential house, and if, out of the consideration, investment in purchase or construction of a residential house is made within the specified time as in sec. 54, then exemption from the capital gains will be available as:

   i) If cost of new asset is greater than the net consideration received, the entire capital gain is exempt.

   ii) Otherwise, exemption = Capital Gains × Cost of new asset/Net consideration.

   It may be noted that this exemption is not available, if on the date of transfer, the assessee owns any house other than the new asset. The Finance Act 2000 has provided that with effect from assessment year 2001-2002, the above exemption shall not be available if assessee owns more than one residential house, other than new asset, on the date of transfer. Investment in the Capital Gains Account Scheme may be made as in Sec.54.

c) Section 54EC: This section has been introduced from assessment year 2001–02 onwards. It provides that if any long term capital asset is transferred and out of the consideration, investment in specified assets (including bonds issued by National Bank for Agricultural & Rural Development or by National Highway Authority of India or by Rural Electrification Corporation is made within 6 months from the date of transfer, then exemption would be available as computed in Sec. 54F.

d) Section 54ED: This section has been introduced from assessment year 2002–03 onwards,. It provides that if a long term capital asset, being listed securities or units, is transferred and out of the consideration, investment in

acquiring equity shares forming part of an eligible issue of capital is made within six months from the date of transfer, then exemption would be available as computed in Sec. 54F.

Loss under capital gains

Cannot be set off against any income under any other head but can be carried forward for 8 assessment years and be set off against capital gains in those assessment years.

Exempt income

The Finance Act 2003, has introduced S.10(33) and S.10(36) w.e.f. 01. 04. 2004 which provide that income Arising from certain types of transfer of capital assets shall be treated as exempt income S.10(33) provides for exemption of income arising from transfer of units of the US 64 (Unit scheme 1964) S.10(36) provides that income arising form transfer of eligible equity shares held for a period of 12 months or more shall be exempt.

Transactions not regarded as transfer under the income tax act

The Income Tax Act also exempts certain transactions from being covered under the definition of transfer. These are more specifically contained in section 46 & 47 of the Income Tax Act. In brief the transactions not regarded as transfer are as under:

1. where the assets of a company are distributed to its shareholders upon its liquidation, the distribution is not regarded as transfer. However where a shareholder receives any money or other assets on the date of distribution which exceeds in value, the amount of dividend within the meaning of section 2(22)(c), the excess is chargeable under the head capital gains.
2. any distribution of capital assets on the total or partial partition of a huf is not regarded as transfer.

3. where a capital asset is transferred under a Gift or a Will or under an Irrevocable trust, the transaction is not treated as transfer as per the Income Tax Act.
4. the transfer of a capital asset to an Indian subsidiary company by a parent company or its nominees who hold the entire share capital of the Indian subsidiary company is not regarded as transfer.
5. any transfer of a capital asset by a wholly owned subsidiary company to its Indian holding company is also not regarded as transfer for the purposes of capital gains. However in respect of (d) and (e) above the transfer of a capital asset as stock in trade is covered by the provisions of capital gains.
6. any transfer in a scheme of amalgamation of a capital asset by the amalgamating company to an Indian amalgamated company is also not a transfer for the purposes of capital gains.
7. in the case where the amalgamating and the amalgamated companies are both foreign companies, the transfer of shares held in the Indian company by the foreign amalgamating company to the foreign amalgamated company is not regarded as a transfer for the purposes of capital gains if at least 25% of the share holders of the amalgamating foreign company continue to remain share holders of the amalgamated foreign company and if such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated..
8. any transfer by a share holder, in a scheme of amalgamation, of share or shares held by him in the amalgamating company in consideration of the allotment of any share or shares in the amalgamated Indian company is not regarded as a transfer for the purposes of capital gains.
9. where a non resident transfers any bond or shares of an Indian company which were issued in accordance with any scheme notified by the Central Government for the purposes of section 115AC or where the non resident

transfer any bonds or shares of a public sector company sold by the government and purchased by the non resident in foreign currency, such a transfer is not regarded as a transfer for the purposes of capital gains, provided the transfer of the capital asset is made outside India by the non resident to another non resident.

10. where any assessee transfers any work of art, archaeological or art collection, book, manuscript, drawing, painting, photograph or print to a University, the National Museum, the National Art Gallery, the National Archives, to the Government or to any other notified institution of national importance it is not considered as transfer for the purposes of capital gains.
11. any transfer by way of conversion of a company's bonds or debentures, debenture-stock or deposit certificates held in any form into shares and debentures of that company is not regarded as transfer for the purpose of capital gains.
12. where a non corporate person transfers its membership of a recognised stock exchange in India to a company in exchange of shares allotted by that company is not regarded as a transfer for the purposes of capital gains provided that such transfer was made on or before 31st day of December, 1998. The exemption shall lapse if the shares received by the assessee are transferred within three years of the date of transfer of the membership.
13. any transfer of a land of a sick industrial company which is being managed by its Worker's Cooperative is not regarded as transfer for the purposes of capital gain if the transfer is made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985. This exemption is operative only in the period commencing from the previous year in which the said company became a sick industrial company under section 17(1) of that Act and ending with the previous year during which the entire net worth of such company become

equal to or exceeded the accumulated losses. The net worth is as defined in the Sick Industrial Companies Act.

14. with effect from April 1, 99 the process of sale or transfer of any capital or intangible asset of a firm is not regarded as a transfer for the purposes of capital gains where it is on account of the succession of the firm by a company in the business carried on by it. This exemption is dependent on the fulfilment of the following conditions:
    1. all the assets and liabilities of the firm before the succession and relating to the business should become the assets and liabilities of the company.
    2. all the partners of the firm before the succession should become share holders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession.
    3. the partners of the firm should not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by allotment of shares in the company.
    4. the aggregate share holding in the company by such partners should remain more than 50% of the total voting power for a period of 5 years from the date of succession.
15. with effect from April 1, 1999 where a sole proprietary concern is succeeded by a company in the business carried on by it and as a result of which the sole proprietor sells or transfers any capital asset or intangible asset to the company, such transfer shall not be regarded as transfer for the purposes of capital gains. This exemption is available only if the following conditions are fulfilled:
    i. all the assets and liabilities of the business of the sole proprietary concern should become the assets and liabilities of the company.

ii. the share holding of the sole proprietor should be more than 50% of the total voting power in the company for a period of 5 years from the date of succession.

iii. the sole proprietor should not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

16. with effect from April 1, 1999 any transfer in a scheme for lending of any securities under an agreement or arrangement which the assessee enters into with the borrower of such securities shall not be regarded as a transfer for the purposes of capital gains. This is subject to the guidelines issued by the Securities and Exchange Board of India on the issue.

Where in the transaction of lending of a different set of distinctive numbers of the shares or received back ,the same would not be considered as exchange of asset within the definition of capital asset since the meaning of the word exchange necessarily involves exchange of two different assets. Thus where the asset received back is not different from what was lent in the above scheme of lending, no transfer is there for the purposes of capital gain as long as the assets received back represent the same fraction of the ownership of the company.

The exemptions referred above are not final and can be withdrawn under specified circumstances as mentioned in section 47A of the Income Tax Act.

Effective date of transfer in certain cases

Circular No. 704, dated 28th April, 1995, F. No. 225/86/95-ITA.II]

Subject: Transactions in Securities Determination of the 'Date of Transfer' and Holding period for the purpose of Capital Gains Instructions regarding.

Under the provisions of sub section (42A) of section 2 of the Income-tax Act, 1961, the shares held in a company or any other

security listed in a recognised stock exchange in India or units of the Unit Trust of India or units of a mutual fund specified under section 10(23D) shall be regarded as short-term capital assets if they are held by an assessee for not more than 12 months immediately preceding the date of its transfer. Clarifications have been sought as to which date should be regarded as the date of transfer and also about the date from which the holding period of the securities should be reckoned. Clarifications have also been sought as to how the holding periods will be computed for the purposes of capital gains when the securities, purchased in several lots at different points of time and which are taken delivery of in one lot, are subsequently sold in parts and no correlation of the dates of purchase and sale is available.

2. When the securities are transacted through stock exchanges, it is the established procedure that the brokers first enter into contracts for purchase/sale of securities and thereafter, follow it up with delivery of shares, accompanied by transfer deeds duly signed by the registered holders. The seller is entitled to receive the consideration agreed to as on the date of contract. The Board are of the opinion that it is the date of broker's note that should be treated as the date of transfer in cases of sale transactions of securities provided such transactions are followed up by delivery of shares and also the transfer deeds. Similarly, in respect of the purchasers of the securities, the holding period shall be reckoned from the date of the broker's note for purchase on behalf of the investors. In case the transactions take place directly between the parties and not through stock exchanges, the date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and the transfer deeds.

3. As regards the second issue, where securities are acquired in several lots at different points of time, the First-in-first-out (FIFO) method shall be adopted to reckon the period of the holding of the security, in cases where the dates of purchase and sale could not be correlated through specific numbers of the

scrips. In other words, the assets acquired last will be taken to be remaining with the assessee while assets acquired first will be treated as sold. Indexation, wherever applicable, for long-term assets will be regulated on the basis of the holding period determined in this manner.

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Special Provision of Capital Gains

Provisions relating to depreciable assets

In section 50 and 50A of the Income Tax Act special provisions have been made to determine the cost of acquisition in case of a depreciable asset. Where the capital asset forms part of a block of asset in respect of which depreciation has been allowed under the Income Tax Act, the cost of acquisition is calculated as under:

i) where the full value of consideration received in respect of the capital asset transferred together with the full value of consideration received in respect of any other capital asset falling within the same block of asset during the previous year exceeds the total of the three sums listed below, the difference is taxable as short term capital gain. The sums are:

written down value of the block of asset at the beginning of the previous year.

actual cost of any new asset falling within the same block of asset and which was acquired during the previous year.

the expenditure incurred wholly and exclusively in connection with such transfer or transfers.

ii) If all the assets in the block of assets are transferred the cost of acquisition of the block of assets is taken as the aggregate of the written down value of the block of assets as at the beginning of the previous year plus the actual cost of any asset falling in the block of assets acquired during the previous year.

It has been provided in the Act that in case of any asset on which the assessee has claimed depreciation in any previous year, the cost of acquisition of such asset shall always be the written down value of the asset. Where any capital asset was subject to negotiations for transfer and the assessee had received any advance or other money in respect of such negotiations, the written down value of the asset shall be reduced by the advance money or sum received and retained by the assessee.

Cost of acquisition if advance money is retained

Where any capital asset was subject to negotiations for transfer and the assessee had received any advance or other money in respect of such negotiations, the cost of acquisition of asset or the written down value or the fair market value of the asset shall be reduced by the advance money or sum received and retained by the assessee.

Cost of acquisition in case of certain securities

Where any person had any beneficial interest in any securities during the previous year covered by the provisions of the Depositories Act, 1996, then the profit and loss on transfer of such securities shall be covered under the provisions of capital gains in the hands of the beneficiary owner and not in the hands of the registered owner or the depository. In such cases the cost of acquisition and the period of holding of any security is determinable on the basis of first-in-first-out method.

Capital gains in special cases of compulsory acquisition

Where in respect of a transfer of a capital asset on account of compulsory acquisition under any law or in respect of a transfer whose consideration is determined or approved by the Central Government or by the Reserve Bank of India and in which case the consideration is enhanced or further enhanced by any court, tribunal or authority, the capital gains is dealt in the manner below:

i) With reference to the compensation awarded in the first instance as the capital gains of the previous year in which such compensation or part thereof was first received.

ii) the subsequently enhanced compensation or consideration shall be deemed to be income chargeable as capital gain of the previous year in which such income is received by the assessee and in such cases the cost of acquisition and the cost of improvement shall be taken as nil.

In case of the death of the transferor or if for any reason the enhanced compensation or consideration is received by any other person then the capital gains will be attributed to such other person.

Reference to valuation officer

In the case of transfer of the capital assets, the capital assets can be referred to the Valuation Cell of the Department in order to ascertain the fair market value in the following cases:

i) where the assessee furnishes a value of an asset in accordance with the estimate made by a registered valuer and where the assessing officer is of the opinion that the value declared is less than the fair market value.

ii) where the assessing officer is of the opinion that the fair market value of the asset exceeds the value of the asset by more than Rupees 25000 or 15% of the value claimed by the assessee, whichever is less.

iii) where the assessing officer is of the opinion that having regard to the nature of the asset and in view of the relevant circumstances, it is necessary to do so.

Special provisions for a non resident

The Income Tax Act lays down certain conditions in the cases of non resident who are not covered by section 115AC and section 115AD of the Act. These conditions are enumerated below:

a) in the case where a non resident acquires shares in or debentures of an Indian company in foreign currency, the cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer of such assets and the full value of the consideration received or accruing as a result of the transfer of the capital asset shall be computed by converting the expenses in the same foreign currency as was initially utilised to acquire the shares or debentures. Thereafter the capital gains shall be computed in the foreign currency and reconverted into Indian currency. This procedure provides a protection against the fluctuation in the currency market of the Indian rupee and protects the interests of the non resident.

b) in the case of a non resident where the long term capital gains are in respect of the assets mentioned above, no indexation of cost of acquisition or of the cost of improvement is permissible.

For the purposes of conversion of the cost of acquisition, the expenditure incurred for transfer, the full value of the consideration received and the capital gains, the rate of exchange to be adopted shall be the average of the telegraphic transfer buying rate and the telegraphic transfer selling rate adopted by the State Bank of India on the specified dates in respect of the said foreign currency.



7.8

Income Tax Rates

Rates are for the tax assessment year 2006–07 and 2007–08.

1. For individuals, Hindu Undivided Family, association of persons and body of individuals

Income Range	Tax Rates
Up to Rs 100,000	Nil
Rs 100,001 to Rs 150,000	10%
Rs 150,001 to Rs 2,50,000	20%
Rs 250,001 and above	30%

1. In the case of a resident woman below the age of sixty five years, the basic exemption limit is Rs 135,000.
2. In the case of a resident individual of the age of sixty-five years or above, the basic exemption limit is Rs 185,000.
3. Surcharge is applicable @10% only where the income exceeds Rs 10,00,000.
4. Education cess is applicable @ 2% on income tax (inclusive of surcharge if any) in all cases.

2. For co-operative societies

Income	Tax Rates
Up to Rs 10,000	10%
Rs 10,000 to Rs 20,000	20%
Rs 20,000 and above	30%

On the above, surcharge is not applicable. Education cess is applicable at the rate of 2%.

3. For local authorities

- Local Authorities are taxable at the rate of 30%.
- Surcharge is not applicable.
- Education cess is applicable at the rate of 2%.

4. For partnership firms

- Partnership Firms are taxable at the rate of 33.66% (inclusive of surcharge and education cess)

5. For companies

- Domestic company 33.66% (inclusive of surcharge and education cess).
- Foreign company 41.82% (inclusive of surcharge and education cess).



8.1

Procedure for Transfer of Flats in Co-operative Societies

Definitions

1. Housing **Society** means a society the object of which is to provide its members with open plots for housing, dwelling houses or flats or if open Plots, the dwelling houses or flats are already acquired, to provide it's members common amenities and services.
2. **Member** means a person joining in an application for the registration of a co-operative Society which is subsequently registered or a person duly admitted to membership of a Society after registration and includes a nominal, associate or sympathiser member.
3. **Associate member** means a member who jointly holds a share of a society with others, but whose name does not stand first in the Share Certificate.
4. **Nominal member** means a member admitted to membership as such after registration in accordance with the bye-laws. It is noted that a nominal member is treated as a member of the co-operative society as held in

K.K.ADHIKAR vs. T.G.KULKARNI and others 1980 C.T.J. 241.

5. **Society** means a co-operative society registered, or deemed to be registered, under this Act. It is to be noted that a proposed society cannot be covered under the definition as held in CNJ 196 (Bom.) 1984 in the case of Beed Dist. Central Co-op and M.P. and D. Federation vs. State of Maharashtra.

Formalities to Comply

1. A member, desiring to transfer his shares and interest in the capital/property of the society, shall give 15 days notice of his intention to do so to the Secretary of the Society in the prescribed form, along with the consent of the proposed transferee in the prescribed form.
2. On receipt of such notice, the Secretary of the Society shall place the same before the meeting of the Committee, held next after the receipt of the notice, pointing out whether the member is prima-facie eligible to transfer his shares and interest in the capital/property of the society, in view of the Provisions of Section 29(2)(1) of the Act.
3. In event of ineligibility of the member to transfer his shares and interest in the capital/property of the Society, the Committee shall direct the Secretary of the Society to inform the member accordingly within 3 days of the decision of the committee.
4. If the Committee is satisfied that the member is prima facie eligible to transfer his/her shares and interest in the capital/property of the society, the Committee shall direct the Secretary of the Society to inform the member within 3 days of the decision of the Committee to make the compliance as under:

i) To submit an application for transfer of his/her shares and interest in the capital/property of the society, in the prescribed form, along with the Share Certificate.

ii) To submit an application for membership of the proposed transferee in the prescribed form.

iii) To give valid reasons for the proposed transfer.

iv) To discharge all the liabilities of the society.

v) To pay the transfer fee of Rs 50.

vi) To remit entrance fee of Rs 10 payable by the proposed transferee.

vii) To pay the amount of premium at a rate to be fixed by the general body meeting not exceeding 2.5 per cent of the difference between the book value of the flat and the price realised by the transfer, on transfer of his flat, or Rs 25,000 (Rupees Twenty-five Thousand Only) whichever is less. No additional amount by way of donation, etc. will be taken unless it is paid voluntarily by the member.

viii) To submit No Objection Certificate required under any law for the time being in force or order or sanction issued by the Government, any financing agency or any authority.

ix) To furnish the undertaking/declaration in compliance with the provisions of any law for the time being in force, in such form as is prescribed under these bye-laws.

Note: The condition at Sr. No. (vii) above shall not apply to transfer of Shares and interest of the transferor in the capital/ property of the Society to the member of his family or to his nominee or his/her legal representative.

a) The procedure for disposal of application for transfer of shares and/or interest of members in the capital/property of the Society as laid down under the model bye-laws No. 67

shall be followed by the Secretary and the Committee of the Society.

b) The managing committee or the General Body, as the case may be shall not refuse any application for admission to membership or transfer of shares and interest in the capital/property of the society except on the ground of non-compliance of the provisions of the Act, the Rules and the bye-laws of the society or any other law or order issued by the Government in exercise of the statutory powers vested in it.

c) If the decision of the Committee/General body meeting as the case may be, on the application for the transfer of shares and/or interest in the capital/property of the society is not communicated to the applicant within 3 months of its receipt, the transfer application shall be deemed to have been accepted and the transferee shall be deemed to have been admitted as a member of the society as provided under Section 22(2) of the Act.

d) Any transfer made in contravention of the Act, Rules or the bye-laws will be void and will not be effective against the society.

The transferee shall be eligible to exercise the rights of membership on receipt of the letter in the prescribed form from the society.



8.2

Home Buying: Things to do from Start to Finish

Identifying your Needs

Budget

1. Own funds.
2. Funds from your employer.
3. Provident Fund Loan.
4. Loan from Banks/HFCs.
5. Loan against assets.

Scouting for property

1. Brokers.
2. Newspapers.
3. Websites.
4. Word of mouth.

Make a rough estimate

1. Purchase Price.

2. Stamp duty.
3. Registration charges.
4. Khata transfer charges.
5. Utility Deposits like Water connection deposit, Electricity connection deposit, etc.
6. Other incidental expenses.

Talk to banks/HFCs

1. Terms and conditions of loan.
2. Interest Rate.
3. Borrowing costs like processing fee, commitment charges, prepayment penalty, etc.
4. Loan tenures and EMI.
5. Time taken for sanctioning the loan.
6. Time taken for disbursing the loan.
7. Freebies and corporate offers.

Shortlisting the property

1. Site or property visit.
2. Speaking to the neighbours or occupants.
3. Clear marketable titles.
4. Credibility of the seller.
5. Quality of the construction.
6. Legal verification.
7. Monthly payouts like maintenance charges, society charges, etc.
8. Municipal taxes or property taxes.

Deal Closing Formalities

1. Negotiate on price if payment is upfront.
2. Press for price negotiation if there are any Modifications/ repairs/painting to be done.

4. Do not forget to collect all original property Documents from the seller.
5. Before paying the seller, make sure he has fulfilled all his commitments and promises.
6. If the transaction involves a broker, withhold some amount of money until he delivers all that he has promised.

Documents Required to be Checked if You are Buying the House from a Builder

An allotment letter from the developer on paying the booking amount

Normally, in a project, which is under construction, the builder asks for an upfront booking amount of about 15% of the cost of the flat. An allotment letter is then issued to the purchaser.

Agreement for sale

After receiving the booking amount, the builder will get the Agreement for Sale stamped by paying the relevant stamp duty, which is normally borne by the purchaser. After being stamped, the agreement is signed by both the purchaser and the builder. Within a month of signing, this agreement is registered with the Sub-registrar appointed by the State Government under the Indian Registration Act, 1908.

The agreement has to contain the liability of the promoter/ builder to construct the building according to the plans and specifications approved by the local authority. It should also contain possession date, price to be paid by the purchaser and the intervals at which the installments for the full payment are to be made specifying stage of construction, the precise nature of the body to be constituted of the persons who would take the flats, details regarding the common areas and facilities specifying the percentage of undivided interest in the common areas and

facilities appertaining to the apartment agreed to be sold, a statement of the use for which the apartment is intended.

Copies of the title certificate, a copy of the approved plans and specification, a list of fixtures and amenities including provisions for lifts to be provided should be attached to the agreement.

The sale agreement should contain a declaration/representation by the promoter/seller that he has not encumbered the property in any manner whatsoever and entered into any other agreement to sell/lease/license with any other party. It needs to be specified whether the property is vacant or in possession of any other party other than the seller.

- Chain of conveyance/sale/partition/gift deed or will, by which land was acquired by the builder
- Urban Land Ceiling & Regulation Act (ULC) Clearance Certificate, if applicable
- 7/12 extract (Property card extract), Index II issued by sub-registrar
- Title Certificate/search report by an advocate for the last 30 years
- Non-agricultural permission (N.A)
- 37 I clearance under section 269 UL (3) of the Income Tax Act, 1961
- Income Tax clearance of the seller under section 230 A of the Income Tax Act, 1961
- Development agreement with the landowner if the developer is not the owner of the property & the Power of Attorney executed by the landowner in favor of their developer.
- Approved building plans
- Commencement certificate
- Completion/Occupation certificate

Documents Required to be Checked if You are Buying a Resale Flat

For flats being purchased in a registered co-operative society

- Share certificate of the society bearing the name of the seller

  This would ensure that the owner is recognised by the society.
- Previous chain of conveyance/sale deeds, Sub - Registrar's receipt

  If the earlier sale deeds have been lodged for registration, then one should ask for the certified true copies of such conveyance and sale deeds along with the original receipt of the Sub-Registrar where the document has been lodged for registration.
- 37 (I) clearance if applicable
- 230 A certificate from the Income Tax authorities (to be obtained by seller)

Prior to the execution of the sale/conveyance deed of the property the purchaser should ask the seller to produce a 230 A certificate issued by the Income Tax authorities. For this the necessary application has to be filed in Form no. 34A.

This certificate would indicate that the seller has no dues/ outstanding in terms of the income tax payable him. As per the Income Tax Act, 1961, this certificate is a mandatory requirement for a property transaction where the value of the transaction is in excess of Rs 5 lakh.

- Original stamped receipts of payment made to previous sellers
- No objection certificate from the society for transfer and sale of flat

Once the previous sale deeds, conveyance deeds are vetted by the purchaser's advocate and the purchaser decides to go ahead with the transaction, he should ask the seller to apply to the

society to issue a 'no objection' certificate indicating that the society has no objection to transfer the share certificate in favor of the intended purchaser and admit the purchaser as a member of that society. The certificate should also mention that the seller has no default/outstanding payments to be made to the society as of date.

- Last receipt for the out goings bill paid to the society and electricity bill
- Set of society transfer forms for transfer of ownership

Set of society transfer forms for transfer of ownership needs to be duly filled and signed by the seller and purchaser and should be submitted to the concerned Society.

- Certificate of Title from an advocate

For flats being purchased in an unregistered society or flats originally allotted by a development authority

- Previous chain of agreements with past owners in original with original receipt of registration (if any)
- Original letter of allotment issued to the first owner by the development authority.
- In case the latest agreement is pending registration the original receipt issued by the sub-registrar acknowledging the pending registration needs to be taken along with a certified true copy of that agreement.
- Original stamped receipts of payments issued to the previous and present owners by the builder/Development authority/society.
- Transfer permission from the respective authority i.e. Development Authority/Society
- Copy of Approved Plan and Occupation certificate issued by competent authority (like the Municipal Corporation)

Get all the documents checked by a property lawyer before executing them and closing the deal.

Check the credentials of your new property

Steps to investigate the genuineness of the title deeds of the property are indicated below:

Invitation of claims

The buyer advertises inviting any claims on the property in the form of a mortgage, charge, lease, lien, easement, gift, trust or any other claim. If the buyer does not get any response to the advertisement in the form of a claim within a certain number of days, he can assume that no claim exists on the property.

However, a genuine claimant may have missed the advertisement and merely advertising does not invalidate his claim. However, the fact that the buyer has advertised is proof enough about his being a genuine purchaser.

Search at the sub-registrar's office

The buyer's lawyer engages a search clerk to conduct a search on all the registered records pertaining to the property with the sub-Registrar for the last 30 years, to find out if there are any past disputed claims on the property.

Enquiry at municipal corporation

The buyer should ensure that all municipal taxes such as water tax, municipality bills and other such items have been paid by the seller up to the time of sale. Such enquiry should be made from the concerned Municipal Corporation. It is imperative that the buyer makes these enquiries failing which, liability if any, will become his. He will have to pay the municipality for taxes due from the seller because such taxes have a first charge on the property giving the municipality the right to sell the property to collect its taxes.

Enquiry with the ward office

Check out with the ward office where the property is situated whether:

- The property is to be acquired for public use under the Land Acquisition Act
- Any action, claim or notice is pending against the property
- Whether there is any notice for repairs of the building, which has not been carried out.

If the owner of the property is deceased

In this case, the purchase must ask the seller for any will, whether probated or not, left by the deceased owner.

A clear title is a very important aspect in a home loan a property should be free for all encumbrances/encroachments.

Property documents to be collected from the seller

1. In case of purchase from builder.
2. In case of direct allotment in a Co-operative Housing Society.
3. In case of direct allotment in a Co-operative Housing Society by Public Agency.
4. In case of Public Agency's allotment to individuals.
5. In case of resale.

In case of purchase from builder

1. Copy of Agreement for sale.
2. Copy of registration receipt.
3. Copies of receipts of payment already made.
4. NOC from builders.

In case of direct allotment in a co-operative housing society

1. Allotment letter.

2. Share certificate.
3. Society registration certificate.
4. Copy of sale/lease deed in favour of the society.
5. NOC from society

In case of direct allotment in a co-operative housing society by public agency

1. Allotment letter, Share certificate, Society Registration certificate.
2. Lease Agreement.
3. Public agency's approved list of members.
4. NOC from Public Agency in favour of bank/HFC.
5. NOC from society.

In case of public agency's allotment to individuals

1. Allotment letter from Public Agency.
2. Tripartite Agreement between the borrower, Bank/HFC and the Public Agency in the prescribed format.

In case of resale

1 Copy of all previous vendors' registered documents along with copy of your purchase agreement duly stamped and registered and the registration receipt wherever applicable.

Buying a rental property

What most of us do not realize is that buying rental properties can be a great way to build wealth. As in most real estate investments, it is sometimes difficult to know if you have found a good deal, especially for the first time. Here are some things to look for to be sure that rentals are a great way to invest money.

1. **Location** is a very critical factor and can never be over emphasized. Is the property close to shops, schools and

transport? Is it in a good area? Near water or have a great view?

2. **Numbers**. Run the numbers. Get every last expense figured into your calculation and be sure that you will have positive cash flow from the start.
3. **High home prices**. Look in areas with high home prices, as this creates rental demand. What do people do when they can't afford to buy, or are here only for a short contract? They rent usually in posh areas. High home prices have sufficient 'button' room to reduce rents while still offering reasonable returns when the rental market is depressed.
4. **Low maintenance buildings**. Avoid old homes that are in need for repairs. Low maintenance means fewer headaches and more profits.
5. **Ask to see the rental history**. There should also be maintenance history. Note how long the tenants are staying on average, and how well they pay on time.
6. **Owner/Manager out of the country**. These properties are often the best deals, because it is thought to be managed as a property from a distance. Such sellers are often happy with a quick sale than hold out for a better deal while the property remains unoccupied and deteriorating.

If structured properly with a bit of planning and imagination, one may still be able to slip in good returns on their investment in rental properties.

Real estate: location is the key

What drives real estate prices is location. If you are buying property for the purposes of making your home alone, there are personal factors that should determine your purchase decision. But if you are buying property as an investment you have to consider returns from the investment realistically. Are you buying the place and intend to give it out on rent every month? Then a marketable prime property might make sense. But if you

are going to hold on to your property, then think twice before investing in high-priced metropolitan areas, in the hope that prices will shoot up higher here. In fact appreciation in these places will be low. A thumb rule to follow is that your investment per square foot should double in five years. And that's unlikely to happen in an already high-priced area. If you are not certain of your money doubling in five years, you'd be better of putting investing in a small savings scheme or in a mutual fund.

A buyers/tenants checklist

The following guidelines would guide property owners and prospective buyers on the laws relating to properties. For convenience and uniformity we have made reference to the laws in Delhi. However, laws in most urban areas are more or less similar.

1. **Check if Use of Property would amount to Change of Land Use:**

   Please confirm whether the property you purchased could be used for the purpose it was purchased. You need to confirm with the master plan whether the property falls within the residential area, green belt or industrial zone. There are penalties for contravention of the plan. For example, in Delhi, the law prescribes that no person can change the use of any land or building or part thereof to other than the sanctioned or permissible use and the offence of the misuse is punishable u/s 347 of the D.M.C. Act 1957, which may result in simple imprisonment that may extend to six months or fine which may extend to Rs 5,000 or with both.

2. **Check if non-residential activity in residential premises is permissible:**

   In Delhi, specific provision for mixed use have been given for Walled City, Karol Bagh and other parts of the Special Area in the relevant sections in the Master Plan after making payment of conversion and parking fee @ Rs 5500

per sq. m of the permissible covered area at G. Floor as per Office order No. 5/EE (B)/HQ/92 dated 18.8.1992.

In case it is found feasible to permit mixed use in a street/area the same would be permitted subject to the following conditions:

i) The commercial activity allowed shall be only on the Ground Floor to the extent of 25% or 50 sq. m whichever is less.

ii) The establishment shall be run only by the resident of the dwelling unit

iii) The following activities shall not be allowed:

a) Retail Shops

Building materials (timber, timber products, marble, iron and steel and sand.)

b) Firewood, Coal.

Repair Shops

Automobiles repairs and workshops

Cycle rickshaw repairs

Tyre resorting and retreading

Battery Charging

c) Service Shops

Flour mills (more than 3 kW power load)

Fabrication and welding

d) Storage, godown and warehousing

e) Manufacturing units (excluding household industry)

f) Junk Shops

Nursing Home, guesthouse, and Bank shall be allowed in residential plots of minimum size of 209 sq. m facing a minimum road width of 18 m wide (9 m in special area and 13.5 m in rehabilitation colonies) subject to the conditions laid down in the guidelines issued in this regard.

The front setbacks for these plots shall be surrendered without compensation unconditional to local body for use as part of the right of way for parking etc. Because of conversion of use activity

the conversion fee shall be charged from the beneficiary as decided by the Authority.

3. **Check if the Muncipal Guidelines allow Mixed Use**

Mixed Use, viz. carrying commercial activities in residential areas are generally governed by laws which indicate the permissible limits of mixed use. For example, the following is the law in Delhi.

The Master Plan for Delhi has been modified vide Notification dated 7th May, 1999 allowing Guest House, Boarding House, Lodging House, Nursing Homes and Banks in residential plots of minimum size 209 sq. m facing roads of minimum width 18 m (9 m in special areas and 13.5 m in rehabilitation colonies) subject to the following conditions;

Minimum road frontage as mentioned above will be necessary for allowing above mentioned activities. For Guest Houses, Banks and Nursing Homes, which are already in existence this requirement may be relaxed, provided there is clearance from fire department.

For Nursing Home and Banks, a maximum of 2/3rd-floor area may be allowed for conversion for plot size up to 250 sq. m. In case of larger plots, the use for the above-mentioned purposes may be permitted subject to a ceiling of 2/3rd FAR or 600 sq. m whichever is less. In the cases of guest Houses a maximum of 3/4th-floor area may be allowed for conversion regardless of size of plot. A maximum of 15 Guest rooms will be permitted in guest Houses.

The maximum plot size for the above-mentioned activities will be 1000 sq. m.

No commercial activity in the form of canteen or restaurant will be permitted. Catering will be allowed only for the residents of the Guest Houses/Nursing Homes.

A permission fee will be charged at the rate of 10% per annum of the difference between the average commercial rate and average residential rate from Banks and Nursing Homes and 2.5% from Guest Houses as approved by the Ministry with the option to the property owners to pay use permission fee for 5 to 7 years in advance. The fees will be based on the actual floor area utilized for such non residential purpose. The amount collected through the levy of permission fee will be placed. in a separate escrow account by the concerned local body (MCD) collecting it and will be utilized for augmentation of infrastructure in and around the area.

Where residential premises are already being put to such non-residential use, the same will be regularized on their payment of permission fee vide para (ix) above from the date from which, its functioning has been established.

The law mandates that the Local bodies will ensure that permission fee is paid for each financial year within six months of that financial year. In case of violation of these guidelines/default, prompt action will. be taken to issue time-bound notice to party and in case of non-compliance close and seal the premises and pern1ission fee with 100% misuse fee recovered. Further, whatever premises are utilized for such non-residential but permissible use it will be ensured that no nuisance or hardship is created for the local residents.

4. Certain Professional Activity permissible in Residential Areas:

The law in several cities in India permits professional activities by self-employed professionals like lawyers, chartered accountants and doctors within the confines of their own homes. In Delhi for example, professional activity shall be allowed in residential plots and flats on any floor on the following condition:

- ✦ Part of the premises shall be permitted to be used up to a maximum of 25% of FAR or 100 sq. m which ever is less, for non residential but non nuisance activities for rendering service based on professional skills.

Similar rules exist in other cities and states in the country.

5. Check if the Building adheres to the Sanctioned Plan

There are important criteria to be checked before a building is used e.g., is the building constructed within with the Floor Space Index (FSI) of the locality, and, whether there has been deviations to the approved plan sanctioned by the local authorities? In many cases unscrupulous builders have built in excess to the sanctioned plan. More often than not it seen that the developed property does not in any way adhere to the sanctioned plan. To get more saleable space, the builder most readily compromises by flouting the sanctioned plan.



8.3

Tips Before Purchasing a Property

Ensure that the paper work and title documentation are in order. Consult your lawyer or a friend knowledgeable in this area.

Bear in mind factors like approach roads, upcoming structures in the area and the availability of all basic amenities.

Purchase of a New Flat or Apartment

Legal

1. Check for proper Development Agreements and the authority for conveyance of title in favour of builder/ promoter.
2. Check if occupancy certificate has been issued by the municipality authority with the approved of building plan.
3. Obtain a clear and marketable title of the project.
4. Ensure execution of proper sale agreements on your initial payments.
5. See the sanctioned plan.
6. Register the property.
7. Verify plinth area of the apartment.

8. Check carpet area of the apartment and find out if the difference between plinth area and carpet area is reasonable.
9. Ask for completion certificate.

Approvals

1. Ensure whether reputed financial companies approve the project. This will help you to get financial loans.
2. Has your builder/promoter acquired the approvals from Municipal Corporation, Area Development Authorities, Electricity Boards, Water Supply and Sewerage Boards, Airport Area Authorities? Ask for adequate proof of this, by way of authorized documentation.

Amenities

1. Verify whether specifications as assured by the builder has been delivered, including quality of construction and availability of drinking water.

The following are the necessary provisions for buying a house from a second owner.

Legal

1. Title deeds of the vendor of the property.
2. Previous title deeds covering a period of 13 years.
3. Encumbrance certificate for the past 13 years.
4. Up to date tax paid receipts.
5. Valuation of the property from a registered valuer.
6. Sanctioned plan.
7. Check if the flat/apartment is free from tenancy.
8. Register the property.
9. Become the member of the society in the next AGM so to entitle rights of Society Members.

10. Make sure that you receive the share certificates of ownership after the AGM. (This is an important document for your Loan Processing.)

Approvals

1. From City Corporation, Area Development Authorities, Electricity Boards, Water Supply and Sewerage Boards.

Amenities

1. Check for the condition of the building and the future life expectancy.
2. Availability of drinking water.

The following are the common provisions, which can be referred under purchase of property through second owner or new property.

1. Check for proper approach roads.
2. Ensure secured electricity connections.
3. Are water connections present and functional?
4. Ensure that well laid out drainage, sewerage and garbage disposal arrangements have been made.
5. Pollution due to industries etc in the area.
6. Check for developmental activities of the area.
7. Public transport facilities in the area.
8. Check for educational institutions, hospitals, shopping avenues nearby, green belts and rainwater drainage.
9. Check for natural lighting, ventilation, water connection and sanitary connection.
10. Check for anti-social or criminal activities.
11. Check for garbage dumping and cleanliness of the locality.



8.4

Tips Before Selling Your Property

Once you decide to sell your property you must make it certain what is the basic object of your sale: like you intend to buy another property by selling this (which could be more or less than its value), you want to invest money in business or any other area. Other thing one has to look at the property market situation as it has a lot of bearing on your property sale prospects. If it is buyers market it will be different scenario as compared to either sellers market or in a neutral market. You will have to adopt the right strategy according to market and your requirement.

If you intend to buy another property, which is bigger (thus expensive) it is advisable to sell it when the prices have crashed. You would defiantly get less price for your property as compared to natural market, but your purchase for a better/bigger price would also be cheap and you would need to add less money to buy your required property as compared to scenario when the market is giving you a better price for your own property.

If you intend to invest the realized money in business of any other area you should try to sell it at a time when there is right price available. Though like stock markets it is difficult to predict what is the highest and lowest market price but one can find out the right market prevailing price of similar property which you intend to sell and once you are able to achieve your target price you should sell your property.

No doubt you need to present your property in a manner that it should appear to be one of the best proposals available for sale to intending purchasers. At the same time you must appreciate the plus and minus points of your property and calculate the right price for the property. It is very easy if you take a look at your property with an eye of a buyer.

Some of the important points you should take a note while selling your property:

- **Make a Summary of your property**: (It should include the following) Built up area, Accommodation, Plot Area, Construction quality, Age of Construction, Its location and property ownership title. Other details like Electricity load, water supply, house tax structure, distance from the market, schools, hospitals, airport, railway station, bus stand, etc. also make an impact on sales of your property price. Any other positive point/s should also become part of this Summary but minus points of your property must be at the back of your mind so that when you negotiate your property price you know them.

Decide who would sell your property

- You should decide whether you intend to sell your property on your own (a difficult scenario) or you intend to depend on a real estate agent
- If you intend to sell your property on your own (as quoted above it is a very difficult and tardy process) you would need to place advertisements in newspapers and websites. Before you place advertisements you should be ready with the summary of the property and the right price you expect for your property. It is a common trend today to expect some bargain so people normally quote little more than the price they wish to get for their property. So, you should quote a little higher to the caller and in case you give the right price you should mention that this price is not negotiable. You should be ready with all answers to

questions which a buyer could ask (which would be available if you have the summary ready with you). If you have little marketing skills, it is advisable to appoint a experienced firm to market your property. By doing this you get the best transaction in every scale.

- In case you decide to sell your property through a real estate agent you should select the right estate agent. The right real estate agent is a person who is dependable and honest, established and has a good reputation in the market. Further, he should have a good knowledge of property trade and the laws in operation in the state. Though real estate consultants list your property without any charge, one needs to be careful in choosing them as they are representing your property. A good real estate can bring in good clients and results. Check the real estate agent's infrastructure, experience, his knowledge of the trade, some references he could provide. You can check up with your friends, and other people then decide which real estate agent is suitable for the job. You may opt for an exclusive real estate consultant, in case you feel he is worth it or you can select two or three only to list your property with them. It is not at all in your interest to list your property with too many estate agents.

Find out the right price

- Once you know the right price of your property you would be able to sell it at the earliest. Everyone wishes to attain maximum price for his property. However you need to be realistic. There is no point that your property is listed at a higher price but does not conclude in a transaction. At the same time you would not like to sell your property lower than the market price. Best way to ascertain the right price is to check up with real estate agents the price of a property similar to yours, check up with friends and neighbors if they know the price of any property sold in

your vicinity. Then compare the plus and minus points of that property with yours and you can come to the right market price for your property. Nevertheless, if your property is good for a self user you can get a better price from an end user as compared to a builder who would pull down the entire building to make new flat/s and he would never take the cost of an existing construction into account while making an offer for your property, whereas an actual owner would be willing to pay a part of it.

Some more useful tips

- If you try to negotiate the brokerage of the real estate agent, his interest in your property would become low so don't try to cut on his brokerage.
- Let your estate agent know your property details and the summary you have made as it would make him aware of every positive aspect of the property and he would be in a better position to market your property.
- If you wish to sell your property on your own, place advertisements in newspapers which have better circulation and place your ads on days when they publish special property pages. But this process involves lots of efforts, dealing with all sorts of people and a lot of expense on advertisements.
- Put your property in presentable condition so that when a buyer visits to see this property it does not appear to be in a bad shape. Small expense on getting the right lighting, paint and clean floors would fetch much better price.
- Don't show your desperation while negotiating your price. Remember if a buyer likes your property he would pay a good price but if he does not like it he won't buy it even if you reduce your price.
- Check Guideline Value of the particular street where the property is located.



8.5

Tips for Renting out your Property

Property owners often are skeptical about the tenants who come in to rent out his house. In the light of innumerable instances of tenants' sub-letting premises, using the *pugree* system or going to court to take advantage of long-winded litigation procedures, here are some pointers to make sure that *rent income* does not insidiously change to *cost.* Here, the rules of the game partially depend on who the other side is a company lessor or individual tenant.

If you intend to hand over the keys of your house to company, hold. Check the credentials of the company. Who knows, it might be broke! Big names do not automatically imply a model tenant. Check around for a good track record of timely payments.

Draw up a daunting contract. Wherever possible, set the security deposit at a third of the flat's cost and collect six months rent in advance. Include a clause, which quadruples rent if the company does not vacate once the contract ends.

The company's nominee occupant should be named. If the employee quits during the lease period, the flat should revert promptly to the owner.

Push for a copy of the occupant's employment contract, which specifies the contract period.

The company must give a corporate guarantee from its head office ensuring that the flat is handed over at the end of the lease. In case, the guarantee is not available take a letter of comfort from the concerned branch office, which will act as proof that the company has rented the house.

Sound legalese in drawing up the contract is a must.

Specify that subletting is prohibited irrespective of whether it is a company or individual lease.

While big corporates may prefer a three-five year lease, residence owners usually prefer the relative safety of a leave-and-license agreement, which ensures periodic renewal of the terms. The eleven-month agreement is usually popular as these pre-empt the rent control laws, which apply after 12 months. Rent control laws, as said earlier, weigh in favor of tenants.

Specify the notice period for either side.

Property, where rent is over Rs 3,500 is subject to the Transfer of Property Act (TPA) and not the rent control laws of the various states and metros. The TPA comes under the civil court while the rent laws are heard by the Rent Controller at the district level. If you want to evict errant tenants, the TPA is much better as it has a broad scope for eviction unlike the latter which sets out barely 12 causes.



9.1

Real Estate Glossary

A

Abatement notice A notice served on the owner(s) or occupier(s) of a property from which a private nuisance arises, warning them of the intention to enter on the land in order to abate the nuisance.

Absolute title 1. The right of ownership of a mortgage deed, which gives the right, in certain specified circumstances, to demand repayment in full, of the outstanding debt than the due date. 2. A clause in a deed or contract, which provides for the early termination of an exciting interest in land, in certain specified circumstances, thereby advancing the future interest.

Acceptance letter Once the sanction letter is issued, the applicant will, on reading the terms of the issue, communicate his willingness to accept the loan by way of an acceptance letter within a particular time frame which varies between 1-3 months from the date of the sanction letter and also pay the requisite administrative fee.

Agreement for lease/sale A contract to enter into a lease (or sale), which in order to be enforceable either must be evidenced in writing and signed by the person against whom action is taken for

the breach of the alleged contract and there must be a sufficient act of part performance.

Alternative user value The value of land and buildings which reflects a prospective use which is different from that of the current use.

Amortization 1. (UK) The concept of writing off the capital cost of a wasting physical asset by means of a sinking fund. 2. (USA) Payment of a debt in equal installments of principal interest, as opposed to interest-only payments.

Anchor tenant One or more department or variety chain stores, or supermarkets, introduced into a shopping centre in key positions to attract the shopping public into the centre for the purpose of encouraging other retailers to lease shops en route. The larger the developments the more anchors required.

Annual rest The EMI is collected from the borrower every month and the appropriation towards interest and principal is made at the end of the financial year. This kind of appropriation is on annual rest basis.

Annuity A sum of money paid each year during the life of the recipient. An annuity is usually paid as a legal obligation under a contract or undertaking, as through a pension scheme, and may be paid in installments more frequently than once every twelve months.

Asset valuation In the property market this expression is applied to the valuation of land and buildings or plant and machinery. The term is often used to describe an expert opinion of the worth of a property which may be incorporated into company accounts, where the ownership of the asset is not necessarily to be transferred but the valuation is required for the company takeovers, share flotation or mortgages.

Assignment The transfer of a property interest, especially a lease, from one party to another.

Atrium An entrance hall of a building, often rising through a number of storeys and containing lifts, reception areas and

plants. Originally the hall or chief apartment of a Roman house.

B

Balloon payment A repayment of a loan bond, usually but not necessarily the final repayment, which is larger in amount than other installments.

Bare shell Depicts the condition of any property after completion of construction activity and installations of basic building services. A bare shell includes basic flooringtiled, mosaic, cement or granite and plastered walls. Apart from this, pantry and toilet facilities may also be operational in such condition.

Basic rent A monthly rental net of maintenance and interest costs charged or quoted by landlords for any property. The base rent comprises of only the payment made for usage of the subject property under a lease agreement. Imputed costs such as holding costs fit out costs and building service charges are not usually included in the base rent.

Bayana An Indian term used to denote the token money given to the landlord to informally freeze negotiations on a particular property, after the initial terms and conditions have been formalized.

Breach of contract An act, or omission, contrary to enforce specific performance to rescind the contract and/or to claim damages, the remedy available depending upon the nature of the breach.

Broker/dealer A person or company who acts as a medium of bringing owners and proposed buyers together with a view to complete a real estate transaction.

Brokerage 1. Commission paid to a broker. 2. The activity of a broker in bringing together two parties in a transaction.

Building bye laws Local authority control of building standards promulgated to regulate and control the usage of land, property and areas in cities and towns.

Building contract A contract between an owner or occupier of land and a building contractor, setting forth the terms under which construction is to be carried out, basis of remuneration, time scale, and penalties, if any, for failure to comply with terms of the contract.

Business centre Commercial premises usable by the occupiers for a short period on a membership basis of the centre. Usually, a business centre charges for the full service accommodation, which is generally substantially higher than the rental of a standard office space and usually includes cost of HVAC, housekeeping, electricity, and security systems.

Business park A landscaped area containing high tech, other amenities for business purposes, as distinct from high-tech park or a science park. Building density is lower than would be usual in a traditional industrial estate. Business parks are preferentially located where motorway, rail and airport communications are within a short distance.

Buy-out rate In a funding agreement between a developer and a prospective purchaser, the pre-determined investment yield which will be used to capitalize the annual income receivable at the time of sale to determine the buy out price.

C

Capitalization 1. At a given date the conversion into the equivalent capital worth of a series of net receipts, actual or estimated, over a period. 2. A method of calculating a final purchase price for a development using an agreed formula to convert actual, or assumed, income from initial lettings into capitalism. Such capitalized sums may be offset against a purchasing fund's interim finance payments, any excess being paid to the developer. 3. In relation to a company's reserves, the conversion into capital of money, which is then distributed as a capitalization issue?

Carpet areas Areas of useable at any floor level as worked out in the plinth area minus the area occupied by the walls.

Clear title It is a title which is free from any reasonable doubt and also free from all encumbrances.

Close relatives As per section 6 of the Companies Act, a close relative acceptable as guarantor is any of the following: Father, mother (including step mother), son (including step son), son's wife, daughter (including step daughter), son's son, son's son's wife, son's daughter, son's daughter's husband, daughter's husband, daughter's son, daughter's son's wife, daughter's daughter, daughter's daughter's husband, brother (including step brother), brother's wife, sister (including step sister), wife/husband and sister's husband. However for consideration of these relatives as guarantors for the loan they should comply with the age and other norms of the company.

Common areas It is actually the covered area of the common spaces and areas meant for use by the occupants of the building. These areas may include staircase, lifts, ducts for sanitation, electrical and air conditioning areas etc. This area is generally divided proportionately in relation to the size of the apartment and charged accordingly.

Credit appraisal/personal interview Every HFC has its panel of credit appraisal officers who process your application. They take into account factors like income of the applicants, number of dependents, monthly expenditure, repayment capacity, employment history, number of years of service left over and other such factors, which affect the credit rating of the borrower. Proof of income will also be verified for the purpose of approval of the loan. Some information may also be requested for the approval of the loan. The time taken for receipt of such information is crucial since it will affect the length of time required for a loan approval. The loan officer will also request applicants to the branch for a credit interview.

Catchment area 1. The area of land from which finds its way into a particular watercourse, lake or reservoir. 2. By analogy, the

area which contains those people who can be expected to obtain goods, services, employment or other benefits from a particularly property. More especially related to retail premises, where the success of forecasting depends on the accuracy of estimating the number of purchasers (catchment population) likely to be attracted from the different parts of the area and the average expenditure which might be expected from them.

Central business district The functional centre around which the rest of a city is comparison shopping, office accommodation, leisure facilities, buildings for recreational use, public museums, art galleries and governmental functions. Generally the area of highest land values within a city.

Clearance area An area which is to be cleared of all buildings. Generally promulgated by way of a government declaration, which is normally followed by the acquisition of the land and the clearance of the area.

Completion certificate/statement 1. (UK) statement pre-pared by solicitors, usually those acting for a purchaser and a vendor respectively, following the conveyance of an interest in property, giving a schedule of sums received leading to a balance being the final amount due to the vendor. In some case the statement is prepared at a later date and may show a figure recoverable by the purchaser from the vendor. 2. A certificate issued by the local development authority certifying that all necessary works have been completed and that the property is fit for occupation.

Condominium (USA) A building or a structure of two or more units, the interior space of the individually owned and the balance of the property (both land and building) being owned in common by the owners of the individual units.

Conveyance A document transferring title to land from one person to another.

Current yield The remunerative rate of interest which is, or would be, an appropriate at the date of valuation, assuming the property to be let at its full rental value. It will be the same as the reversion yield where the reversion is to full rental value, and the

same as the term yield where the rent receivable under the lease is full rental value.

D

Developer An entrepreneur who has an interest in a property, initiates its development and ensures, that this is carried out (for occupation, investment or dealing) and from the outset accepts the responsibility for providing or procures the requisite funds needed to finance the whole project.

Development control The powers of a local planning authority to control the development and use of land, which includes inter alia:

a) the refusal or grant (with or without conditions) of planning permission.
b) the issue of enforcement notices.
c) the making of revocation, modification or discontinuance orders.
d) the grant or refusal of listed building consents.
e) the designations of conversion areas.

Development yield In a valuation to ascertain a ground rent, the rate at which costs are recapitalized to find the annual deduction from the occupation rents. It comprises:

a) an investment yield
b) an annual allowance for developers risk and profit and, in some instances
c) an annual sinking fund element

Discounted cash flow analysis Techniques used in investment and development appraisal whereby future inflows and outflows of cash associated with a particular project are expressed in present-day terms by discounting. The most widely used forms of DCF are the internal rates of return (IRR) and net present value (NPV). The techniques may be used for such purposes as the

valuation of land and investment, the ranking of projects or their components.

Documentation The papers to be signed in connection with the loan at the HFC, i.e., the loan papers, is called documentation.

E

Easement (UK) A right appurtenant to a parcel of land entitling a dominant owner to use the land of the servient owner in a particular manner, or constraining the legal rights otherwise enjoyed by the servient owner, e.g. a right of way, right to light, right to support. Strictly speaking, easements cannot exist "in gross", i.e. personal and unattached to the ownership of land, but rights similar to easements can be created by statute, usually for the benefit of public utility undertakings, and these are commonly referred to as "statutory easements".

Effective rent The gross rent payable per month by the occupiers which includes the base rent, maintenance charges, imputed costs of loss of interest on security deposit and rental advance. The effective rent indicates the total cash outflow of an occupier every month on account of leasing any property.

EMI Equated Monthly Installment. This is the installment amount the borrower has to make towards repayment of his loan. The EMI comprises of both the principal and interest.

Encumbrance This records details of transfer of ownership of a property in succession up to the current owner. It shows the date, the names of the parties involving the amount of consideration, the extent and schedule of the property. This certificate can be obtained from the sub registrar's office for a payment of fee from any previous year till date. This certificate is also useful in establishing the events as to how and when the present owner came into possession of the property.

Equity linked mortgage A mortgage whereby the interest on the principal in part or in whole is calculated, usually yearly, by reference on the security, e.g. it may reflect annual increase or

possible decreases, in the annual return on, or the value of, the property in which the mortgage is secured.

Escalation clause Specified in lease agreements wherein renewals of lease period are built in. It involves an increment in the base rent at every renewal of a lease agreement and is generally a percentage rate that is either pre agreed or negotiated before the renewal of the lease agreement.

F

Facilities management The co-ordination of many specialist disciplines to create the optimum working environment for staff.

Fail rent The rent determined by a rent officer (or, on appeal, by a rent assessment committee) under a regulated tenancy and registered.

FEMA An act to regulate certain payments dealing in foreign exchange, securities, the import and export of currency and acquisition of immovable property by foreigners. Under the Foreign Exchange Management Act (FEMA), it is mandatory for foreign corporations, which are not incorporated in India to obtain permission from the Reserve Bank of India (RBI) to acquire, hold, transfer or dispose off in any manner (expect by way of lease for a period not exceeding five years) any immovable property in India.

Fire certificate A certificate covering matters of safety required under the legislation for hotels, boarding houses, factories, offices shops and railway premises, excluding those buildings containing less than a minimum number of employees. In order to obtain a fire certificate, one must apply to a fire officer, who then inspects the building and issues a list of requirements (e.g. Fire escape doors/stairways). Once the fire officer is satisfied that those requirements have been met he will issue the fire certificate. It enables fire officers, in the event of an emergency, to have prior knowledge inter alia of the permitted number of people on each floor; it also informs officials if any authorised inflammables/explosives materials are found on the premises.

Fit outs Relate to the interior permanent furnishings required in a property including HVAC ducting, fire protection system implementation, establishment of workstations and telephone/ computer cabling among others, in order to make the property fit for usage.

Flatted factory An industrial building of more than one storey, usually with two or more goods lifts, and constructed or converted for multiple occupation. The building is subdivided into small, separately occupied units which are used for manufacturing, assembly and associated storage.

Force majeure A force, which cannot be resisted, in other words, something beyond the control of the parties involved. It includes acts of God and acts of man, e.g. riots, strikes, arson. In many contracts and insurance policies, specific provision is made for damage or injury arising from force majeure. For example, the financial liability of a building contractor for failure to complete by a specific date may be relieved to the extent it was caused by force majeure. This is a common clause in most property contracts.

Foreclosure 1. (UK) The mortgagees restricted power to extinguish the mortgagor's right of redemption by transferring the mortgagor's interest in the property to himself, if the mortgagors default in paying his dues or in complying with any other terms of the mortgage deeds. 2. (USA) The legal process by which a mortgagee can sell the mortgagors interest in the property to satisfy debt: also called "foreclosure sale". Also applied to the extinguishment of a mortgagor's right of redemption.

Freehold In general parlance this is used as shorthand for the tenure of an estate in fee simple absolute in possession. Strictly speaking, however, freehold includes fee simple, entailed interests and tenancies for life.

Frontage (line) The full length of a plot of land or a building measured alongside the road on to which the plot or building fronts. In the case of contiguous buildings individual frontages are usually measured to the middle of any party wall.

G

Greased lease back The disposal by a freehold or leasehold owner of his interest on a property or leasehold interest where the rent payable is geared to a fixed percentage of some variables, often rack-rental value.

Gold cause (UK) A clause in a lease which provides for the rent to be reviewed with reference to the price of gold.

Green field site An area of land, usually in the edge of a town or city or away from substantial urban areas, hitherto undeveloped but for which development is now proposed.

Gross External Area (GEA) The aggregate superficial area of a building taking each floor into account. As described in the RICS/ISVA Code of Measuring Practice (UK), this includes: external walls and projections, internal walls and partitions, columns, piers, chimney-breasts, stairwells, lift wells, tank and plant rooms, fuel stores; whether or not above main roof level and open-sided covered areas and enclosed car-parking areas, terraces, etc.

H

Hi-tech building (high technology building) Primarily a modern industrial building which is particularly suited to the flexible uses and space needs of business organisations engaged in modern technologies. Such activities usually require more office or laboratory space than a traditional factory and also more sophisticated and adaptable installations for services and communications.

High point loading A concentration of abnormally heavy floor-loading at one point or more. Particular places in a building or other structure where extra support may be required.

HVAC Refers to the heating, ventilation, air conditioning system installed in a building to regulate temperature. This includes air conditioning plants, chillers and ducting systems,

which ensure the uniform transfer of the cold or hot air, as the case may be throughout the building.

I

Indian Stamp Act, 1899 A legal statute, which provides for the payment of stamp duty in case of all real estate transactions to duty to the local government. The value of the stamp duty depends on the rental payable and the lease term or the sale value as the case may be. This duty is paid by purchasing non judicial Indian Stamp Paper, on which the lease/sale agreements are documented.

Improvements Generally, physical changes which enhance the capital value of land or buildings. These may include additional buildings, extensions to existing buildings, installation of new services, e.g. central heating and air conditioning and infra-structure works. On the other hand, mere replacement by a modern equivalent if something worn out would normally be regarded as a repair rather than an improvement. The distinction has legal and taxation consequences.

Indenture A deed between two or more parties, each party having his own copy. Originally copies were all included in a single document from which each part was torn or cut along a wavy (intended) line.

Institutional investors These are generally taken to include banks, pension funds, insurance companies, unit trusts and investment trusts, which are together commonly referred to in the investment field as the "institutions".

Investment yield The annual percentage return which is considered to be for a specific valuation in an investment being expressed as the ratio of annual net income (actual or estimated) to the capital value. It is therefore a measure of an investor's opinion about the prospects and risks attached to that investment. The better the prospects and lower the risks, the lower the expected yield and thus the greater the capital value.

The required yield from an investment is estimated in the light of such factors as:

a) the security in real terms of the capital invested.
b) the security in real terms and regularity of income.
c) the ability to adjust the income to reflect market conditions.
d) the complexity and cost of management.
e) the ease and likely cost of realizing the capital.
f) the tax position.

Internal rate of return (IRR) 1. The rate of interest (expressed as a percentage) at which all-future cash flows (positive and negative) must be discounted in order that the net present value of those cash flows should be equal to zero. It is found by trial and error by applying present values at different rates of interest in turn to the net cash flow. It is something called the discounted cash flow rate of return. 2. An alternative explanation might be: the highest rate of interest (expressed as a percentage) at which funded cash flow generated is to be sufficient to repay the original outlay at the end of the project life.

Inspection of property Inspection of property intended for purchase/construction is done at regular intervals, both before and after disbursement of the loan. Post sanction inspection of the property is done at each stage of the disbursement to ensure that the margin money is invested by the borrower and the progress of work is as per schedule.

J

Joint agent One or two or more agents jointly instructed by a principal to act on his behalf. In the case of estate agents this is normally on the basis that if any one of the agents effects the sale, letting or other joint agent(s) will share the remuneration in agreed proportions. None of these agents would be entitled to a

commission if the transaction is concluded as a result of someone else's introduction.

Joint sole agent One of two or more agents jointly instructed as the only agent entitled to represent the principal. It is customary for the joint agents to share any commission earned on an agreed basis, irrespective of which agent effects the sale or letting.

K

Kiosk A small enclosed retailed outlet, normally without toilet facilities and in the retail area, frequently located in a public concourse or other place where it may remain open only during peak times and be closed securely when there are no customers. Kiosks are now sometimes included in managed shopping schemes.

Khata, chitti, adangal These are basic documents called by different names in different places indicating the ownership of property as entered in the register of the Government authorities.

L

Land assembly The process of forming a single site from a number of lands, usually for eventual development or redevelopment. This will include acquisition of individual interest and the eventual development or redevelopment, removal or discharge of any restrictive covenants or other encumbrances and obtaining physical possession, when required, from occupiers.

Landlord The owner of an interest in land who, in consideration of a rent or other payment (eg. a premium), grants the right to exclusive possession of the whole or part of their land to another person for a specific or determinable period by way of a lease or tenancy.

Lease agreement An agreement, usually written, between the lessor and the lessee, which allows for the conveyance of property

to the tenant under a contract, and confers usage and control rights to the tenant for the duration of lease. Apart from financial terms and conditions, several clauses describing the other binding terms and conditions of the agreement are also documented.

License The lawful grant of a right to do something which would otherwise be illegal or wrongful. It may be gratuitous, contractual or coupled with an interest in land. The grantor of license is the licensor and the grantee is the licensee. A gratuitous ("mere" or "bare") license can always be revoked (ie. cancelled), but revocability of a contractual license depends on the terms of the contract. A license coupled with an interest in land may be irrevocable and unlike the other two categories, may be binding on successors in title of the licensor. One example of license is permission, usually required in writing, given specifically by an owner to a tenant, enabling something to be done which otherwise would be in breach of a term of the lease. A license does not itself transfer any interest in the land but may authorise the licensee to enter the licensor's land for some specific purposes of the license; the licensor may enter the land and use it in any way not inconsistent with the rights of the licensee. However, a landlord may authorise by license some act or omission by a tenant, which would otherwise be a breach of the terms of the lease.

Load bearing The capacity of an element in a building structure to support a weight in addition to its own, whether vertically or laterally. Thus a load bearing wall is one which supports part of the structure in addition to its own weight.

Legal scrutiny report The documents pertaining to your property needs to be scrutinized by legal personnel of the HFC to ensure that you are buying a property that is clear and marketable. This is one of the first criteria to take care of, so that the transaction is proper and the property can be passed onto your legal heirs.

License for construction A permission to construct or an authorization in writing issued along with the sanctioned plan.

M

Maintenance In property parlance, the keeping of a building, structure or other physical feature in a specified condition e.g. wind and weather tight conditions. The approved cost of maintenance may be deductible for income taxation.

Mattha Frontage of a building with the main road.

Mortgage The conveyance of a legal or equitable interest in freehold or leasehold property as security for a loan and with provision for redemption on repayment of the loan. The lender (mortgagee) has powers of recovery in the event of default by the borrower (mortgagor). A mortgage is a form of land charge and can be either legal or equitable.

Margin amount The difference in the total cost of the project and the loan amount sanctioned is the margin amount. This money has to be invested by the borrower of the property prior to the release of the loan amount in case of construction of a house. In case it is for purchase of a house, then the loan amount will be released on the day of registration of the property and the margin money has to be invested by the borrower prior to the release. In case of purchase of flats also, the release will be made only on investment of the margin money by the borrower.

Marketable title When the title to the property is clear and the person has the right and capacity to transfer the same then he is said to have a marketable title.

Market value It is the value of the property as per the prevailing market rates.

N

Negotiation Discussion, written or otherwise, between two or more parties of different sides, the aim being to reach a common agreement.

Non conforming use The use of a property which does not conform to the allocation of the area for planning purposes. Such a property may have been built in conformity with the planning requirement at the time and a policy change ensued; more usually, the property was constructed before planning control was introduced.

Net present value method (NPV) A method used in discounted cash flow analysis to find the sum of money representing the difference between the present value of all inflows and outflows of cash associated with the project by discounting each at a target yield.

O

Open market value 1. The best price which might reasonably be expected to be obtained at arms' length for an interest in a property at the date of valuation, subject to any statutory assumptions which may be required. 2. For the purpose of asset valuations this is defined by the Royal Institute of Chartered Surveyors (UK) as the best price which might reasonably be expected to be obtained for an interest in a property at the date of valuation assuming:

1. there is a willing seller
2. there is a reasonable period in which to negotiate the sale
3. that values will remain static during that period
4. that the property will be freely exposed to the market; and
5. that no account will be taken of any higher price that might be paid by a person with a special interest.

Outgoings Costs incurred by the owner of an interest in property, usually calculated on a yearly basis e.g. management, repairs, rates, insurance and rent payable to the holder of a superior interest, as appropriate to his contractual or other liabilities. It is prudent to make annual provision for future items involving expenditure at intervals of more than one year.

Obligation of the borrower The borrower in terms of the agreement will be obligated to keep up the schedule of repayment, to deposit the post dated cheques periodically and to keep the property free from encumbrance.

P

Patwari Usually denotes the person appointed by a local government or land authority to maintain and update land ownership records for a specific area as well as to undertake the collection of land taxes.

Penal rent A financial punishment of a tenant for failing to honor his obligation to pay rent at the proper time, taking the form of a vastly higher figure being payable during the period of default.

Permitted one Colloquially, either 1. A use authorised by a grant of planning permission or, 2. A use allowed by the deemed grant of planning permission under the local development control norms.

Pre-stressed concrete A type of reinforced concrete in which all or some of the ordinary steel reinforcement is replaced by high-tensile steel bars or wires which are tensioned by 'pre-tensioning' or 'post-tensioning'. The number and positioning of wires or tendons can be arranged to eliminate all tension in the concrete, thereby preventing cracking and so rendering the concrete water-tight and gas-tight as well as increasing in durability. Pre-stressed concrete structures can achieve greater spans and carry higher loading.

Premium rent 1. A rent above the level which a property could reasonably be expected to command in the open market on normal terms. Such rents may be justified in instances where the tenant receives a present or future benefit against the market e.g. in inflationary conditions where upward-only rent reviews are normally required at three-yearly intervals, the tenant may be prepared to pay a higher rent if fixed for a longer period of say, 5

years. 2. A rent which is higher than would reasonably be expected because the tenant is particularly anxious to secure the property.

Private treaty The most common method of disposal of real property, in which negotiations are carried out between the vendor and prospective purchasers (or their respective agents) privately and in comparative secrecy, normally without any limit on the time within which they must be completed, before contracts are exchanged.

Project management (development management) The leadership role which plans, budgets, co-ordinates, monitors and controls the operational contributions of property professionals, and others, in a project involving the development of land in accordance with a client's objectives in terms of quality, cost and time.

Property investment trust A public company, having certain tax advantages and complying with rules applicable to its operation and investment activities, managed by a professional specialist team and established for the purpose of acquiring mainly shares in property companies-public or private. To such an extent, as is permitted legally, without prejudicing its beneficial tax treatment, it may invest in other securities, own property directly or undertake development. It provides shareholders with an interest in a wide ranging portfolio and the reassuring knowledge that investment policy is in the hands of experts.

Property management The range of functions concerned with looking after buildings, including collection of rents, payment of outgoings, maintenance including repair, provision of services, insurance and supervision of staff employed for services, together with negotiations with tenants or prospective tenants. The extent of and responsibility for management between landlord and tenant depend on terms of the lease(s). The landlord may delegate some or all of these functions to managing agents.

Property portfolio management The unified management of a group of properties which are held in one ownership. Decisions

taken in respect of any issue are reached on the basis of achieving the maximum benefit for the owners, having regard to the effect on the portfolio as a whole rather than on an individual property.

Pugree An Indian term used to describe an interest free security deposit given to landlords which is refundable at the expiry of the lease term to the outgoing tenant by the successive tenant.

Penal interest If the installments are not received as per the repayment terms, by the end of the month, the borrower will be charged interest on the installments delayed which is called as penal interest.

Plinth area Area measured externally of the whole building. This includes balconies; however this will not include common areas in apartment blocks/commercial buildings and spaces.

Power of attorney It is an instrument empowering a specified person or persons to act for and in the name of the person executing it. The person for whom the act is done or who is so represented is called principal. The person who is so authorised to do or represent is called agent. It may be either notarized or registered depending on the transaction.

Pre-EMI The EMI for the loan will begin after the loan has been disbursed in full. Till such time the borrower has to pay the interest for the loan. This amount of interest payable every month is called as pre-EMI.

Prepayment It is the amount paid towards principal ahead of the prescribed repayment schedule. The benefit of interest is given to the party in such cases as per the norms of the company.

Pre-sanction inspection of property Immediately on receipt of the application of the loan application, a loan officer from the HFC will conduct an inspection of the property to ascertain the location of the property, verify the technical details of the house like structural stability etc and the stage of construction, if the loan is for construction.

Property tax This is the tax levied on the property by the local authority such as Corporation, Municipality, etc to the person in whose name the property stands.

Q

Qualified Covenant A restriction contained in a legal document which limits the rights of a person having an interest in the land but, by its wording envisages the possibility of removing the limitation on terms agreed between the parties e.g. a covenant by a lessee not to assign or sublet without the landlord's written consent. In certain cases, such as the one quoted, statute law strengthens the applicant's position by importing such words as "such consent not to be unreasonably withheld".

R

Rack-rent A rent representing the full, or nearly the full, letting value of a property on a given set of terms and conditions

Rateable value The figure upon which property tax is charged in India. This value is determined by the tax authorities and thereafter the tax liability is charged to the owner(s) of the property on the basis of certain pre-determined tax slab rates.

Real Estate Investment Trust (USA/UK) A legally constituted organisation (entitled to preferential tax treatment) which enables investors to own and transfer shares of an interest in a property or properties; the shares can be dealt with in a manner similar to corporate stock. In order to qualify, a trust must be formed by at least 100 shareholders and invest most of its capital

in real estate loans or properties and receive income from them. The special feature is that such a trust reduces its own taxable income by a distribution to shareholders with no tax deducted, but this is taxable income in the hands of shareholders according

to their own tax status. To maintain the trust's status, REITs are obligated to distribute a minimum of 90% of their taxable income to the investors.

In order to qualify, a trust must, among other requirements, be owned by at least 100 shareholders and invest most of its capital in real estate loans or properties and receive income in the hands of shareholders

Refurbishment Improvement and modernisation of a building falling short of rebuilding or redevelopment and thus not normally requiring planning permission (other than for alterations to the external appearance), except in the case of listed buildings.

Registration and mutation It is mandatory for the sale deed of all high value property transactions to be registered at the regional sub registrar's office of the local municipal authority. Thereafter, the buyer has to apply for mutation, which involves a change in the title records to incorporate the name of the buyer of the property. In order to complete the transfer of property, it is mandatory for the seller to furnish or arrange a valid "certificate of completion" issued from the local municipal authority to the buyer.

Renewal As distinct from repair, this is "reconstruction of the entirely meaning not necessarily the whole subject matter".

Rent Act(s) Legislation promulgated by various states in India, which regulates the terms and conditions of the rental market with a view to curb profiteering and hoarding. Though its restrictive nature has not allowed owners to enjoy economic returns from same categories of property, thereby allowing market inefficiencies.

Rent free period An agreed period, usually for several weeks or months, during which a lessee is allowed to occupy the subject premises without payment of rent:

1. in consideration for the tenant incurring expenditure on such matters as fitting out premises or carrying out repairs or improvements.
2. to reflect market conditions which favour tenant e.g. where the space available for letting exceeds the total tenant demand in that area or
3. by virtue of both (1) and (2).

Rentable area The area of floor space for which rent is calculated even though other areas, within or outside the premise, are lawfully used by the tenant. For example, in an office building it is customary to exclude from the direct calculation of rent the space used for corridors, atrium and stairways.

Rental advance Comprises a lump sum payment to the landlord at the beginning of the lease term, which is thereafter adjusted in equal installments over the lease term against the monthly base rental payable by the tenant. The advance amount generally ranges between 3 to 18 months depending on the city, type, location of property and the period of the lease.

Root of title (UK) In conveyancing of unregistered land, a document which forms a solid basis to establish the title to the land. It must go back, sufficiently for identification, showing a disposition of the whole interest contracted to be sold and containing nothing throwing any doubt on the title.

Registration value It is the value of the property at which the property is registered. Generally the rates for the value for registration is fixed for specific areas by the authorities in many places.

Repayment The payment of EMI or pre-EMI as applicable is called as repayment of the loan. In case of NRIs this amount should come from Non-Resident (External) Account/Non-Resident (Ordinary) Account in India.

Role of guarantor Commitment by way of agreeing to the terms and conditions of the loan and liable to the extent of the loan/liability together with the interest and other charges.

S

Sale and leaseback An arrangement whereby a freeholder or lessee sells his interest in a property for an agreed sum and takes back a lease on the whole or part of the property from the purchaser, generally either at a rack rent or at some lesser rent related to the price paid.

Science park A development of an industrial nature suited to accommodate high technology, with supporting amenities, which is associated on site with or is close to a higher educational research establishment to provide cross-fertilization of ideas between entrepreneurs and researchers for the purpose of enabling academic knowledge to be applied to effective commercial use.

Security deposit Comprises of an interest free lump sum payment to the landlord at the commencement of the lease, which is refundable at the end of the lease term. Though the deposit amount varies depending on city, property type, location and the period of the lease, it may range anywhere between 6 to 18 months of monthly rental. It is not uncommon for some landlords to provide a bank guarantee to the tenant as security for the repayment of the initial deposit amount.

Serviced accommodation Suites of offices or rooms where the landlord provides a range of services within the individual premises extending beyond the traditional ones associated with the maintenance and management of the building itself or the operation and maintenance of the installation or plant therein eg. furniture, telephone, fax machine, room cleaning, and/or provides centralized specialized services, such as a receptionist and secretarial and communication facilities.

Shopping mall A group of retail outlets designed and built with ways for pedestrians on one or more levels to form a unified whole under one roof.

Site plans A drawing of an area of land, on a horizontal plane, showing the boundaries and physical extent of the land included in a particular parcel. It may also show any existing buildings or the proposed layout of a development.

Speculator A person (usually a dealer) who undertakes a transaction in property, in expectation of asking for a profit but with the risk of not doing so.

Strata title Freehold title to a horizontal title above and/or below. Satisfactory arrangements for management usually involve a statutory obligation for the setting up of a management corporation with responsibility for the maintenance of common facilities and areas.

Sub leasing A method wherein, the primary lessee of a property has the right to further lease out a part or whole of the property to another occupier or lessee. Essentially, the right to sub lease is decided beforehand at the time of signing the main lease agreement and is with the consent of both the lessor and the lessee.

Suspended ceiling A ceiling, not being part of the structural framework of a building, installed below the level of the underside of the floor above or of the roof. Commonly used to provide space for services e.g. cables, recessed lighting and piping; to reduce the cost of heating in a room; to improve the acoustics; or to produce more aesthetically pleasing proportions.

Sale agreement It is an agreement which is entered into between the parties for dealing with the property and which creates a right to obtain a sale deed mentioning the property. Normally it fixes a time for completion, payment of earnest money or part payment of purchase consideration. Generally it is a document that precedes a sale deed and in such cases does not require registration and will also not confer any charge or right

on the property. However in some states the sale agreement itself will be registered and will act as a sale deed.

Sale deed It is an instrument in writing which transfers the ownership of the property or properties in exchange for a price paid/consideration. This is a document that requires to be registered compulsorily.

Sanction letter Once the loan is approved, a letter communicating the sanction terms and conditions will be issued to the party.

Sanctioned plan A drawing containing the plans, section of elevations of areas along with detailed schedules, specifications and area statements on which the sanctioning authorities grant permission to carry out work as regulated in the bye laws.

Stamp duty It is the duty/fee payable on the different instruments/documents as per the prescribed rate. This differs from state to state. The adequacy of stamp duty should be ensured to make a document valid and enforceable.

Statement of account The statement indicating the outstanding loan amount, the amount paid by the borrower, the appropriations made towards interest and principal, etc. at the end of the financial year.

Submission of loan application form The loan application form asks for information of the borrower, his family, details of his income and expenditure and his financial history, cost of the property, availability of resources, details of personal finances including bank account numbers, details of property proposed to be purchased etc.

Super built-up areas Plinth area + proportionate share of 'Common Areas'.

T

Tax clearance (37-1) The Income Tax Act, 1961 specifies that any lease transaction for not less than 12 years or any sale transaction, above a prescribed transaction value limit tax, has to

undergo a clearance process from the appellate body known as the Income Tax Appropriate Authority, constituted under the Income Tax Act. A joint application by the parties involved in the transaction is submitted along with processing fees to the Income Tax Authority, which takes upto a maximum of three months to grant the clearance, without which the sale transaction is not complete. This procedure is popularly known as the 37-(I) clearance, which is the application form number used for this purpose.

Technology park A landscaped development usually comprising of high specification office space as well as residential and retail developments, designed to encourage localization of high technology companies such as information technology, software development etc., thereby giving each the benefit of economies of scale. Usually, technology parks are located outside the inner city areas as these are quite land intensive in nature.

Tenancy 1. Strictly speaking, the interest of a person holding property by any right or title. 2. More usually, an arrangement, whether by formal lease or informal agreement, whereby formal lease or informal agreement, whereby the owner (the landlord) allows another (the tenant) to take exclusive possession of land in consideration for rent, with or without a premium, either:

a) for an agreed period or
b) on a periodic basis until formally terminated

Tenant's improvements to land or buildings to meet the needs of and carried out wholly or partly at the expense of the tenant.

Town and country planning The determination of policy for the development and use of land and the control of its implementations in urban and rural areas by district and country planning authorities.

Turnover rent A rent which is calculated as a proportion of the annual turnover of the lessee's business. Usually, it does not fall below a base rent. More commonly used in the USA, although in recent years being applied with increasing frequency in the

Europe and the mature markets of Asia, especially in the case of the more profitable retail outlets.

Title It is the right and interest over the property evidencing the ownership.

U

Uplifted rent A rent which reflects lease terms which are more beneficial to the tenant than prevailing commercial terms, eg. a higher rent to reflect, say, 14-yearly reviews, rather than the more common five-yearly reviews.

Urban Land Ceiling and Regulation Act (ULCRA) A legislation promulgated in 1976 as a social equity measure with a view to curb profiteering and hoarding in the urban land market as well as prevent urban congestion.

Urban centers i.e. cities were classified into categories such as A, B and C and a ceiling on the maximum permissible usage on land by respective owners was set under provisions of the act.

User 1. The use or enjoyment of a property or of a right over property. 2. A person who uses, enjoys or has a right over a property.

V

Vaastu shastra A traditional Indian architecture and design system, which specifies the detailed methodology of designing buildings, buying land etc. in order to maximize benefits, from the same for the occupier. This system relies in harmonizing any real estate development with the five elements of Indian mythology namely air, water, earth, fire and space.

Valuation 1. The process of making an estimate of worth of real property or real property or other assets for a particular purpose e.g. letting, purchase, sale, audit, rating, compulsory purchase or taxation. That purpose and the relevant circumstances will

determine assumptions and facts that are appropriate and hence the process used. 2. A statement, usually in writing, setting, out the facts, assumptions, calculations and resultant value. 3. Colloquially, the value arrived at as a result of the valuation process.

Value The price that might an interested in property or some other asset might reasonably be expected to fetch if disposed of at right

Vertical slice participation A method of multi-participation in a venture, usually a development, whereby each of the participants owns a separate legal interest in the whole of the property concerned by way of the freehold, head lease or a subordinate interest. The documentation normally ensures that rental and other income and /or capital receipts as well as the cost of any revenue or capital liabilities are shared by the participants in predetermined percentages related to their respective contributions, whether financial or otherwise.

W

Warehouse Premises designed and built for the purpose of bulk storage of raw materials or finished or partly finished goods, pending either onward transit or division into smaller batches and subsequent distribution.

Willing seller-willing buyer An assumption sometimes made for valuation purposes that the owner of the property concerned is willing to dispose of his interest therein and that there is at least one genuine purchaser in the market for that interest, whether or not such is actually the case at the date of valuation.

Written-down value At a given time, the result of making one or more annual of periodic deductions for depreciation against capital cost or worth.

Who can be the guarantor for the loan? Any individual who has good income/net worth can be a guarantor for the loan. In case of

non-resident Indians, the guarantors are to be close relatives as defined under Section 6 of the Companies Act.

X

Xystus 1. A covered colonnade, as originally used for exercise by Greek athletes. 2. A garden walk, usually bordered by trees.

Y

Yield up Give up possession, especially by the tenant at the end of a lease.

Z

Zone A defined area of land or part of a building which is allocated for a particular purpose, eg. development plans may allocate areas of land for different uses or values of property may distinguish between areas of floor space of a building and ascribe different values to them.

Zoning In planning terms, the dividing of an area by a local planning authority into zones for particular uses or activities.



9.2

Home Loan Glossary

Accessories An additional feature or extra item which is added to a basic car, like music system, clock etc.

Amortisation Amortisation means the method or the calculation by way of which the entire principal/loan amount is paid through the tenure of the loan. This helps a customer to know what his outstanding principal is at any point in time.

Annual rests This is more commonly known as Annual Reducing Balance of the principal amount lent to you. In an annual rest the EMIs are calculated on an annual basis. The interest is calculated on the outstanding principal at the beginning of every year. Once the interest is calculated at the rate charged to the customer for the entire year it is deducted from the EMIs received during the year. The balance EMI is taken as principal repaid during the year and this is deducted from the opening balance of principal of the current year to arrive at the opening balance of principal for the next year. Under this method, typically the component of interest in the EMI is higher for the first few years and later on the component of principal increases and the interest keeps reducing year after year. In other words, the interest in the EMI will keep reducing year after year and the principal component in the EMI keeps increasing.

Asset An immovable or movable property which can used as a security against which credit can be offered.

Bounce charges These charges are levied by the HFI if your cheque gets dishonoured due to some reason.

City survey nos. This is a number given to plots of lands falling within the purview of urban development plans of the Town Planning Authority.

Compound interest Interest charged or paid on the principal and the accumulated interest, unlike Simple Interest which is paid only the principal.

Co-applicant As a customer you have an option of having a co-applicant to your loan. The co-applicant cannot be a minor and most HFIs allow for only brother-brother, parent-son and husband-wife combination for a co-applicant.

Co-owners All HFIs insist that all co-owners have to be co-applicants necessarily. No minor is allowed to be a co-owner as a minor cannot enter into a contract as per law.

Cost of property This refers to the total cost of the property including various charges as acceptable to the HFI. This normally includes the agreement value of the property, the stamp duty and registration charges, the society transfer charges, garage charges for parking cars, electricity connection and water connection charges. The cost of the property will also include any additional furnishings done by the developer, for which an amenities agreement has been entered into between the customer and the developer that has been duly stamped and registered. The cost of the property, however, does not include any cash transactions involved in the purchase of the house over and above those mentioned in the agreement.

Credit profile Profile of an individual or company's capacity to receive credit and honour the terms and conditions of commercial credit.

Depreciation The decline in value of an asset over a period of time.

Documentation

1. Offer letter
2. Disbursement advice
3. Demand notice/Payment notice
4. Sale agreement
5. Stamp duty
6. Registration
7. Own contribution receipts
8. Layout
9. Approved plans
10. Commencement certificate
11. Completion/Occupation certificate
12. Possession letter
13. Conveyance Deed
14. Disbursement details
15. Allotment letter
16. 7/12 extract
17. Property card

Eligibility This is the loan amount that you get based on your repayment capacity. Your eligibility depends on the norms set by the HFIs. Typically, the eligibility computed would be lower of the Loan to value ratio (LTV), Installment to Income Ratio (IIR) and Fixed Obligation to Income Ratio (FOIR) as per the norms of the HFI.

EMI The loan can be repaid by paying a fixed amount every month, known as Equated Monthly Installment.

Encumbrance The encumbrance clause under the NOC ensures that no one else has a right or mortgage on this property.

Fixed rate of interest This is an option that is available to you when you avail of a home loan. Under this, the rate of interest remains fixed over the tenure of the loan. The rate remains constant after the final disbursement has been made. This is an

ideal option for situations when you expect the rates of interest to go up in the future. Hence the fluctuation in the rates does not affect you adversely. In case of Home Loans where the disbursement takes place as per the stages of construction of the property, the interest rate in the market may change during this period. Irrespective of the fact that you may either be under the fixed rate or the variable rate scheme, the new rate of interest would apply to the extent of undisbursed portion of your loan amount. The rate of interest remains fixed at the final weighted average rate at which the loan is disbursed.

Floating rate of interest This is the rate of interest that fluctuates with market lending rate.

Gross Monthly Income GMI stands for the Gross Monthly Income of an individual as considered by a HFI to calculate his loan eligibility. For a salaried customer GMI would indicate the Monthly Income on his salary slip including any fixed income generated regularly from a fixed source. For self-employed professionals who are practising on their own, GMI would reflect their Gross Professional Receipts while for self-employed non-professionals, GMI stands for Net profits that they earn from their business.

Insurance Cover Note Insurance companies issue a note first, which confirms that the asset has been insured. The policy normally takes few days as it has to be processed by the company. This note which is issued before the actual policy is made is called Insurance Cover Note.

Lease Contract by which the owner of an asset lets it out for use to another for a specified time on payment of a specified amount called rental.

Lending rate The interest charged by the financier on the amount financed.

Lien Under the NOC a clause of Acceptance of Lien is covered. This simply states that you have accepted to mortgage your property and can not sell it to any one else without the consent of the HFI.

Load bearing construction Developers for properties that do not exceed 1 or 2 floors use this term. There is no concept of slabs and columns in this kind of construction and therefore the load that can be borne by this kind of construction is far lower than that in a framed construction.

Loan tenure The time duration for which loan has been provided.

Margin money Financiers do not fund the full value of the asset. They expect the customer to bring a certain percentage of the asset as margin. This is called Margin Money.

Monthly rests This is also called Monthly Reducing Balance of principal. The calculation in this method remains the same as above except that the balance is calculated on a monthly basis and the EMI is broken up every month to arrive at the opening balance of principal for the next month.

Mortgage This is a form of hypothecation of the property to the HFI. There are three types of mortgage. They are: Equitable mortgage—where the mortgage is by way of deposit of title deeds ie all the documents of the property have to be deposited with the HFI. Mortgage by way of Memorandum of Entry—In this case you have to sign a declaration stating that you are mortgaging the property to the HFI. This declaration is then entered into the Memorandum of Entry of Mortgage that can be enforced in case you default in the payment of installments. Registered mortgage or English mortgage—This is the safest form of mortgage for a HFI. No documents of the property are required to create this kind of a mortgage. You just need to enter into a mortgage deed with the HFI which needs to be stamped and registered for it to be enforceable. This is an expensive way to create a mortgage.

Octroi This is a tax or cess applicable on goods which have entered a particular city/town.

Own contribution/Margin money This is the minimum amount of money that you need to put as your own contribution towards the purchase of the house. Most HFIs insist that this amount is paid upfront before they release any disbursement.

Personal guarantor Some HFIs insist that you provide for one or two personal guarantors. The guarantor is required to meet the norms specified by the HFI, which is similar to the norms of an applicant.

Pre-approval In a Home Loan, you have a facility to apply for a loan before you decide on the property. The loan is sanctioned however, disbursement takes place only after the property is selected and is technically and legally cleared. Such cases are called Pre-approvals as the loan is approved before the customer selects a property. This helps you to decide on a budget to buy a property of your choice.

Prepayment At any point in time you can pay back the loan amount either in parts or in full. This is called a prepayment. Normally, HFIs have a cap on the number of times that a person can prepay his loan amount during a financial year and on the minimum amount that can be prepaid.

Principal The capital sum in a finance transaction as opposed to interest.

Refinance/Balance transfer If you are an existing home loan customer and you have availed of the loan at a higher ROI then you have the option to switch to a lower rate of interest. You could do this either from the same HFI or from a different HFI. Kindly go through the Switch product for more details.

Registered owner Name of the person in whose name the vehicle is registered.

Rentals The repayment amounts paid in a lease contract.

Returns Yields or profits made in a financial transaction.

Risk Chance or danger of a loss of capital and or interest in financial transaction.

Security It is the asset that you mortgage with the HFI against which a loan is given to you. Typically, the security is the house for which a loan is given. At times it can also be security by way of Fixed deposits, Bonds, Shares, etc. and personal guarantees.

Stages of construction Typically, disbursement takes place on the basis of the stages of construction of the property. Broadly, the stages of construction are classified as follows:

Stage of Construction	Percentage (%)
Plinth/Foundation	15
RCC complete	55
Brickwork complete	70
Internal and external plastering complete	85
Plumbing, electrification and flooring	95
Windows, doors and painting	100

Note: Kindly note that the above percentages can differ based on the type of construction, number of floors, etc.

Stamp Duty Government levies a duty on certain legal documents and financial contracts.

Standing instructions Instructions to a bank to debit a fixed amount from your account and pay your financier.

Statutory charges These are charges like stamp duty, sales tax etc which are imposed by the government.

Survey numbers This is a number given to every plot of land. It is prevalent in areas not falling under the urban development plans of the Town Planning Authority. City survey nos. : This is a number given to plots of lands falling within the purview of urban development plans of the Town Planning Authority. Tax benefits: These are the tax benefits that are available to a Home Loan customer. Please go through Tax benefits in the Home Loan page for more details.

Tenure This is the term used to represent the number of years for which the loan is given. The loan amount gets amortised over the period of the loan.

Variable rate of interest This is an option available to you when you opt for a Home Loan. In this case, the rate of interest is

reviewed at periodic intervals and the new rates are applicable on your loan amount. This is suited in cases where you expect the market rates to go down further in the future.

Weighted average rate of interest In case of Home Loans where the disbursement takes place as per the stages of construction of the property, the interest rate in the market may change during this period. Irrespective of the fact that you may either be under the fixed rate or the variable rate scheme, the new rate of interest would apply to the extent of undisbursed portion of your loan amount. The final rate of interest that would be applicable to your loan would be an average of the different rates at which your loan has been disbursed.



9.3

Important Real Estate Organisations in the World

CREDAI (www.credai.com)

Confederation of Real Estate Developer's Associations of India is the apex body of the organized real estate developers/builders across India. 18 state/city level association viz. Andhra Pradesh, Assam, Chattisgarh, Delhi-NCR, Goa, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal spread over across 17 states of India are members of CREDAI with over 3,500 individual members developers encompassing over 60% of the organised private state/cities in the country.

Major objectives

The major objectives of the CREDAI are as enlisted below:

- To perpetuate an ethical code of conduct, which is self-imposed and mandatory for all the member developers/ builder of CREDAI to maintain integrity and transparency in the profession of real estate development.

- To represent the developers/builders across India by communicating and representing with the government authorities for the formulation of proactive policies for this profession.
- To encourage support the developers/builders to increase their efficiency in the development/construction activities by introducing the latest chronologies.
- To disseminate the data, statistics and other related information in this profession of real estate development.
- To promote the interest of construction workers and to educate them on the best practices.
- To encourage research in the profession of construction and real estate development.
- To facilitate easy housing finance availability to the property purchasers by working in close coordination with the leading housing finance institutions and banks.

Activities achievements of CREDAI

- CREDAI holds the National Convention once a year and also holds several city, state and regional level conference and technical seminars.
- CREDAI holds the Exhibitions in various cities across the country viz. Delhi, Mumbai, Bangalore, Kolkata etc. and also organizes exhibitions in the Gulf viz. Dubai, Muscat, Kuwait, Saudi Arabia, London (UK), USA, Far-East, etc.
- CREDAI has initiated several real estate market research projects to locate/understand the demand-supply ratio in various cities.
- CREDAI protested against the steep rise in the prices of cement, steel and other construction materials, which would translate into the escalation in the prices to the property purchasers.

Indian Institute of Real Estate (www.iire.co.in)

IIRE is a registered non-profit organisation, championing the cause of the Indian real estate industry. IIRE has evolved into a nationally renowned certifying and accreditation institute, dedicated to enhance the standard of real estate practice in India. IIRE is designed to be an umbrella organisation offering real estate education through its accredited training centres across India. IIRE offers one-of-its-kind certifications in Real Estate. It has tied-up with National Association of Realtors®, the leading real estate association in the USA, to offer real estate certification programs in India. IIRE is also in talks to provide with two more certification courses from Institute of Real Estate Management (IREM) and Certified Commercial Investment Manager (CCIM).

Currently the courses are running in Mumbai only and in due course of time will commence operations in Bangalore and Delhi.

International Consortium of Real Estate Associations (www.worldproperties.com)

WorldProperties.com is backed by the International Consortium of Real Estate Associations (ICREA), which is comprised of more than 25 leading national real estate organizations, representing 2 million brokers and agents worldwide, each of whom adhere to a code of conduct. WorldProperties.com provides benefits to broker members by assisting them in efficiently and profitably facilitating transnational business and in marketing their services locally and internationally. The site also assists consumers in locating properties outside their country and in locating a qualified real estate professional.



9.4

Websites on Real Estate

1. www.1roof4u.com
2. www.2letservice.com
3. www.99acres.com
4. www.abodesindia.com
5. www.alliancein.com
6. www.bangaloreinfo.net
7. www.businessparkindia.com
8. www.capitalistindia.com
9. www.chennairealtors.com
10. www.covalprop.com
11. www.ddlands.com
12. www.dhrealtyindia.com
13. www.geradevelopments.com
14. www.indiaproperties.com
15. www.indiarealestateblog.com
16. www.indiarealestatedirectory.com
17. www.indiarealtors.com
18. www.indiataylorhomes.com
19. www.mukulindia.com
20. www.norman-raymand.com

21. www.nrilegalservices.com
22. www.onlineghar.com
23. www.propertytalaash.com
24. www.rankyouragent.com
25. www.realestatencr.com
26. www.realestateonline.in
27. www.realindia.com
28. www.sanjeevaniprojects.com
29. www.searchindia.com
30. www.settlersindia.com
31. www.shubhamestates.com
32. www.totalmove.com
33. www.vakilhousing.com
34. www.venus-properties.com
35. www.venusrealtors.com



9.5

Attachment and Sale of Immovable Property

Part III Schedule II of Income Tax Act, 1961 deals with attachment and sale of immovable property. The provisions of this Schedule have been reproduced here. Please note that

Part III

1. Rule 48 to 51 deal with attachment of property.
2. Rule 52 to 68 deal with sale of attached property.

Part IV

1. Rule 69 to 72 deal with appointment and powers of the Receiver.

Part V

1. Rule 73 to 81 deal with arrest and detention of the defaulter.

Part III: Attachment of Immovable Property

Attachment

48. Attachment of the immovable property of the defaulter shall

be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

Attachment to relate back from the date of service of notice.

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale of Immovable Property

Sale and proclamation of sale

52. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation

53. A proclamation of sale of immovable property shall be drawn

up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,

a) the property to be sold;

b) the revenue, if any, assessed upon the property or any part thereof;

c) the amount for the recovery of which the sale is ordered; [***]

[cc) the reserve price, if any, below which the property may not be sold; and]

d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation

54. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

Time of sale

55. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed

on the property or in the office of the Tax Recovery Officer, whichever is later.

Sale to be by auction

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

[**Provided** that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53.]

Deposit by purchaser and resale in default

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in default of payment

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority to bid

59. [(1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an [Assessing] Officer, if so authorised by the [Chief Commissioner or Commissioner] in this behalf, to bid for

the property on behalf of the Central Government at any subsequent sale.]

[(2)] All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

[(3) Where the [Assessing] Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.]

Application to set aside sale of immovable property on deposit

60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing

(a) [***] the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of [fifteen] per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity

61. Where immovable property has been sold in execution of a

certificate, [such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that

a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

Setting aside sale where defaulter has no saleable interest

62. At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

Confirmation of sale

63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within

thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

Return of purchase money in certain cases

64. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

Sale certificate

65. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

Postponement of sale to enable defaulter to raise amount due under certificate

66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be

mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh proclamation before re-sale

67. Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

Bid of co-sharer to have preference

68. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Acceptance of property in satisfaction of amount due from the defaulter

68A. (1) Without prejudice to the provisions contained in this Part, an Assessing Officer, duly authorised by the Chief Commissioner or Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 59, at such price as may be agreed upon between the Assessing Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Assessing Officer and on the date the possession of the property is

delivered to the Assessing Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the Assessing Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the Assessing Officer fails to pay such excess within the period aforesaid, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at six per cent per annum to the defaulter on such amount.

Time limit for sale of attached immovable property

68B. (1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period

i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.]

Part IV: Appointment of Receiver

Appointment of receiver for business

69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging

the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

Appointment of receiver for immovable property

70. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

Powers of receiver

71. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal of management

72. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

Part V: Arrest and Detention of the Defaulter

Notice to show cause

73. (1) No order for the arrest and detention in civil prison of a

defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied

a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after [61][the drawing up of the certificate by the Tax Recovery Officer], dishonestly transferred, concealed, or removed any part of his property, or

b) that the defaulter has, or has had since [the drawing up of the certificate by the Tax Recovery Officer], the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.

(4) Every person arrested in pursuance of a warrant of arrest under [this rule] shall be brought before the Tax Recovery Officer [issuing the warrant] as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Explanation. For the purposes of this rule, where the defaulter is a Hindu Undivided Family, the karta thereof shall be deemed to be the defaulter.

Hearing

74. When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, [the Tax Recovery Officer shall give the defaulter] an opportunity of showing cause why he should not be committed to the civil prison.

Custody pending hearing

75. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of detention

76. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his

appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

Detention in and release from prison

77. (1) Every person detained in the civil prison in execution of a certificate may be so detained,

a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees for a period of six months, and

b) in any other case for a period of six weeks:

Provided that he shall be released from such detention

i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

ii) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.]

[***]

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

Release

78. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the rearrest of the defaulter in execution of

the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Release on ground of illness

79. (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Entry into dwelling house

80. For the purpose of making an arrest under this Schedule

a) no dwelling house shall be entered after sunset and before sunrise;

b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to

make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors, etc.

81. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of

a) a woman, or

b) any person who, in his opinion, is a minor or of unsound mind.



10.1

Indian Contract Act, 1872

PRELIMINARY

1. Short title

This Act may be called be the Indian Contract Act, 1872. Extent, commencement It extends to the whole of except the State of Jammu and Kashmir; and it shall come into force on the first day of September, 1872. Enactment repealed[***] Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or customs of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. Interpretation–clause

In this Act the following words and expressions are used in the following senses, unless contrary intention appears from the context:

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when a accepted, becomes a promise;

(c) The person making the proposal is called the “promisor”, and the person accepting the proposal is called “promisee”,

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something,

such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I

OF COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptance, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicated such proposal, acceptance or revocation, or which has the effect of communicating it

4. Communication when complete

The communication of a proposal is complete when it becomes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete -as against the proposer, when it is put in a course of transmission to him so at to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete -as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge

5. Revocation of Proposals and acceptance

A proposal may be revoked at any time before the communication of its

acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but no afterwards.

6. Revocation how made

A proposal is revoked–

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute

In order to convert a proposal into a promise the acceptance must

(1) be absolute and unqualified.

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted; and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but; if he fails to do so, he accepts the acceptance.

8. Acceptance by performing conditions, or receiving consideration

Performance of the conditions of proposal, for the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. Promise, express and implied

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS

10. What agreements are contracts

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents

11. Who are competent to contract

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject.

12. What is a sound mind for the purposes of contracting

A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind

13. "Consent" defined

Two or more person are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined

Consent is said to be free when it is not caused by –

(1) coercion, as defined in section 15, or
(2) undue influence, as defined in section 16, or
(3) fraud, as defined in section 17, or
(4) misrepresentation, as defined in section 18, or
(5) mistake, subject to the provisions of section 20,21, and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake

15. "Coercion" defined

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

16. "Undue influence" defined

(1) A contract is said to be induced by "under influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generally of the foregoing principle, a person is deemed to be in a position to dominate the will of another–

(a) where he hold a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872)

17. "fraud" defined

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract;

(1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent

18. "Misrepresentation" defined

"Misrepresentation" means and includes–

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that whichis not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement.

19. Voidability of agreements without free consent

When consent to an agreement is caused by coercion, [***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation: A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

20. Agreement void where both parties are under mistake as to matter of fact

Explanation: An erroneous opinion as to the value of the things which forms the subject-matter of the agreement, is not be deemed a mistake as to a matter of fact.

21. Effect of mistake as to law

A contract is not voidable because it was caused by a mistake as to any law

in force in India; but mistake as to a law not in force in India has the same effect as a mistake of fact.

22. Contract caused by mistake of one party as to matter of fact

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact

23. What consideration and objects are lawful, and what not

The consideration or object of an agreement is lawful, unless -It is forbidden by law; or is of such nature that, if permitted it would defeat the provisions of any law or is fraudulent; of involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

24. Agreements void, if considerations are objects unlawful in part

If any part of a single consideration for one or more objects, or any one or any part of any one of several consideration of a single object, is unlawful, the agreement is void.

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law

An agreement made without consideration is void, unless–

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation 1: Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2: An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

26. Agreement in restraint of marriage, void

Every agreement in restraint of the marriage of any person, other than a minor, is void.

27. Agreement in restraint of trade, void

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1: Saving of agreement not to carry on business of which good will is sold - One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.[***]

28. Agreements in restrain of legal proceedings, void

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent.

Exception 1: Saving of contract to refer to arbitration dispute that may arise.This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.[***]

Exception 2: Saving of contract to refer question that have already arisenNor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to reference to arbitration.

29. Agreements void for uncertainty

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

30. Agreements by way of wager, void

Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which may wager is made. Exception on favour of certain prizes for horse-racing: This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected: Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

CHAPTER III

OF CONTINGENT CONTRACTS

31. "Contingent contract" defined

A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

32. Enforcement of Contracts contingent on an event happening

Contingent contracts to do or not to do anything in an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void

33. Enforcement of contract contingent on an event not happening

Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person

If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that the should so act within any definite time, or otherwise than under further contingencies

35. When contracts become void, which are contingent on happening of specified event within fixed time

Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced, which are contingent on specified event not happening within fixed time : Contingent contract tutu or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it become certain that such event will not happen.

36. Agreements contingent on impossible event void

Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to agreement at the time when it is made.

CHAPTER IV

OF PERFORMANCE OF CONTRACTS, CONTRACTS WHICH MUST BE PERFORMED

37. Obligations of parties to contract

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance in dispensed with or excused under the provision of this Act, or of any other law.

Promises bind the representative of the promisor in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

38. Effect of refusal to accept offer of performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions –

(1) it must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it

is been made is able and willing there and then to do the whole of what he is bound by his promise to do;

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

39. Effect of refusal of party to perform promise wholly

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance

40. Person by whom promises is to be performed

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contain in it should be performed by the promisor himself, such promise must be performed by the promisor.

In other cases, the promisor or his representative may employ a competent person to perform it.

41. Effect of accepting performance from this person.

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. Devolution of joint liabilities

When two or more person have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor the representatives of all jointly, must fulfil the promise.

43. Any one of joint promisors may be compelled to perform

When two or more persons make a joint promise, the promise may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole promise.

Each promisor may compel contribution: Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution: If any one of two or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation: Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

44. Effect of release of one joint promisor

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

45. Devolution of joint rights

When a person has made a promise to two or more persons jointly, then unless contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

46. Time for performance of promise, where no application is to be made and no time is specified

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation: The question "what is a reasonable time" is, in each particular case, a question of fact.

47. Time and place for performance of promise, where time is specified and no application to be made

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without the application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

48. Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty

of the promisee to apply for the performance at a proper place within the usual hours of business.

Explanation: The question "what is proper time and place" is, in each particular case, a question of fact.

49. Place for the performance of promise, where no application to be made and no place fixed for performance

When a promise is to be performed without application by the promisee, and not place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

50. Performance in manner or at time prescribed or sanctioned by promise

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

52. Order of performance of reciprocal promises

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the orders is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.

53. Liability of party preventing event on which contract is to take effect

When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

54. Effect of default as to the promise which should be performed, in contract consisting or reciprocal promises

When a contract consists of reciprocal promises, such that one of them

cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

55. Effect of failure to perform a fixed time, in contract in which time is essential

When a party to a contract promises to do a certain thing at or before a specified time, or certain thins at or before a specified time and fails to do such thing at or before a specified time, and fails to do such thing at or before a specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of such failure when time is not essential: If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than agreed upon: If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agree, the promisee cannot claim compensation of any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he give notice to the promisor of his intention to do so.

56. Agreement to do impossible act

An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful: Where one person has promised to be something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promise for any loss which such promisee sustains through the non-performance of the promise.

57. Reciprocal promise to do things legal, and also other things illegal

Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly under specified circumstances, to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

58. Alternative promise, one branch being illegal

In the case of an alternative promise, one branch of which is legal and other illegal, the legal branch alone can be enforced.

59. Application of payment where debt to be discharged is indicated

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment if accepted, must be applied accordingly.

60. Application of payment where debt to be discharged is not indicated

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

61. Application of payment where neither party appropriates

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

62. Effect of novation, rescission, and alteration of contract

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

63. Promise may dispense with or remit performance of promise

Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or

may accept instead of it any satisfaction which he thinks fit.

64. Consequence of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need to perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he have received any benefit there under from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it.

66. Mode of communicating or revoking rescission of voidable contract

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation of the proposal.

67. Effect of neglect or promise to afford promisor reasonable facilities for performance

If any promisee neglects or refuses to afford the promisee reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby.

CHAPTER V

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

68. Claim for necessaries supplied to person incapable of contracting, or on his account

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

69. Reimbursement of person paying money due by another, in payment of which he is interested

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

70. Obligation of person enjoying benefit of non-gratuitous act

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the letter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

71. Responsibility of finder of goods

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

73. Compensation of loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss of damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation: In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

74. Compensation of breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss or proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation: A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Explanation: When any person enters into any bail bond, recognisance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

75. Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non fulfillment of the contract.

Chapter VII, comprising sections 76-123, is repealed by the Sale of Goods Act(3 OF 1930), section 65

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

124. "Contract of indemnity" defined

A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

125. Right of indemnity-holder when sued

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit, if in bringing of defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contract to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126. "Contract of guarantee", "surety", "principal debtor" and "creditor"

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety", the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Consideration for guarantee

Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

128. Surety's liability

The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

129. Continuing guarantee

A guarantee which extends to a series of transaction, is called, a "continuing guarantee".

130. Revocation of continuing guarantee

A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

131. Revocation of continuing guarantee by surety' death

The death of the surety operates, in the absence of any contract to the contrary, as a revocation of ma continuing guarantee, so far as regards future transactions.

132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default

Where two persons contract with third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

133. Discharge of surety by variance in terms of contract

Any variance made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

134. Discharge of surety by release or discharge of principal debtor

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor

A contract between the creditor and the principal debtor, by which the creditor make a composition with, or promises to give time, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Surety not discharged when agreement made with third person to give time to principal debtor

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

137. Creditor's forbearance to sue does not discharge surety

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him, dies not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

138. Release of one co-surety does not discharge other

Where there are co-sureties, a release by the creditor of one of them does not discharge the others neither does set free the surety so released from his responsibility to the other sureties.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy

If the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

140. Rights of surety on payment or performance

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. Surety's right to benefit of creditor's securities

A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety, the surety is discharged to the extent of the value of the security.

142. Guarantee obtained by misrepresentation, invalid

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

144. Guarantee on contract that creditor shall not act on it until co-surety joins

Where a person gives a guarantee upon a contract that the creditor shall not

act upon it until another person has jointed in it as co-surety, the guarantee is not valid that other person does not join.

145. Implied promise to indemnify surety

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

146. Co-sureties liable to contribute equally

Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contract, and whether with or without the knowledge of each other the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

147. Liability of co-sureties bound in different sums

Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

CHAPTER IX

OF BAILMENT

148. "Bailment", "bailor" and "bailee" defined

A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". Explanation: If a person already in possession of the goods of other contracts holds them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. Delivery to bailee how made

The delivery to be bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

150. Bailor's duty to disclose faults in goods bailed

The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risk; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

151. Care to be taken by bailee

In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

152. Bailee when not liable for loss, etc, of thing bailed

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. Termination of bailment by bailee's act inconsistent with conditions

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the foods bailed, inconsistent with the conditions of the bailment.

154. Liability of bailee making unauthorized use of goods bailed

If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

155. Effect of mixture with bailor's consent, of his goods with bailee's

If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. Effect of mixture, without bailor's consent, when the goods can be separated

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to be

bear the expense of separation or division, and any damage arising from the mixture.

157. Effect of mixture, without bailor's consent, when the goods cannot be separated

If the bailee, without the consent of the bailor, mixes the foods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

158. Repayment, by bailor, of necessary expenses

Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailors shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. Restoration of goods lent gratuitously

The lender of a thing for use may at any time require its return, if the loan was gratuitous, even through he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him losses exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefits so derived.

160. Return of goods bailed, on expiration of time or a accomplishment of purpose

It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. Bailee's responsibility when goods are not duly returned

If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

162. Termination of gratuitous bailment by death

A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. Bailer entitled to increase or profit from goods bailed

In the absence of any contract to the contrary, the bailee is bound to deliver to the bailer, or according to his directions, any increase or profit which may have accrued from the goods bailed.

164. Bailor's responsibility to bailee

The bailor is responsible to the bailee for any loss which the bailee may sustain the reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions, respecting them

165. Bailment by several joint owners

If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all in the absence of any agreement to the contrary.

166. Bailee not responsible on redelivery to bailor without title

If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such deliver.

167. Right of third person claiming goods bailed

If a person, other than the bailor, claims goods bailed he may apply to the court to stop delivery of the goods to the bailor, and to decide the title to the goods.

168. Right to finder of goods may sue for specified reward offered

The finder of goods has no right to use the owner for compensation for trouble and expense, voluntary incurred by him to preserve the goods and to find out the owner; but he may retain the goods again the owner until he receive such compensation; and where the owner has offered a specific required for the return of goods lost, the finder may sue for such reward, and may retain the goods until he received it.

169. When finder of thing commonly on sale may sell it

When thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell it

(1) when the thing is in danger of perishing or of losing the greater part of its value, or

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Bailee's particular lien

Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

171. General lien of bankers, factors, wharfinger, attorneys and policy brokers

Bankers, factor, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other person have a right retain, as a security for which balance, goods, bailed to them, unless is an express contract to that effect.

172. "Pledge", "Pawnor", and "Pawnee" defined

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called "pawnor". The bailee is called "pawnee".

173. Pawnee's right of retainer

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect to the possession or for the preservation of the goods pledged.

174. Pawnee not to retain for debt or promise other than for which goods pledged - presumption in case of subsequent advances

The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise of other than the debtor promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. Pawnee's right as to extraordinary expenses incurred

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. Pawnee's right where pawnor makes default

If the pawnor makes default in payment of the debt, or performance, at the stipulated time, or the promise, in respect of which the goods were pledged, the pawnee may bring as suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater that the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. Defaulting pawnor's right to redeem

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledged is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, on that case, pay, in addition, any expenses which have arisen from his default.

178. Pledge by mercantile agent

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Explanation: In this section, the expression "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).

178A. Pledge by person in possession under voidable contract

When the pawnor has obtained possession of the other goods pledged by him under a contract voidable under section 19 of section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquired a goods title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

179. Pledge where pawnor has only a limited interest

Where person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

180. Suit by bailor or bailee against wrong-doer

If a third person wrongfully deprives the bailee of the use of possession of goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment has been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Appointment of relief or compensation obtained by such suit

Whatever is obtained by way of relief of compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X

AGENCY

182. "Agent" and "principal" defined

An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

183. Who may employ agent

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. Who may be an agent

As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent, so as to be responsible to the principal according to the provisions in that behalf herein contained.

185. Consideration not necessary

No consideration is necessary to create an agency;

186. Agent's authority may be expressed or implied

The authority of an agent may be expressed or implied.

187. Definitions of express and implied

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

188. Extent of agent's authority

An agent, having an authority to do an act, has authority do every lawful thing which is necessary in order to do so such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

189. Agent's authority in an emergency

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss and would be done by a person or ordinary prudence, in his own case, under similar circumstances.

190. When agent cannot delegate

An agent cannot lawful employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature or agency, a sub-agent must, be employed.

191. "Sub-agent" defined

A "sub-agent" is a person employed by, and acting undue the control of, the original agent in the business of the agency.

192. Representation of principal by sub-agent properly appointed

Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. Agent's responsibility for sub-agent: The agent is responsible to the principal for the acts of the sub-agent. Sub-agent's responsibility: The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud, or willful wrong.

193. Agent's responsibility for sub-agent appointed without authority

Where an agent, without having authority to do so, has appointed a person

to act as a sub-agent stands towards such person in the relation of a principal to an agent, and is responsible for his act both to the principal and to third person; the principal is not represented, by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Relation between principal and person duly appointed by agent to act in business of agency

When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

195. Agent's duty in naming such person

In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man or ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts of negligence of the agent so selected.

Illustrations

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

196. Right of person as to acts done for him without his authority-effect of ratification

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied

Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations

(a) A, without authority, buys goods, for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

198. Knowledge requisite for valid ratification

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective

199. Effect of ratifying unauthorized act forming part of a transaction

A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. Ratification of unauthorized act cannot injure third person

An act done by one person on behalf of another, without such other person's authority, which, if done with authority would have the effect of subjecting a third person to damages, or of terminating any right to interest of a third person cannot, by ratification, be made to have such effect.

Illustrations

(a) A, not being authorised thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

REVOCATION OF AUTHORITY

201. Termination of agency

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the

agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Termination of agency, where agent has an interest in subject-matter

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) A, gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.A cannot revoke this authority,nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to be, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, not is it terminated by his insanity or death.

203. When principal may revoke agent's authority

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised, so as to bind the principal.

204. Revocation where authority has been partly exercised

The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations

(a) A authorises B to buy, 1,000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands. B buys, 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B' s hands. B buys 1,000 bales of cotton in A' s name, and so as not to render himself

personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Compensation for revocation by principal, or renunciation by agent

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Notice of revocation or renunciation

Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. Revocation and renunciation may be expressed or implied

Revocation or renunciation may be expressed or may be implied in the conduct of that principal or agent respectively.

Illustration

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. When termination of agent's authority takes effect as to agent, and as to third persons

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations

(a) A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards by letter, revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes, his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not o the second, for the sale to him of

the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. Agent's duty on termination of agency by principal's death or insanity

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representative, of his late principal, all reasonable steps for the protection and reservation of the interests entrusted to him.

210. Termination of sub-agent's authority

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

AGENT'S DUTY TO PRINCIPAL

211. Agent's duty in conducting principal's business

An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and if any profit accrues, he must account for it.

Illustrations

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, on its to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. Skill and diligence required from agent

An agent is bound to conduct the business of the agency with as much skill

as is generally possessed by person engaged in similar business unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations

(a) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with order to remit. B retains the money for considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest, from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss as, e.g., by variation of rate of exchange-but not further.

(b) A, an agent for the sale of goods, having authority to sell on credit, sells to B in credit, without making the proper and usual enquiries as to the solvency of B. B at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. Agent's accounts

An agent is bound to render proper accounts to his principal on demand.

214. Agent's, duty to communicate with principal

It is the duty of an agent in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

215. Right of principal when agent deals, on his own account, in business of agency without principal's consent

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations

(a) A direct B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the seals has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wished to buy the estate for himself but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. Principal's right to benefit gained by agent dealing on his own account in business of agency

If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account to his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compels him to sell it to A at the price he gave for it.

217. Agent's right of retainer out of sums received on principal's account

An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Agent's duty to pay sums received for principal

Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. When agent's remuneration becomes due

In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. Agent not entitled to remuneration for business misconducted

An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations

(a) A employs B to recover 1, 00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must make good the loss.

221. Agent's lien on principal's property

In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

PRINCIPAL'S DUTY TO AGENT

222. Agent to be indemnified against consequences of lawful acts

The employer of an agent is bound to indemnify him against the

consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations

(a) B, at Singapore under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

223. Agent to be indemnified against consequences of acts done in good faith

Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it may cause an injury to the rights of third persons.

Illustrations

(a) A, a decree-holder and entitled to execution of B's goods requires the officer of the court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Non-liability of employer of agent to do a criminal act

Where one person employees another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied

promise to indemnify him against the consequences of that Act.

Illustrations

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. Compensation to agent for injury caused by principal's neglect

The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration

A employs B as a bricklayer in building a house, and put up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS

226. Enforcement and consequences of agent's contract

Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.

Illustrations

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b) A, being B's agent; with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. Principal how far bound, when agent exceeds authority

When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration

A, being owner of a ship and cargo, authorises B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Principal not bound when excess of agent's authority is not separable

Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Illustration

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for a sum of 6,000 rupees. A may repudiate the whole transaction.

229. Consequences of notice given to agent

Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

Illustrations

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact B is not entitled to set-off a debt owing to him from C against the price of goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal

In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to the contrary: Such a contract shall be presumed to exit in the following cases-

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2) Where agent does not disclose the name of his principal;

(3) Where the principal, though disclosed, cannot be sued.

231. Right of parties to a contract made by agent not disclosed

If an agent makes a contract with a person who neither, knows nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against if the agent had been the principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Performance of contract with agent supposed to be principal

Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the right and obligations subsisting between the agent and the other party of the contract.

Illustration

A, who owes 500 rupees to B, sells, 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. Right of person dealing with agent personally liable

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Illustration

A enters into a contract with B to sell him 100 bales of cotton, and afterwards, discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable

When a person who has made a contract with an agent induce the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable that agent or principal respectively.

235. Liability of pretended agent

A person untruly representing himself to be the authorised agent of another, and thereby including a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

236. Person falsely contracting as agent, not entitled to performance

A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

237. Liability of principal inducing belief that agent's unauthorised acts were authorized

When an agent has, without authority, done acts or incurred obligations to third person on behalf of his principal, the principal is bound by such acts or obligations, if he has by his word or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instruction, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private order from A. The sale is good.

238. Effect, on agreement, of misrepresentation or fraud by agent

Misrepresentation made or fraud committed, by agent acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations of frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not affect their authority, do not affect their principal

Illustrations

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI: [OF PARTNERSHIP] Repealed by the Indian Partnership Act, 1932 (9 of 1932).

SCHEDULE: [**ENACTMENTS REPEALED]** Repealed by the Repealing and Amending Act, 1914 (10 of 1914).

FOOTNOTES

1 Substituted by Act No. 3 of the 1951 for the words "except Part B States".

2 The words "The enactments mentioned in the Schedule hereto are repealed to the extent specified in the third column thereof but" repealed by Act No. 10 of 1914.

3 Substituted by Act No. 3 of 1951, for the words "Part A States and Part C States".

4 Substituted by Act No. 6 of 1899.

4A The words "undue influence" repealed by Act No. 6 of 1899.

5 Inserted by Act No. 6 of 1899.

6 The words "British India" have successively been amended by AO 1948 and AO 1950.

7 Paragraph 2, omitted by AO 1950.

8 Second illustration repealed by Act No. 24 of 1917.

9 Substituted by Act No. 12 of 1891 for the word "assurances".

10 Exceptions 2 and 3 repealed by Act No. 9 of 1932.

11 Substituted by Indian Contract (Amendment) Act, 1996, dated 8th. January, 1997.

12 Second clause of Exception 1 to section 28 repealed by Specific Relief Act, 1877 and Act No. 1 of 1877 was repealed by Specific Relief Act, 1963, w.e.f. 1st. March, 1964.

13 Substituted by Act No. 12 of 1891.

14 Submitted by Act No. 12 of 1891, for the word “compensation”.

15 Substituted by Act No. 6 of 1899.

16 Added by Act No. 6 of 1899.

17 Inserted by Act No. 24 of 1917.

18 Sections 178 and 178A substituted by Act No. 4 of 1930.



10.2

Transfer of Property Act, 1882

CHAPTER I

PRELIMINARY

1. Short title

This Act may be called the Transfer of Property Act, 1882.

Commencement: It shall come into force on the first day of July, 1882.

Extent: It extends in the first instance to the whole of India except the territories which, immediately before the lst November, 1956, were comprised in Part B States or in the States of Bombay, Punjab and Delhi.

But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely,-

Section 54, paragraph 2 and sections 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section, section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908 (XVI of 1908), under the power conferred by the first section of that Act or otherwise.

2. Repeal of Acts-Saving of certain enactments, incidents, rights, liabilities, etc.

In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect-

(a) the provisions of any enactment not hereby expressly repealed;

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a court of competent jurisdiction, and nothing in the second Chapter of this Act shall be deemed to affect any rule of Mohammedan law.

3. Interpretation clause

In this Act, unless there is something repugnant in the subject or context,-

"immovable property" does not include standing timber, growing crops or grass;

"instrument" means a non-testamentary instrument;

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

"registered" means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents;

"**attached to the earth**" means-

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached;

"**actionable claim**" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

"**a person is said to have notice**" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I: Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

PROVIDED that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II: Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III: A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

PROVIDED that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act

The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872).

1[And section 54, paragraphs 2 and 3, sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 2[1908 (16 of 1908)].]

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) Transfer of property, whether movable or immovable

5. Transfer of property defined

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

6. What may be transferred

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.

(h) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

7. Persons competent to transfer

Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Operation of transfer

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debtor other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer

A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

PROVIDED that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

12. Condition making interest determinable on insolvency or attempted alienation

Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person

Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior

interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. Rule against perpetuity

No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to a class, some of whom come under sections 13 and 14

If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails in regard to those persons only and not in regard to the whole class.

16. Transfer to take effect on failure of prior interest

Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation

(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than-

(a) the life of the transferor, or

(b) a period of eighteen years from the date of transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is

directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of-

(i) the payment of the debts of the transferor or any other person taking any interest under the transferor; or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer; or

(iii) the preservation or maintenance of the property transferred,

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public

The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

19. Vested interest

Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation: An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit

Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary

intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest

Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception: Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age

Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Transfer contingent on happening of specified uncertain event

Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified

Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the lifetime of B. D survives B. At B's death the property passes to D.

25. Conditional transfer

An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy.

Illustrations

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C, if she will desert her husband. The transfer is void.

26. Fulfilment of condition precedent

Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations

(a) A transfers Rs. 5000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition

Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfer to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. Ulterior transfer conditional on happening or not happening of specified event

On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. Fulfilment of condition subsequent

An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies as minor or marries without C's consent, Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

30. Prior disposition not affected by invalidity of ulterior disposition

If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to B for her life, and, if she does not desert her husband to

C. B is entitled to the farm during her life as if no condition had been inserted.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen

Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. Such condition must not be invalid

In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Transfer conditional on performance of act, no time being specified for performance

Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Transfer conditional on performance of act, time being specified

Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as

shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

ELECTION

35. Election when necessary

Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000. In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules : Where a particular benefit is expressed to be conferred on the owner of the property which the transferor

professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claims the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgement of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representative may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

APPORTIONMENT

36. Apportionment of periodical payments on determination of interest of person entitled

In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. Apportionment of benefit of obligation on severance

When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract, to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

PROVIDED that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in the manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.

Illustrations

(a) A sells to B, C and D a house situated in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7.50 to C, and Rs. 7.50 to D and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation. E had agreed as a term of his lease to perform this work for A, B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of immovable property

38. Transfer by person authorised only under certain circumstances to transfer

Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed,

if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Transfer where third person is entitled to maintenance

Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

40. Burden of obligation imposing restriction on use of land

Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment in a particular manner of the latter property, or

Or of obligation annexed to ownership but not amounting to interest or easement: Where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Transfer by ostensible owner

Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Transfer by person having authority to revoke former transfer

Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred

Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Transfer by one co-owner

Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same' but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Joint transfer for consideration

Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Transfer for consideration by persons having distinct interests

Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in the mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Transfer by co-owners of share in common property

Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

48. Priority of rights created by transfer

Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Transferee's right under policy

Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. Rent bona fide paid to holder under defective title

No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. Improvements made by bona fide holders under defective titles

When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. Transfer of property pending suit relating thereto

During the pendency in any court having authority 3[4[within the limits of India excluding the State of Jammu and Kashmir] Government or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation: For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

53. Fraudulent transfer

(1) Every transfer of immovable property made with intent to defeat or

delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

53A. Part performance

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

PROVIDED that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

CHAPTER III

OF SALES OF IMMOVABLE PROPERTY

54. "Sale" defined

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. Rights and liabilities of buyer and seller

In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:

(1) The seller is bound-

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

PROVIDED that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

PROVIDED that,

(a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and,

(b) where the whole of such property is sold to different buyers, the buyers of the lot of greatest value is entitled to such documents.

But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound-

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs:

PROVIDED that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation

of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a) and paragraph (5), clause (a), is fraudulent.

56. Marshalling by subsequent purchaser

If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.

DISCHARGE OF ENCUMBRANCES ON SALE

57. Provision by court for encumbrances and sale freed therefrom

(a) Where immovable property subject to any encumbrances, whether immediately payable or not, is sold by the court or in execution of a decree, or out of court, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court,-

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property-of such amount as, when invested in securities of the Central Government, the court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property-of the amount sufficient to meet the encumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investment not exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons (which it shall record) thinks fit to require a large additional amount.

(b) Thereupon the court may, if it thinks fit, and after notice to the encumbrances, unless the court, for reasons to be recorded in writing thinks fit to dispense with such notice, declare the property to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(c) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other court which the State Government may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgaged" defined.

(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple mortgage-Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have

a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Mortgage by conditional sale-Where, the mortgagor ostensibly sells the mortgaged property-

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

PROVIDED that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

(d) Usufructuary mortgage-Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage and the mortgagee a usufructuary mortgagee.

(e) English mortgage-Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Mortgage by deposit of title-deeds-Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) Anomalous mortgage-A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

59. Mortgage when to be by assurance

Where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property.

59A. References to mortgagors and mortgagees to include persons deriving title from them

Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.

RIGHTS AND LIABILITIES OF MORTGAGOR

60. Right of mortgagor to redeem

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

PROVIDED that the right conferred by this section has not been extinguished by the act of the parties or by decree of a court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property-Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the

amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

60A. Obligation to transfer to third party instead of re-transference to mortgagor

(1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions of the fulfilment of which he would be entitled to require a retransfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrance shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60B. Right to inspection and production of documents

A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's cost and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

61. Right to redeem separately or simultaneously

A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.

62. Right of usufructuary mortgagor to recover possession

In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,-

(a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property,-when such money is paid;

(b) where the mortgagee is authorised to pay himself from such rents and profits or any part thereof a part only of the mortgage-money,-when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the mortgage-money or the balance thereof or deposits it in court hereinafter provided.

63. Accession to mortgaged property

Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership- Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

63A. Improvements to mortgaged property

(1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from

destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

64. Renewal of mortgaged lease

Where mortgaged property is a lease, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. Implied contracts by mortgagor

In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,-

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title. thereto;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(d) and, where the mortgaged property is a lease, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all the claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent encumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on such prior encumbrance as and when it

becomes due, and will at the proper time discharge the principal money due on such prior encumbrance.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

65A. Mortgagor's power to lease

(1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid with a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

66. Waste by mortgagor in possession

A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation: A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

RIGHTS AND LIABILITIES OF MORTGAGEE

67. Right to foreclosure or sale

In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage- money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed-

(a) to authorise any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or a usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorise the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorise a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

67A. Mortgagee when bound to bring one suit on several mortgages

A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.

CHAPTER IV

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

68. Right to sue for mortgage-money

(1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely,-

(a) where the mortgagor binds himself to repay the same;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

PROVIDED that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.

69. Power of sale when valid

(1) 5[***] A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely,-

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;

(b) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the government;

(c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, be notification in the Official Gazette, specify in this behalf.

(2) No such power shall be exercised unless and until-

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into court under section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882.

69A. Appointment of receiver

(1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the court for the appointment of a receiver, and any person appointed by the court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor, and the mortgagor shall be solely responsible for the receiver's act or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee, in accordance with the provisions of this section.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent, on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and

keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all the money received by him as follows, namely,-

(i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(iii) in payment of his commission, and of the premiums of fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(iv) in payment of the interest falling due under the mortgage;

(v) in or towards discharge of the principal money, if so directed in writing by the mortgagee,

and shall pay the residue, of any of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed; and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Applications may be made, without the institution of a suit, to the court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the court for summary disposal, A copy of such application shall be served upon, and the hearing thereof may be attended by such of the persons interested in the application as the court may think fit.

The costs of every application under this sub-section shall be in the discretion of the court.

(11) In this section, "the court" means the court which would have jurisdiction in a suit to enforce the mortgage.

70. Accession to mortgaged property

If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the. plot.

71. Renewal of mortgaged lease

When the mortgaged property is a lease and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. Rights of mortgagee, in possession

A mortgagee may spend such money as is necessary-

(a) 6[***]

(b) for the preservation of the mortgaged property from destruction, forfeiture or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and

(e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease,

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine percent per annum: '

PROVIDED that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and the premiums paid for any such insurance shall be added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent per annum. But the amount

of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amounts in which the mortgagee is hereby authorised to insure.

73. Right to proceeds of revenue sale or compensation on acquisition

(1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears or revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding the principal money on the mortgage has not become due.

74. Right of subsequent mortgagee to pay off prior mortgagee

[Repealed by the Transfer of Property (Amendment) Act, 1929.]

75. Rights of mesne mortgagee against prior and subsequent mortgages

[Repealed by the Transfer of Property (Amendment) Act, 1929.]

76. Liabilities of mortgagee in possession

When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must try his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;

(e) he must not commit any act which is destructive or permanently injurious to the property;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(i) when the mortgagor tenders, or deposits in the manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be, and shall not be entitled to deduct any amount

therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property.

Loss occasioned by his default- If the mortgagee fails to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

77. Receipts in lieu of interest

Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

CHAPTER IV

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

PRIORITY

78. Postponement of prior mortgagee

Where, through the fraud, misrepresentation or gross neglect of prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed

If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and

C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. Tacking abolished

[Repealed by the Transfer of Property (Amendment) Act, 1929 (20 of 1929).]

MARSHALLING AND CONTRIBUTION

81. Marshalling securities

If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgage is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.

82. Contribution to mortgage-debt

Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the subsequent mortgage.

DEPOSIT IN COURT

83. Power to deposit in court money due on mortgage

At any time after the principal money payable in respect of any mortgage has

become due and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor-The court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed and all documents in his possession or power relating to the mortgaged property, apply for and receive the money, and the mortgage-deed, and all such other documents so deposited shall be delivered to the mortgagor or such other person as aforesaid

Where the mortgagee is in possession of the mortgaged property, the court shall, before paying to him the amount so deposited direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgement in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.

84. Cessation of interest

When the mortgagor or such other person as aforesaid has tendered or deposited in court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or in the case of a deposit, where no previous tender of such amount has been made as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, and the notice required by section 83 has been served on the mortgagee:

PROVIDED that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to a reasonable notice before payment or tender of the mortgage-money and such notice has not been given before the making of the tender or deposit, as the case may be.

SUITS FOR FORECLOSURE, SALE OR REDEMPTION

85. Parties to suits for foreclosure, sale and redemption

[Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

FORECLOSURE AND SALE

Sections 86 to 90

[Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

REDEMPTION

91. Persons who may sue for redemption

Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely,-

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

92. Subrogation

Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated. .

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. Prohibition of tacking

No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

94. Rights of mesne mortgagee

Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.

95. Right of redeeming co-mortgagor to expenses

Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

96. Mortgage by deposit of title-deeds

The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.

97. Application of proceeds

[Repealed by the Code of Civil Procedure, 1908 (5 of 1908)]

ANOMALOUS MORTGAGES

98. Rights and liabilities of parties to anomalous mortgage

In the case of an anomalous mortgage the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend by local usage.

ATTACHMENT OF MORTGAGED PROPERTY

99. Attachment of mortgaged property

[Repealed by the Code of Civil Procedure, 1908 (5 of 1908).]

CHARGES

100. Charges

Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

101. No merger in case of subsequent encumbrance

Any mortgagee of, or person having a charge upon, immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.

NOTICE AND TENDER

102. Service or tender on or to agent

Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any court in which a suit might be brought for redemption of the mortgaged property, and such court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

PROVIDED that, in the case of a notice required to section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit in any court in which a suit might be brought for redemption of the mortgaged property the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Notice, etc., to or by person incompetent to contract

Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court by, any person incompetent to contract, such notice may be s erved on or by or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any court in which a suit might be brought for the redemption of the mortgage to appoint a guardian ad litem for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of order XXXII in the Schedule I to the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to such application and to parties thereto and to the guardian appointed thereunder.

104. Power to make rules

The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V

OF LEASES OF IMMOVABLE PROPERTY

105. Lease defined

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any

other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined: The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

106. Duration of certain leases in absence of written contract or local usage

In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. Leases how made

A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

PROVIDED that the State Government from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

108. Rights and liabilities of lessor and lessee

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess

the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

(A) Rights and liabilities of the lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and liabilities of the lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

PROVIDED that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the

earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his

own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee

If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

PROVIDED that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.

110. Exclusion of day on which term commences

Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year: Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease: Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose

option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease

A lease of immovable property determines-

(a) by efflux of the time limited thereby,

(b) where such time is limited conditionally on the happening of some event-by the happening of such event,

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,

(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,

(f) by implied surrender,

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture

A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

PROVIDED that the lessor is aware that the forfeiture has been incurred:

PROVIDED FURTHER that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. Waiver of notice to quit

A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent

Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114A. Relief against forfeiture in certain other cases

Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing-

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach,

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

115. Effect of surrender and forfeiture on underleases

The surrender, express or implied, of a lease of immovable property does not prejudice an under lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the underlessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such underleases, except where such forfeiture has been procured by the lessor in fraud of the underlessees, or relief against the forfeiture is granted under section 114.

116. Effect of holding over

If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. Exemption of leases for agricultural purposes

None of the provisions of this Chapter apply to leases for agricultural purposes, except insofar as the State Government may, by notification published in the Official Gazette, declare all or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI

OF EXCHANGES

118. "Exchange" defined

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. Right of party deprived of thing received in exchange

If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.

120. Rights and liabilities of parties

Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

121. Exchange of money

On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII

OF GIFTS

122. "Gift" defined

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donor, and accepted by or on behalf of the donee.

Acceptance when to be made-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property

A gift comprising both existing and future property is void as to the latter.

125. Gift to several of whom one does not accept

A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Onerous gifts

Where a gift in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person: A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Universal donee

Subject to the provisions of section 127, where a gift consists of the donor's

whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

129. Saving of donations mortis causa and Mohammedan Law

Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mohammedan law.

CHAPTER VIII:

OF TRANSFERS OF ACTIONABLE CLAIMS

130. Transfer of actionable claim

(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

PROVIDED that every dealing with the debtor other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

Exception: Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938).

Illustrations

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as

prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an insurance company and assigns it to a bank for securing the payment of an existing or future debt. If A dies, the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

130A. Transfer of policy of marine insurance

[Repealed by the Marine Insurance Act, 1963 (11 of 1963), w.e.f. 1-8-1963.]

131. Notice to be in writing, signed

Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. Liability of transferee of actionable claim

The transferee of an actionable claim shall take it subject to all the liabilities and equities and to which the transferor was subject in respect thereof at the date of the transfer

The Schedule

(a) STATUES

Year and Chapter	Subject	Extent of repeal
27 Hen. VIII,c.10	Uses	The whole
13 Eliz., c.5	Fraudulent conveyances	The whole
27 Eliz.,c.4	Fraudulent conveyances	The whole
4 Wm. and Mary, c.16	Clandestine mortgages	The whole

(b) ACT OF THE GOVERNOR GENERAL IN COUNCIL

Number and Year	SUBJECT	Extent of repeal
IX of 1842	Lease and re-lease	The whole
XXXI of 1854	Modes of conveying land	Section 17
XI of 1855	Mesne profits and improvements	Section 1; in the title, the words "to mesne profits and ", and in the preamble " to limit the liability for mesne profits and"
XXVII of 1866	Indian Trustee Act	Section 31
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XX of 1875	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XVII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulations XVII of 1806
1 of 1877	Specific Relief	In ss. 35 and 36, the words "in writing"

(c) REGULATIONS

Number and Year	Subject	Extent of repeal
Bengal Regulation I of 1798	Conditional Sales	The whole Regulation
Bengal Regulation XVII of 1806	Redemption	The whole Regulation
Bombay Regulation V of 1827	Acknowledgement of debts; interest; mortgages in possession	Section 15

Illustrations

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Warranty of solvency of debtor

Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Mortgaged debt

Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Assignment of rights under policy of insurance against fire

Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy has been made with himself.

135A. Assignment of rights under policy of marine insurance

[Repealed by the Marine Insurance Act, 1963 (11 of 1963), w.e.f. 1-8-1963.]

136. Incapacity of officers connected with courts of justice

No judge, legal practitioner or officer connected with any court of justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no court of justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Saving of negotiable instruments, etc.

Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation: The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

FOOTNOTES

1. Added by Act No. 3 of 1885.
2. Substituted by Act No. 20 of 1929, for the Year "1877".
3. Substituted by the AO 1950, for the words "in the Provinces or established beyond the limits of the Provinces".
4. Substituted by Act No. 3 of 1951, for the words "within the limits of Part A States and Part C States", w.e.f. 1-4-1951.
5. The words and figures "Notwithstanding anything contained in the Trustees' and Mortgagee Powers Act, 1866" omitted by Act No. 48 of 1952.
6. Clause (a) omitted by Act No. 20 of 1929.



10.3

Registration Act, 1908

PART I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the 1[***] Registration Act, 1908.

2[(2) It extends to the whole of India except the State of Jammu and Kashmir:

PROVIDED that the State Government may exclude any district or tracts of country from its operation.]

(3) It shall come into force on the first day of January, 1909.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context-

(1) "addition" means the place of residence, and the profession, trade, rank and title, (if any) of a person described, and, in the case of 3[an Indian], 4[***] his father's name, or where he is usually described as the son of his mother, then his mother's name;

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book;

(3) "district" and "sub-district" respectively means a district and sub-district formed under this Act;

(4) "District Court" includes the High Court in its ordinary original civil jurisdiction;

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;

(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

5[(6A) "India" means the territory of India excluding the State of Jammu and Kashmir;]

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease;

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority;

(9) "movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property; and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

PART II

OF THE REGISTRATION-ESTABLISHMENT

3. Inspector-General of Registration

(1) The State Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such government:

PROVIDED that the State Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the State Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under the Government.

4. [6][Branch Inspector-General of Sindh]

5. Districts and sub-districts

(1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such district and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. Registrars and Sub-Registrars

The State Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrar of the several sub-districts, formed as aforesaid, respectively.

7. Offices of Registrar and Sub-Registrar

(1) The State Government shall establish in every district and office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The State Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

PROVIDED that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. Inspectors of Registration offices

(1) The State Government may also appoint officers, to be called Inspectors of Registration offices, and may prescribe the duties of such officers.

(2) Every such Inspector shall be subordinate to the Inspector-General.

9. [7][Military cantonments may be declared sub-districts or districts]

10. Absence of Registrar or vacancy in his office

(1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction

the Registrar's office is situate, shall be the Registrar during such absence or until the State Government fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the State Government fills up the vacancy.

11. Absence of Registrar on duty in his district

When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

12. Absence of Sub-Registrar or vacancy in his office.

When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until 8[the vacancy is filled up].

13. Report to State Government of appointments under sections 10, 11 and 12

(1) 9[***] All appointments made under section 10, section 11 or section 12 shall be reported to the State Government by the Inspector-General.

(2) Such report shall be either special or general, as the State Government directs.

10[***]

14. Establishments of registering officers

11[***]

(2) The State Government may allow proper establishments for the several offices under this Act.

15. Seal of registering officers

The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the State Government directs:

"The seal of the Registrar (or of the Sub-Registrar) of".

16. Register-books and fire-proof boxes

(1) The State Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the State Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The State Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III

OF REGISTRABLE DOCUMENTS

17. Documents of which registration is compulsory

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

12[(e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in

future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

PROVIDED that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court 13[except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;] or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

14[(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue-officer.

15[Explanation: A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

18. Documents of which registration is optional

Any of the following documents may be registered under this Act, namely:-

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

16[(cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.

19. Documents in language not understood by registering officer

If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

20. Documents containing interlineations, blanks, erasures or alterations

(1) The registering officer may in his discretion refuses to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

21. Description of property and maps or plans

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and land shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plans as are equal to the number of such districts.

22. Description of houses and land by reference to government maps of surveys

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

PART IV

OF THE TIME OF PRESENTATION

23. Time for presenting documents

Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

17[23A. Re-registration of certain documents

Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and

such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

PROVIDED that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.]

24. Documents executed by several persons at different times

Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

25. Provision where delay in presentation is unavoidable

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in 18[India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

26. Documents executed out of India

When a document purporting to have been executed by all or any of the parties out of 18[India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied-

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in 18[India]

may, on payment of the proper registration-fee, accept such document for registration.

27. Wills may be presented or deposited at any time

A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V

OF THE PLACE OF REGISTRATION

28. Place for registering documents relating to land

Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), 19[(d) and (e), section 17, sub-section. (2), insofar as such document affects immovable property, and section 18, clauses (a), (b) 20[(c) and (cc)], shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Place for registering other documents

(1) Every document 21[not being a document referred to in section 28 or a copy of a decree or order], may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. Registration by Registrars in certain cases

(1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) 22[The Registrar of a district in which a Presidency-Town is included and the Registrar of the Delhi district] 23[***] may receive and register any document referred to in section 28 without regard to the situation in any part of 18[India] of the property to which the document relates.

31. Registration or acceptance for deposit at private residence

In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit:

PROVIDED that such officer may on special cause being shown attend at the residence of any person desiring to present a document for

registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

32. Persons to present documents for registration

Except in the cases mentioned in 24[sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. Power-of-attorney recognisable for purposes of section 32

(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognised, namely:

(a) if the principal at the time of executing the power-of-attorney resides in any part of 18[India] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid 25[resides in any part of India in which this Act is not in force], a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in 18[India], a power-of-attorney executed before and authenticated by Notary Public, or any court, Judge, Magistrate, 26[Indian] Consul or vice-consul, or representative 27[***] of the Central Government:

PROVIDED that the following persons shall not be required to attend at any registration-office or court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely-

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court.

5[Explanation: In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.]

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.

34. Enquiry before registration by registering officer

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (I) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. Procedure on admission and denial of execution respectively

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) If in the case of any person appearing by a representative, assignee or agent, such representative, assignee or agent admits the execution, or

(c) If the person executing the document is dead, and his representative or assignee appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assignee denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

PROVIDED that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

28[PROVIDED FURTHER that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

PART VII

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

36. Procedure where appearance of executant or witness is desired

If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or court as the State Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

37. Officer or court to issue and cause service of summons

The officer or court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. Persons exempt from appearance at registration office

(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registration-officer shall either himself go to the house of such person, or to the hall in which he is confined, and examine him or issue a commission for his examination.

39. Law as to summonses, commissions and witnesses

The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses and for their remuneration in suits before civil courts, shall, save as aforesaid and mutatis mutandis, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

PART VIII

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT

40. Persons entitled to present Wills and authorities to adopt

(1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. Registration of Wills and authorities to adopt

(1) A will or an authority to adopt presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied-

(a) that the will or authority was executed by the testator or donor, as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX : OF THE DEPOSIT OF WILLS

42. Deposit of Wills

Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. Procedure on deposit of Wills

(1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No.5 the superscription aforesaid, and shall not in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any

persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fireproof box.

44. Withdrawal of sealed cover deposited under section 42

If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorised agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. Proceedings on death of depositor

(1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No.3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. Saving of certain enactments and powers of courts

(1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865, or of section 81 of the Probate and Administration Act, 1881, or the power of any court by order to compel the production of any will.

(2) When any such order is made the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No.3 and make a notice on such copy that the original has been removed in to court in pursuance of the order aforesaid.

PART X

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION

47. Time from which registered document operates

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made,

and not from the time of its registration.

48. Registered documents relating to property when to take effect against oral agreements

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession 12[and the same constitutes a valid transfer under any law for the time being in force:

PROVIDED that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

49. Effect of non-registration of documents required to be registered

No document required by section 17 32[or by any provision of the Transfer of Property Act, 1882] to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

32[PROVIDED that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.]

50. Certain registered documents relating to land to take effect against unregistered documents

(1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation: In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

PART XI

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS

(A) As to the register-books and indexes

51. Register books to be kept in the several offices

(1) The following books shall be kept in the several offices hereinafter named, namely:

(A) In all registration offices-

Book 1, "Register of non-testamentary documents relating to immovable property";

Book 2, "Record of reasons for refusal to register";

Book 3, "Register of wills and authorities to adopt"; and

Book 4, "Miscellaneous Register";

(B) In the offices of Registrar's-

Book 5, "Register of deposits of wills".

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17,18 and 89 which relate to immovable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. Duties of registering officers when document presented

(1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. Entries to be numbered consecutively

All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. Current indexes and entries therein

In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books, and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. Indexes to be made by registering officers, and their contents

(1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No.I,-Index No.II, Index NO.III and Index No. IV.

(2) Index No.I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No.1.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

56. Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar and filed

[Repealed by the Indian Registration (Amendment) Act, 1929]

57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries

(1) Subject to the previous payment of the fees payable in that behalf, the Book Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No.3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No.4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under the section for entries in Book Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) As to the procedure on admitting to registration

58. Particulars to be endorsed on documents admitted to registration

(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely,-

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been

admitted by the representative, assignee or agent of any person, the signature and addition of such representative, assignee or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. Endorsements to be dated and signed by registering officer

The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. Certificate of registration

(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered ", together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. Endorsements and certificate to be copied and document returned

(1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No.1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as

he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. Procedure on presenting document in language unknown to registering officer

(1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. Power to administer oaths and record of substances of statements

(1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a notice of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such notice, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) Special duties of Sub-Registrar

64. Procedure where document relates to land in several Sub-Districts

Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No.1.

65. Procedure where document relates to land in several Districts

(1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall

also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall file in his Book No.1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file in his Book No.1.

(D) Special duties of Registrar

66. Procedure after registration of documents relating to land

(1) On registering any non-testamentary document relating to immovable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The registered shall also forward a copy of such document together with copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No.1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in this Book No.1.

67. Procedure after registration under section 30, sub-section (2)

On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

(E) Of the controlling powers of Registrars and Inspector-General

68. Powers of Registrar to superintend and control Sub-Registrars

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

69. Power of Inspector-General to superintend registration offices and make rules

(1) The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act-

(a) providing for the safe custody of books, papers and documents 29[***];

(b) declaring what languages shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be recognised under section 21;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63;

(f) regulating the form in which registering officers are to make memoranda of documents,

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under sections 51;

14[(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;]

(h) declaring the particulars to be contained in Index Nos. I, II, III and IV, respectively;

(i) declaring the holidays that shall be observed in the registration offices; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be punished in the Official Gazette, and on publication shall have effect as if enacted in this Act.

70. Power of Inspector-General to remit fines

The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.

PART XII

OF REFUSAL TO REGISTER

71. Reasons for refusal to register to be recorded

(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Appeal to Registrar from orders of Sub-Registrar refusing registration on grounds other than denial of execution

(I.) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution

(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assignee or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. Procedure of Registrar on such application

In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire-

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registering within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witness, and compel them to give evidence, as if he were a civil court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

76. Order of refusal by Registrar

(1) Every Registrar refusing

(a) to register a document except on the ground that the property to which it relates does not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2 and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar

(1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assignee or agent, may, within thirty days after the making of the order of refusal, institute in the civil court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

PART XIII

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES

78. Fees to be fixed by State Government

30[***] The State Government shall prepare a table of fees payable-

(a) for the registration of documents;

(b) for searching the registers;

(c) for making or granting copies of reasons, entries or documents, before, on or after registration;

and of extra or additional fees payable-

(d) for every registration under section 30;

(e) for the issue of commissions;

(f) for filing translations;

(g) for attending at private residences;

(h) for the safe custody and return of documents; and

(i) for such other matters as appear to the State Government necessary to effect the purposes of this Act.

79. Publication of fees

A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

80. Fees payable on presentation

All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV : OF PENALTIES

81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure

Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment

Whoever-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer

acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act; shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

83. Registering officer may commence prosecutions

(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permissions of the Inspector-General, 31[***] the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any court or officer exercising powers not less than those of a Magistrate of the second class.

84. Registering officers to be deemed public servants

(1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

PART XV

MISCELLANEOUS

85. Destruction of unclaimed documents

Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years may be destroyed.

86. Registering officer not liable for things bona fide done or refused in his official capacity

No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing so done invalidated by defect in appointment or procedure

Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

[32][88. Registration of documents executed by government officers or certain public functionaries

(1) Notwithstanding anything contained in this Act, it shall not be necessary for -

(a) any officer of government, or

(b) any Administrator General, Official Trustee or Official Assignee, or

(c) the Sheriff, Receiver or Registrar of a High Court, or

(d) the holder for the time being of such other public office as may be specified in a notification in the Official Gazette issued in that behalf by the State Government, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him or in his favour, in his official capacity, or to sign as provided in section 58.

(2) Any instrument executed by or in favour of an officer of government or any other person referred to in sub-section (1) may be presented for registration in such manner as may be prescribed by rules made under section 69.

(3) The registering officer to whom any instrument is presented for registration under this section may, if he thinks fit, refer to any Secretary to Government or to such officer of government or other person referred to in sub-section (1) for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.]

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed

(1) Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be

improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No.1.

(2) Every court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No.1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No.1.

(4) Every revenue-officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No.1.

EXEMPTION FROM ACT

90. Exemption of certain documents executed by or in favour of government

(1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have any time required, the registration of any of the following documents or maps, namely:

(a) documents issued, received or attested by any officer engaged in making a settlement or revision or settlement of land-revenue, and which form part of the records of such settlement; or

(b) documents and maps issued, received or authenticated by any officer engaged on behalf of government in making or revising the survey of any land, and which form part of the record of such survey; or

(c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records; or

(d) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land; or

(e) notice given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants, or of alienated land by holders of such land.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Inspection and copies of such documents

33[(1) Subject to such rules and the previous payment of such fees as the 34[State Government, by notification in the Official Gazette, prescribes in this behalf,] all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

35[(2) Every rule prescribed under this section or made under section 69 shall be laid, as soon as it is made, before the State Legislature.]

92. Burmese registration rules confirmed

[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937]

93. Repeal

[Repealed by the Repealing Act, 1938]

THE SCHEDULE: REPEAL OF ENACTMENTS

[Repealed by Repealing Act, 1938]

FOOTNOTES

1 Word “Indian” omitted by Act No. 45 of 1969.
2 Substituted by Act No. 3 of 1951.
3 Substituted by the AO 1950, for the words “a Native of India”.
4 The words “his caste (if any) and” omitted by Act No. 17 of 1956.
5 Inserted by Act No. 3 of 1951.
6 Repealed by Govt. of India (AIL) Orders, 1937.

7 Repealed by the Repealing and Amending Act, 1927.
8 Substituted for the words “the Local Government fills up the vacancy” by Act No. 4 of 1914.
9 The words and figure “All appointments made by the Inspector-General under section 6 and”, inserted by Act No. 4 of 1914 and later omitted by the Act of 1937.
10 Sub-section (3) omitted by the Act of 1937.
11 Sub-section (1) omitted by the Act of 1937.
12 Added by Act No. 21 of 1929.
13 Substituted by Act No. 21 of 1929 for the words “and any award”.
14 Inserted by Act No. 39 of 1948.
15 Inserted by Act No. 2 of 1927.
16 Inserted by Act No. 33 of 1940.
17 Inserted by Act No. 15 of 1917.
18 Substituted by Act No. 3 of 1951, for the words “the States”.
19 Substituted by Act No. 33 of 1940.
20 Substituted by Act No. 33 of 1940, for word and figure “and (c)”.
21 Substituted by Act No. 32 of 1940 for the words and figure “other than a document referred to in section 28 and a copy of a decree or order”.
22 Substituted by Act No. 45 of 1969, for words “The Registrar of a district including a Presidency-town”.
23 The words “and the Registrar of the Lahore District” omitted by the AO 1948.
24 Substituted by Act No. 39 of 1948 for words and figures “s. 31 and s. 89”.
25 Substituted by Act No. 3 of 1951, for the words “resides in any other part of the State”.
26 Substituted by the AO 1950, for the word “British”.
27 The words “of His Majesty or” omitted by AO 1950, for word “British”.
28 Added by Act No. 13 of 1926.
29 The Words “and also for the destruction of such books, papers and documents as need no longer be kept” repealed by Act No. 5 of 1917.
30 The words “Subject to the control of the GG in C” omitted by Act No. 38 of 1920.
31 The words “the Branch Inspector-General of Sindh”, omitted by AO 1937.
32 Substituted by Act No. 39 of 1948.
33 Section 91 renumbered as sub-section (1) by the Delegated Legislation Provisions (Amendment) Act, 1983, w.e.f. 15th. March, 1984.
34 Substituted for the words “State Government prescribes in this behalf”, ibid.
35 Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983, w.e.f. 15th. March, 1984.



10.4

Indian Stamp Act, 1899

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Indian Stamp Act, 1899.

1[(2) It extends to the whole of India except the State of Jammu and Kashmir:

PROVIDED that it shall not apply to 2[the territories which, immediately before the Ist November, 1956, were comprised in Part B States] (excluding the State of Jammu and Kashmir) except to the extent to which the provisions of this Act relate to rates of stamp duty in respect of the documents specified in entry 91 of List I in Schedule VII to the Constitution.]

(3) It shall come into force on the first day of July, 1899.

2. Definitions

In this Act, unless there is something repugnant in the subject or context,-

(1) "Banker" includes a bank and any person acting as a banker;

(2) "Bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any other person of, or to draw upon any other person for, any sum of money;

(3) "Bill of exchange payable on demand" includes-

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated period; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn;

(4) "Bill of lading" includes a "through bill lading", but does not include a mate's receipt;

(5) "Bond" includes-

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

(6) "Chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in 3[India] when such instrument was executed or, where several persons executed the instrument at different times, first executed;

(7) "Cheque" means a bill of exchange, drawn on a specified banker and not expressed to be payable otherwise than on demand;

(8) 4[* * *]

(9) "Collector"-

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively and, without those limits, the Collector of a district, and

(b) includes a Deputy Commissioner and any officer whom 5[the 6[State Government]] may, by notification in the Official Gazette, appoint in this behalf;

(10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I;

(11) "Duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in 3[India];

(12) "Executed" and "execution", used with reference to instruments, mean "signed" and "signature";

7[* * *]

(13) "Impressed stamp" includes-

(a) labels affixed and impressed by the proper officer, and

(b) stamps embossed or engraved on stamped paper;

8[(13A) "India" means the territory of India excluding the State of Jammu and Kashmir];

(14) "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

(15) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any civil court and an award by an arbitrator directing a partition;

(16) "Lease" means a lease of immovable property, and includes also-

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver or pay or deliver rent for, immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted;

9[(16A) "Marketable security" means a security of such a description as to be capable of being sold in any stock market in 3[India] or in the United Kingdom;]

(17) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property;

(18) "Paper" includes vellum, parchment or any other material on which an instrument may be written;

(19) "Policy of insurance" includes-

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

(b) a life-policy, and any policy insuring any person against accident or sickness, and any other personal insurance;

10[* * *]

8[(19A) "Policy of group insurance" means any instrument covering not less than fifty or such smaller number as the Central Government may approve, either generally or with reference to any particular case, by which an insurer, in consideration of a premium paid by an employer or by an employer and his employees, jointly, engages to cover, with or without medical examination and for the sole benefit of persons other than the employer, the lives of all the employees or of any class of them, determined by conditions pertaining to the employment, for amounts of insurance based upon a plan which precludes individual selection;]

(20) "Policy of sea-insurance" or "sea-policy"-

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel, and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance;

(21) "Power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it;

(22) "Promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881;

It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(23) "Receipt" includes any note, memorandum or writing-

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment;

and whether the same is or is not signed with the name of any person 11[* * *]

(24) "Settlement" means any non-testamentary disposition, in writing, of movable or immovable property made-

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose,

and includes an agreement in writing to make such a disposition 9[and, where, any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition]; 12[* * *]

13[(25) "Soldier" includes any person below the rank of non-commissioned officer who is enrolled under the 14[Indian Army Act, 1911].

15[* * *]

CHAPTER II

STAMP-DUTIES

A-Of the liability of instruments to duty

3. Instruments chargeable with duty

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say-

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in 3[India] on or after the first day of July, 1899;

(b) every bill of exchange 19[payable otherwise than on demand] 20[* * *] or promissory note drawn or made out of 3[India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in 3[India]; and

(c) every instrument (other than a bill of exchange 20[* * *] or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of 3[India] on or after that day relates to any property situate, or to any matter or thing done or to be done, in 3[India] and is received in 3[India]:

PROVIDED that no duty shall be chargeable in respect of-

(1) any instrument executed by, or on behalf of, or in favour of, the government in cases where, but for this exemption, the government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1938, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

21[3A. * * *]

4. Several instruments used in single transaction of sale, mortgage or settlement

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

PROVIDED that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Instruments relating to several distinct matters

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.

6. Instruments coming within several descriptions in Schedule I

Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

PROVIDED that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

7. Policies of sea-insurance

22[* * *]

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

8. Bonds, debentures or other securities issued on loans under Act 11 of 1879

(1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of 23[one per centum] on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

PROVIDED that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1978, when such duty has not already been paid or remitted by order issued by the Central Government.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

24[8A. Securities not liable to stamp duty

Notwithstanding anything contained in this Act,-

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of share from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

25[(d) transfer of beneficial ownership of shares, such shares being shares of a company formed and registered under the Companies Act, 1956 or a body corporate established by a Central Act dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act;

(e) transfer of beneficial ownership of units, such units being units of a mutual fund including units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act.]

Explanation: For the purposes of this section, the expressions "beneficial owner", "depository" and "issuer", shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996.]

9. Power to reduce, remit or compound duties

26[(1)] 27[The 28[***] government] may, by rule or order published in Official Gazette,-

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of 29[the territories under its administration], the duties with which any instruments or any particular class or instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour or any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate 30[or of transfers (where there is a single transferee, whether incorporated or not).]

31[(2) In this section, the expression "the government" means,-

(a) in relation to stamp-duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp-duty chargeable under this Act and failing within entry 96 of List I in Schedule VII to the Constitution, the Central Government;

(b) save as a foresaid, the State Government.]

B-Of stamps and the mode of using them

10. Duties how to be paid

(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments by means of stamps-

(a) according to the provisions herein contained; or

(b) when no such provision is applicable thereto, as the 6[State Government] may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,-

(a) in the case of each kind of instrument-the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps-the number of stamps which may be used;

(c) in the case of bills of exchange or promissory notes 32[* * *] the size of the paper on which they are written.

CHAPTER II

STAMP-DUTIES

11. Use of adhesive stamps

The following instruments may be stamped with adhesive stamps, namely,

(a) instruments chargeable 33[with a duty not exceeding ten naye paise], except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange 33A[***] and promissory notes drawn or made out of 3[India];

(c) entry as an advocate, vakil or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

12. Cancellation of adhesive stamps

(1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

13. Instruments stamped with impressed stamps how to be written

Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

14. Only one instrument to be on same stamp

No second instrument chargeable with duty shall be written upon a piece of

stamped paper upon which an instrument chargeable with duty has already been written:

PROVIDED that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

15. Instrument written contrary to section 13 or 14 deemed unstamped

Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

16. Denoting duty

Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of both the instruments, be denoted upon such first mentioned instrument by application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first mentioned instrument by endorsement under the hand of the Collector or in such other manner (if any) as the 6[State Government] may by rule prescribe.

C-Of the time of stamping instruments

17. Instruments executed in India

All instruments chargeable with duty and executed by any person in 3[India] shall be stamped before or at the time of execution.

18. Instruments other than bills and notes executed out of India

(1) Every instrument chargeable with duty executed only out of 3[India] and not being a bill of exchange 20[***] or promissory note, may be stamped within three months after it has been first received in 3[India].

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the 6[State Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. Bills and notes drawn out of India

The first holder in 3[India] of any bill of exchange 19[payable otherwise than on demand], 20[* * *] or promissory note drawn or made out of 3[India] shall,

before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in 3[India], affix thereto the proper stamp and cancel the same:

PROVIDED that,

(a) if, at the time any such bill of exchange 20[* * *] or note comes into the hands of any holder thereof in 20[India], the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D-Of valuations for duty

20. Conversion of amount expressed in foreign currencies

(1) Where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of 20[India] such duty shall be calculated on the value of such money in the currency of 20[India] according to the current rate of exchange on the day of the date of the instrument.

(2) The Central Government may, from time to time, by notification in the Official Gazette, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of 20[India] for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

21. Stock and marketable securities how to be valued

Where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of the date of the instrument.

22. Effect of statement of rate of exchange or average price

Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Instruments reserving interest

Where interest is expressly made payable by the terms of an instrument,

such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had not mention of interest been made therein.

9[23A. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements

(1) Where an instrument (not being a promissory note or bill of exchange)-

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security, it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under 34[Article No.5(c)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.]

24. How transfer in consideration of debt, or subject to future payment, etc. to be charged

Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

PROVIDED that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation: In the case of a sale of property subject to a mortgage or other encumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

PROVIDED that, where property, subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

(2) A sells property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage.

25. Valuation in case of annuity, etc.

Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act be deemed to be-

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained-such total amount;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance-the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance-the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

26. Stamp where value of subject-matter is indeterminate

Where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount of value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

35[PROVIDED that, in case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp duty,

(a) when the lease has been granted by or on behalf of 36[the government], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to 36[the government] under the lease, or

(b) when the lease has been granted by any other person, at twenty thousand rupees a year,

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:]

PROVIDED ALSO that where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. Facts affecting duty to be set forth in instrument

The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. Direction as to duty in case of certain conveyances

(1) When any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with ad valorem duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with ad valorem duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with ad valorem duty in respect only of the

consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with ad valorem duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

PROVIDED that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E-Duty by whom payable

29. Duties by whom payable

In the absence of any agreement to the contrary, the expense of providing the proper stamp shall be borne

(a) in the case of any instrument described in any of the following Articles of Schedule I, namely:

No. 2. (Administration Bonds),

37[No. 6. (Agreement relating to Deposit of Title deeds, Pawn or Pledge)],

No. 13. (Bill of Exchange),

No. 15. (Bonds),

No. 16. (Bottomry Bond),

No. 26. (Customs Bond),

No. 27. (Debenture),

No. 32. (Further Charge),

No. 34. (Indemnity-bond),

No. 40. (Mortgage-deed),

No. 49. (Promissory-note),

No. 55. (Release),

No. 56. (Respondentia Bond),

No. 57. (Security Bond or Mortgage-deed),

No. 58. (Settlement),

No. 62(a). (Transfer of shares in an incorporated company or other body corporate),

No. 62(b). (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62(c). (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),

by the person drawing, making or executing such instrument:

38[(b) in the case of a policy of insurance other than fire-insurance- by the person effecting the insurance:

(bb) in the case of a policy of fire-insurance- by the person issuing the policy:]

(c) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease- by the lessee or intended lessee:

(d) in the case of a counterpart of a lease- by the lessor:

(e) in the case of an instrument of exchange- by the parties in equal shares:

(f) in the case of a certificate of sale- by the purchaser of the property to which such certificate relates: and,

(g) in the case of an instrument of partition– by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or civil court or arbitrator, in such proportion as such authority, court or arbitrator directs.

30. Obligation to give receipt in certain cases

Any person receiving any money, exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

39[Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.]

CHAPTER III

ADJUDICATION AS TO STAMPS

31. Adjudication as to proper stamp

(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than 40[fifty naye paise]) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

PROVIDED that-

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. Certificate by Collector

(1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty; and-

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

PROVIDED that nothing in this section shall authorised the Collector to endorse-

(a) any instrument executed or first executed in 3[India] and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of 3[India] and brought to him after the expiration of three months after it has been first received in 3[India]; or

(c) any instrument chargeable 33[with a duty not exceeding ten naye paise], or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

CHAPTER IV

INSTRUMENTS NOT DULY STAMPED

33. Examination and impounding of instruments

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in 3[India] when such instrument was executed or first executed:

PROVIDED that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal court to examine or impound, if he does not think fit so to do, any instrument coming before him

in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898:

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,-

(a) 27[the 6[State Government]] may determine what offices shall be deemed to be public offices; and

(b) 27[the 6[State Government]] may determine who shall be deemed to be persons in charge of public offices.

34. Special provision as to unstamped receipts

Where any receipt chargeable 33[with a duty not exceeding ten naye paise] is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

35. Instruments not duly stamped inadmissible in evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

PROVIDED that-

(a) any such instrument not being an instrument chargeable 33[with a duty not exceeding ten naye paise] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

36. Admission of instrument where not to be questioned

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

37. Admission of improperly stamped instruments

27[The 6[State Government] may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

38. Instruments impounded how dealt with

(1) Where the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits, such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

39. Collector's power to refund penalty paid under section 38, sub-section (1)

(1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit 41[***] refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

40. Collector's power to stamp instruments impounded

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38; sub-section (2), not being an instrument chargeable 42[with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, 9[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

PROVIDED that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14; the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by the section, return it to the impounding officer.

41. Instruments unduly stamped by accident

If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable 42[with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year, from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead

of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

42. Endorsement of instruments in which duty has been paid under sections 35, 40 or 41

(1) When the duty and penalty (if any), leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

PROVIDED that-

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect the 43[Code of Civil Procedure, section l44 clause 3].

43. Prosecution for offence against stamp law

The taking of proceedings or the payment of a penalty under this chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

PROVIDED that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

44. Persons paying duty or penalty may recover same in certain cases

(1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some

other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

45. Power to Revenue authority to refund penalty or excise duty in certain cases

(1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

46. Non-liability for loss of instruments sent under section 38

(1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

47. Power of payer to stamp bills and promissory notes received by him unstamped

When any bill of exchange 44[or promissory note] chargeable 45[with a duty not exceeding ten naye paise] is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may

pay the sum payable upon such bill 46[or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill 46[or note] shall, so far as respects the duty, be deemed good and valid:

PROVIDED that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill 46[or note].

48. Recovery of duties and penalties

All duties, penalties, and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land

CHAPTER V

ALLOWANCES FOR STAMPS IN CERTAIN CASES

49. Allowance for spoiled stamps

Subject to such rules as may be made by 5[the 6[State Government]] as to the evidence to be required or, the enquiry to be made, the Collector may, on application made with the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely,

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) in the case of bills of exchange 19[payable otherwise than on demand] or promissory notes-

(1) the stamp on 47[any such bill of exchange 48[***] signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than byway of tender for acceptance:

PROVIDED that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange 48[* * *] to be afterwards written thereon;

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for 19[any such bill of exchange] 49[* * *] or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange 49[* * *] may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange 49[* * *] or promissory note is produced identical in every particular except in the correction of such omission or error as aforesaid, with the spoiled bill 49[* * *] or note;

(d) the stamp used for an instrument executed by any party thereto which-

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

(6) become useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient is value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

PROVIDED that, in the case of an executed instrument, no legal proceeding has been commenced in which the

instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation: The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section.

50. Application for relief under section 49 when to be made

The application for relief under section 49 shall be made within the following periods, that is to say,

(1) in the cases mentioned in clause (d)(5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

PROVIDED that,-

(a) when the spoiled instrument has been for sufficient reasons sent out of 3[India], the application may be made within six months after it has been received back in 3[India];

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period; the application may be made within six-months after the date of execution of the substituted instrument.

51. Allowance in case of printed forms no longer required by corporations

The Chief Controlling Revenue-authority 50[or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf] may, without limit of time, make allowance for stamped papers used for printed forms of instruments, 51[by any banker or] by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said 51[banker], company or body corporate: provided that such authority is satisfied that the duty in respect of such stamped paper has been duly paid.

52. Allowance for misused stamps

(a) When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) When any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13, the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. Allowance for spoiled or misused stamps how to be made

In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof-

(a) other stamps of the same description and value; or

(b) if required and he thinks fit, stamps of any other description to the same amount in value; or

(c) at his discretion, the same value in money, deducting 3[ten naye paise] for each rupee or fraction of a rupee.

54. Allowance for stamps not required for use

When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting 52[ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction-

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased with in the period of six months next preceding the date on which they were so delivered:

PROVIDED that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

53[54A. Allowances for stamps in denomination of annas

Notwithstanding anything contained in section 54, when any person is possessed of a stamp or stamps in any denominations, other than in denominations of annas four of multiples thereof and such stamp or stamps has or have not been spoiled, the Collector shall repay to such person the value of such stamp or stamps in money calculated in accordance with the provisions of sub-section (2) of section 14 of the Indian Coinage Act, 1906, upon such person delivering up, within six months from the commencement of the Indian Stamp (Amendment) Act, 1958, such stamp or stamps to the Collector.]

54[54B. Allowances for Refugee Relief Stamps

Notwithstanding anything contained in section 54, when any person is possessed of stamps bearing the inscription "Refugee Relief" (being stamps issued in pursuance of section 3A before its omission) and such stamps have not been spoiled, the Collector shall, upon such person delivering up, within six months, from the commencement of the Refugee Relief Taxes (Abolition) Act, 1973, such stamps to the Collector, refund to such person the value of such stamps in money or give in lieu thereof other stamps of the same value:

PROVIDED that the State Government may, with a view to facilitating expeditious disposal of claims for such refunds, specify, in such manner as it deems fit, any other procedure which may also be followed for claiming such refund.]

55. Allowance on renewal of certain debentures

When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

PROVIDED that the original debenture is produced before the Collector and cancelled by him in such manner as the State Government may direct.

Explanation: A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following charges:

(a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;

(b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;

(c) the substitution of the name of the holder at the time of renewal for the name of the original holder; and

(d) the alteration of the rate of interest or the dates of payment thereof.

REFERENCE AND REVISION

56. Control of, and statement of case to, Chief Controlling Revenue-authority

(1) The power exercisable by a Collector under Chapter IV and Chapter V 55[and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

57. Statement of case by Chief Controlling Revenue-authority to High Court

(1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,-

56[(a) if it arises in a State to the High Court for that State;]

57[(b) if it arises in the Union territory of Delhi to the High Court of Delhi;]

58[(c) if it arises in the Union territory of Arunachal Pradesh or Mizoram, to the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura;)]

(d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta; 59[* * *]

(e) if it arises in the Union territory of the 60[Lakshadweep], to the High Court of Kerala;]

61[(ee) if it arises in the Union territory of Chandigarh, to the High Court of Punjab and Haryana;]

62[(f) if it arises in the Union territory of Dadra and Nagar Haveli, to the High Court of Bombay;]

(2) Every such case shall be decided by not less than three Judges of the High Court 63[* * *] to which it is referred, and in case of difference the opinion of the majority shall prevail.

58. Power of High Court to call for further particulars as to case stated

If the High Court 64[* * *] is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the court may direct in that behalf.

59. Procedure in disposing of case stated

(1) The High Court, 64[* * *] upon the bearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

60. Statement of case by other courts to High Court

(1) If any court, other than a court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court 64[* * *] to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

(2) Such court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the court and the signature of the Registrar to the Chief Controlling Revenue-authority and other like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a court, subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate revenue court, shall be made through the court immediately superior.

61. Revision of certain decisions of courts regarding the sufficiency of stamps

(1) When any court in the exercise of its civil or revenue jurisdiction of any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting

any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the court to which appeals lie from, or references are made by, such first-mentioned court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

PROVIDED that

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such court, was payable in respect or the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.



10.5

Land Acquisition Act, 1894

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An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition;

It is hereby enacted as follows:

FOOTNOTES:

1. This Act has been amended in its application to-(1) Madras by Madras Acts 37 of 1950 and 12 of 1953;(2) Bombay ay by Bombay Act 18 of 1938;(3) West Bengal by Bengal Act 2 of 1934 and West Bengal Act 7 of 1948;(4) Uttar Pradesh by U.P.Act 10 of 1945 as re-enacted by U.P.Act 13 of 1948:(5) the Kanpur Urban Area by U.P.Act 6 of 1945 as re-enacted by U.P.Act 13 of 1948;(6) Bihar by Bihar Acts 8 of 1946, 23 of 1948,17 if 1951 and 35 of 1951;(7) Madhya Pradesh by Central Provinces & Berar Acts 27 of 1939, 7 of 1949, 28 of 1949 and 3 of 1950.(8) Punjab by East Punjab Act 15 of 1948;(9) Orissa by Act 19 of 1948.For modification in this Act to make provision for the acquisition of lan in certain municipal areas , see--(1) the Culcutta Improvement Act, 1911 (Ben.5 of 1911), Section 71 and Schedule (2) the Culcutta of Municipal Act, 1923 (Bengal 3 of 1923), Section 475.(3) the City of Bombay ay Improvement Trust Transfer Act, 1925 (Bom.16 of 1925.)(4) the U.P.Town Improvement Act, 1919 (U.P 8 of 1919), Section 58 and Schedule (5) the Punjab Town Improvement Act, 1922 (Pun.4 of 1922), Section 59 and Schedule (6) the Darbhanga Improvement Act, 1934 (B.& O.4 of 1934),s.41.(7) the Central Provinces Municiapalities Act, 1922 (C.P.2 of 1922), Section 239 and Schedule (8) the Nagpur Improvement Trust Act, 1936 (Central Provinces 36 of 1936), Section 61 and Schedule

Statement of Object

For several years past the amendment of the Land Acquisition Act, 1870, has been under consideration by the Government of India in communication with local Governments.

2. Before the passing of that Act, the valuation of lands, which it was found necessary to take up for the execution of public works, was entirely in the hands of Arbitrators, from whose decision there was no appeal. This system led to a lamentable waste of the public money, both because the Arbitrators were incompetent, and sometimes, it is to be feared corrupt, and also because the law, as it then stood, laid down no instructions for their guidance in the performance of their duties. This latter defect, among others, was remedied by the Act of 1870, which it is now proposed to amend, and which contains detailed instructions as to the matters which are to be considered, and which are to be neglected, in awards of compensation for lands acquired

under its provisions. The Act of 1870 also provided for the abolition of the system under which uncontrolled discretion was entrusted to Arbitrators; and, in lieu thereof, required the Collector when unable to come to terms with the persons interested in land which it was desired to take up, to refer the difference for the decision of a Civil Court, usually that of the District Judge. In the disposal of such references, the Court is aided Assessors disagree, an appeal is allowed, which usually lies to the High Court.

3. The Act of 1870 has not, in practice, been found entirely effective for the protection either of the persons interested in lands taken up or of the public purse. The requirement that the Collector shall refer for the decision of the Court every petty difference of opinion as to value, and every case in which any one or perhaps a large number of persons fails to attend before him, has involved in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. It has, in fact, frequently been the case that the owners of small pieces of land have had to pay Court cost to an amount far exceeding the value of the land itself.
4. On the other hand, the provisions of the Act as to the incidence of costs, the whole of which fall on the Collector if the final award is ever so little in excess of the amount of his tender, are such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs is so great, that claimants are in the position of risking very little in order to gain very much, and have, therefore, every motive to refuse even liberal offers made by the Collector, and to try their luck by compelling a reference to the Court. Much the same may be said as to the provisions of the existing law regarding the payment of interest. No matter how fair the original offer of the Collector and how groundless the refusal to accept the compensation he has tendered, interest is payable on the amount of the award finally arrived at from the date of the Collector's taking possession of the land. This may be for a period of two or three years and as interest continues to run until the litigation is finally completed, it is to the advantage of the land-owner to protract the proceedings to the utmost. All this costs a very heavy and undeserved burden on the public purse.
5. It is proposed, therefore, to amend the law by making the Collector's award final, unless altered by a decree in a regular suit. Persons interested in land taken up for public works will thus still have the opportunity, if they desire it, of preferring to an authority quite independent of the Collector their claims to more substantial compensation than the Collector has awarded; and will in all cases have a further right of appeal to the regular appellate Courts. They will no longer, however, be encouraged to litigate by the feeling that they can hardly lose, but may make a great gain by doing so.
6. This change in the procedure for determining the valuation of land taken up for public works will also render it possible to dispense with the services of the Assessors, who are now supposed to assit the Court. Considering the

difficulty, almost throughout the country, of obtaining the services of such Assessors as are really qualified to form a sound opinion on the subject of the valuation of land, it is believed that the proposal to dispense with them, and to leave the matter to the sole arbitrament, first of the Collector, and then of the Judge, will in no way diminish the efficiency of the Courts in enquires in which the value of lands is in issue. It will certainly tend to shorten litigation and to diminish its expense.

7. Several minor amendments in the law, which experience has shown to be desirable, are included in the Bill.

1. Short title, extent and commencement-
   (1) This Act may be called the Land Acquisition Act, 1894 ;
   (2) It extends to the whole of India except Part B States; and
   (3) It shall come into force on the first day of March, 1894.

(Part I - Preliminary)

2. Repeal.- Rep.party by the Repealing and Amending Act, 1914 (10 of 1914), s.3 and Sch.II, and partly by the Repealing Act, 1938 (1 of 1938), s.2and Sch.

3. Definication.- In this Act, unless there is something repugnant in the subject or context,-
   (a) the expression"land" includes benefits to arise out of land, and things attached to the earth or permanently fastended to anything attached to the earth;
   (b) the expression " person interested" includes all persons claiming an interest in compensation to be made on accout of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;
   (c) the expression "Collector" means the Collector of a district, and includes a Depurty Commissioner and any officer specially appointed by the appropriate Government to perform the function of a Collector under this Act;
   (d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special juducial officer within any specifed lacal limits to perfom the functions of the Court under this Act;
   (e) the expression "Company" means a Company registered under the [1] Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament [2] of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent [3] and includes a society registered under the Societies Registration Act, 1860, and a

registered society within the meaning of the Co-operative Societies Act, 1912;

[4][(ee) the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

(f) The expression " public purpose" includes the provision of village-sites In districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision; and

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)-

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age ; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, the same extent as the minors, lunatics or idiots themselves, if free from disability , could have acted:

Provided that-

(i) no person shall be deemed "entitled to act" whose interest in the subject- matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court , as the case may be , shall appoint a guardian for the case to act on his behalf in the conduct thereof ;

(iii) the provisions of [5] Chapter XXXI of the Code of Civil Procedure shall , mutatis mutandis, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act ; and

(iv) no person "entitled to act" shall be competent to receive the compensation- money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purphase- many on a voluntary sale.

[6]

FOOTNOTES:

1. See now the Indian Companies Act, 1913(7 of 1913)
2. Inserted by the Adaptation of Laws Order, 1950 .
3. Inserted by Act 17 of 1919, Section 2.
4. Inserted by the Adaptation of Laws Order, 1950 .
5. See now the Code of Civil Procedure, 1908 (5 of 1908), Schedule I Order XXXII.
6. As to amendments with which this section should be read when land is required for the purposes of a Company, See Section 38 (2) , infra.)

   (A protected monument may be acquired under this Act as if its preservation were a "public purpose" within the meaning of the Act, see Section 10 of the Ancient Monuments Preservation Act, 1904 (7 of 1904).

4. Publication of preliminary notification and powers of officers of there upon.-

   (1) Whenever it appears to the appropriate Government that land in any locality [1] is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

   (2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen.-

   to enter upon and survey and take levels of any land in such locality ;

   to dig or bore into the subsoil ;

   to do all other acts necessary to ascerttain whether the land is adapted for such purpose ;

   to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

   to mark such levels, boundaries and line by placing marks and cutting trenches' and.

   where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

   Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

FOOTNOTES:

1. Inserted by Act.38 of 1923, Section 2

5. Payment for damage.- The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue- offecer of the district, and such decision shall be final.

Objections [1]

5 A. Hearing of objections-

(1) Any person interested in any land which has been notified under section 4, Sub-section (1) as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections,The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Declaration of intended acquisition

FOOTNOTES:

1. Inserted by Section 3, ibid.

6. Declaration that land is required for a public purpose-

(1) Subject to the provisions of Part VII of this Act , [1] when the appropriate Government is satisfied, after considering the report, if any, made under section 5 A, sub-Section (2), that any particular land is needed for public purpose or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:

Provided that no scuh declaration shall be made unless the compensation to be awarded for such property is to be paid by a

Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

FOOTNOTES:

1. Substituted by Act 38 of 1923, Section 4.for "whenever it appears to the Local Government "
7. After declaration Collector to take order for acquisition.- Whenever any shall have been so declared to be needed for a public purpose or for a Company the appropriate Government, or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land.
8. Land to be marked out, measured and plannedThe Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.
9. Notice to persons interested-
   (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interest in such land may be made to him.
   (2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agents before the Collector at a time and place therein mentioned (such time not being earlier that fifteen days after the date of publication of the notice), and to state the nature of their respective interest in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8.The Collector may in any case require such statement to be made in writing and signed by the party or his agent.
   (3) The Collector shall also serve notice to the same effect on the occupier (If any) of such land and on all such persons known or

believed to be entitled to act for persons so interesed a s reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the [1] Indian Post Office Act, 1866.

FOOTNOTES:

1. See now the Indian Post Office Act, 1898 (6 of 1898).

10. Power to require and enforce the making of statements as to names and interests-

(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing so far as may be practicable, the name of every other person possessing any interest in the land or any part therof as co-proprietor, sub-proprietor, mortagagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statment under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into measuremnts, value and claims, and award by the Collector

11. Enquiry and award by Collector.- On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8 , and into the value of the land [1] at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of

(i) the true area of the land ;

(ii) the compensation which in his opinion should be allowed for the land ; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him,

FOOTNOTES:

1. Inserted by Act 38 of 1923, Section 5

12. Award of Collector when to be final-
    (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.
    (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. Adjournment of enquiry.- The Collector may, for any cause he thinks fit from time to time adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents.- For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them ,and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the [1] Code of Civil Procedure.

FOOTNOTES:

1. See now the Code of Civil Procedure, 1908 (5 of 1908).

15. Matters to be considered and neglected.- In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking possession

16. Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. Special powers in cases of urgency-
    (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hour's notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remobe his movable property from such building without unecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in cases, such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[1](4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does not so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

FOOTNOTES:

1. Inserted by Act 38 of 1923, Section 6

18. Reference to Court-

(1) Any person interested who has not accepted the award may, be written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appropriate of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. Collectors statement to the Court-

(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,---

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid for tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice.- The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their apperance before the Court on that day, to be served on the following persons, namely:---

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings.- The scope of the inquiry in every such proceedings shall be restrcited to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court.- Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, and act (as the case may be) in such proceeding.

23. Matters to be considered in determining compensation-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration---

first, the market-value of the land at the date of the publication of the [1] notification under section 4, sub-section (1);

secondly, the damage by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession taking possession of the l;and, by the reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if in the consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

FOOTNOTES:

1. Subs, by Act 38 of 1923, Section 7, for "declaration relating thereto under Section 6."

24. Matters to be neglected in determining compensation.- But the Court shall not take into consideration

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him, if caused by a private person, would not render such persons liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accure from the use to which the land acquires will be put; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the [1] notification under section4, sub-section (1).

FOOTNOTES:

1. Subs, by Act 38 of 1923, Section 8, for "declaration under Section 6."

25. Rules as to amount of compensation-

(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) when the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the maount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not less than, and may exceed, the amount awarded by the Collector.

(S.26 was re-numbered as sub-section (1) of that section by Act 19 of 1921.s.2.)

26. Form of awards-

(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

[1](2) every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgement within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908.

FOOTNOTES:

1. Inserted by Section 2, Act 19 of 1921.

27. Costs-

(1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarlily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation.- If the sum which, in the poinion of the Court, the Collector ought to have a awarded as compensation is in excess of the sum which the Collector did award as compensation the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum from the date on which he took possession of the land to the date of payment of such excess into Court.

29. Particulars of apportionment to be specified.- Where there are several persons interested, if such persons agree in the apportionment of the Compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be consclusive evidence of the correctness of the apportionment.

30. Disputes as to apportionment.- When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same to any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

31. Payment of compensation or deposit of same in Court-

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitlted thereto according to the award and shall pay it to them unless prevented by some one or more of the contigencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and (As to persons who are competent to contract, see s.11 of the Indian Contract Act, 1872 (9 of 1872).)competent to contract in respect thereof.

32. Investment of money deposited in respect of lands belonging to persons in competent to alienate-

(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who has no power to alienate the same, the Court shall,

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investmnet to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied--

(I) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as amy be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases.- When any money shal have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the court may, on the appliation of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it amy think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it amy consider will give the parties interested therein the same benefit thereform as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

35. Temporary occupation of waste or arable land.Procedure when difference as to compensation exists-

(1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of moneys, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. Power to enter and take possession, and compensation on restoration-

(1) On payment of such compensation, or on excuting such agreement or on making a reference under section 35, the Collector may enter upon

and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to persons interested therein:

Provided that, if the land has become permanently unfit tobe used to the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. Difference as to condition on land.- In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the collector shall refer such difference to the decision of the Court.

38. Company may be authorised to enter and survey:-

(1) [1] The appropriate Government may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be constructed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construted as if after the words "the officer" the words "of the Company" were inserted.

[2]

38A. Industrial concern to be deemed Company for certain purposes.- An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling hosuses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.

39. Previous consent of appropriate Government and execution of agreement necessary.- The provisions of section 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Governmnet, nor unless the Company shall have executed the agreement hereinafter mentioned.

FOOTNOTES:

1. The words "Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" Repealed by Section 2 and Schedule I of Act 38 of 1920.
2. Ins, by Act 16 of 1933, Section 6.

40. Previous enquiry-

(1) Such consent shall not be given unless the appropriate Government be satisfied, [1] either on the report of the Collector under Section 5A, Sub-section (2), or by an enquiry held as hereinafter provided,---

[2](a) that the purposes of the acquistion is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the [3] Code of Civil Procedure in the case of a Civil Court.

FOOTNOTES:

1. Ins, by Act 38 of 1923, Section 9
2. Subs, by Act 16 of 1933, Section 3, for the original clauses (a) and (b).
3. See now the Code of Civil Procedure, 1908 (5 of 1908).

41. Agreement with appropriate Government-

[1] If the appropriate Government is satisfied [2] after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under sub-section 40 that {Ins, by Act 16 of 1933, s.4.) the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall [3] require the Company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:

(1) the payments to the appropriate Government of the cost of the acquisition;

(2) The transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

[4](4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therwith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

FOOTNOTES:

1. The words “Such officer shall report to the Local Government the result of the enquiry and” were Repealed by Act 38 of 1923, Section 10.
2. Ins, by Section 10, ibid.
3. The words “Subject to such rules as the Governor-General in Council may from time to time prescribe in this behalf” Repealed by Act 38 of 1920, Section 2 and Schedule I.
4. Subs, by Act 16 of 1933, Section 4, for the original clauses (4) and (5).

42. Publication of agreement.- Every such agreement shall, as soon as may be after its execution, be publised [1] in the Official Gazette and shall thereupon (so as far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

FOOTNOTES:

1. The words “in the Gazette of India and also” Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937 as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 .

43. Sections 39 to 42 not to apply where Government bound by agreement.- The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding section of the [1] Land Acquisition Act, 1870, shall be deemed never tohave applied, to the acquisition of land for any Railway or other Company, for the purposes of which, [2] under any agreement with such Company, the Secretary State for India in Council, the Secretary of State, the Central Government of any State Government is or was bound to provide land.

FOOTNOTES:

1. Repealed by this Act.
2. Subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "under any agreement between such company and the Secretary of State for India in Council, the Government is, or was bound to provide land"

44. How agreement with Railway Company may be proved.- In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

45. Service of notices-

(1) Service, of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person thererin named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the [1] Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

FOOTNOTES:

1. See now the Indian Post Office Act, 1898 (6 of 1898).

46. Penalty for obstructing acquisition of land.- Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fils up, destroys, damages or displace any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to

imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. Magistrate to enforce surrender.- If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender fo the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the government withdraws from any such acquisition, the Collector shall determine the amount of compensation due to the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. Acquisition of part of house of building-

(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in wriitng, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired.

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) if, in the case of any claim under section 23, sub-section (1), thridly, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion

that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under section 11.



10.6

Architects Act, 1972

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Sch.1 SCHEDULE

Architects Act, 1972

An Act to provide for the registration of architects and for matters connected therewith.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:

Statement of Object

Since independence and more particularly with the implementation of the Five-Year Plans, the building construction activity in our country has expanded almost on a phenomenal scale. A large variety of buildings, many of extreme complexity and magnitude like multi-storeyed office buildings, factory buildings, residential houses, is being constructed each year. With this increase in the building activity, many unqualified persons calling themselves as architects are under-taking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of archiects. Various organisations, including the Indian Institute of Architects, have repeatedly emphasised the need for statutory regulation to protect the general public from unqualified persons working as architects. With the passing of this legislation, it will be unlawful for any person to designae himself as 'architect' unless he has the requisite qualifications and experience and is registered under the Act. The Legislation is generally on the same line as similar Act in other countries.

2. The main features of the Bill are:-(a) creation of a body corporate by the name of "Council of Architecture",(b) vesting the requisite powers for the registration of architects in the Council;(c) enrolment initially of persons holding a degree or diploma in architecture recognised by Central Government or possessing other qualifications whcih may be prescribed by the Central Government or of persons who have proved to the satisfaction of the Council to have been engaged in practice as architects for a period of not less than five years before the commmencement of the proposed legislation;(d) subsequent enrolment of persons who hold degrees or diplomas in architecture recognised by the Central Government or who possess other qualifications that may be prescribed by the Central Government;(e) holding of enquiries into the misconduct of registered architects and taking suitable action:(f) prescribing standards of professional conduct and etiquette and Code of ethics for architects; and (g) assessment of the standards of education and training of architects within the countries.
3. The legislation protects the title "architects" but does not make the design, supervision and construction of buildings as an exclusive responsibility of architects. Other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as architects.
4. The Bill also stipulates that after expiry of two years from the date of Act coming into force, a person who is registered as an architect shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or

aided from the public or local funds or in any institution recognised by the Central Government.

5. The proposed Bill seeks to achieve the above objects.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement-
   (1) this Act may be called the Architects Act, 1972.
   (2) it extends to the whole of India.
   (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. Definitions.- In this, Act, unless the context otherwise requires,-
   (a) "architect" means a person whose name is for the time being entered in the register;
   (b) "Council" means the Council of Architecture constituted under section 3:
   (c) "Indian Institute of Architects" means the Indian Institute of Architects registered under the Societies Registration Act, 1860 (21 of 1860);
   (d) "recognised qualification" means any qualification in architecture for the time being included in the Schedule or notified under section 15;
   (e) "register" means the register of architects maintained under section 23;
   (f) "regulation" means a regulation made under this Act by the Council;
   (g) "rule" means a rule made under this Act by the Central Government.

CHAPTER II

COUNCIL OF ARCHITECTURE

3. Constitution of Council of Architecture-
   (1) The Central Government shall, by notification in the Official Gazette, constitute, with effect from such date as may be specified in the notification, a Council to be known as the Council of Architecture, which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by that name sue or be sued.

(2) The Head Officer of the Council shall be at Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) The Council shall consist of the following members, namely:

(a) five architects possessing recognised qualifications elected by the Indian Institute of Architects from among its members :

(b) two persons nominated by the All India Council for Technical Education established by the Resolution of the Government of India in the late Ministry of Education No.F.16-10/44-E.III, dated the 30th November, 1945;

(c) five person selected from among themselves by heads of architectural institutions in India imparting full-time instruction for recognised qualifications;

(d) the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allotted and the head of the Architectural Organisation in the Central Public Works Department, ex officio;

(e) one person nominated by the Central Government;

(f) an architect from each State nominated by the Government of that State;

(g) two person nominated by the Institution of Engineers (India) from among its members; and

(h) one person nominated by the Institution of Surveyors of India from among its members.

Explanation.- For the purposes of this sub-section,-

(a) " Institution of Engineers (India)" means the Institution of Engineers (India first registered in 1920 under the India Companies Act, 1913 (7 of 1913) and subsequently incorporated by a Royal Charter in 1935.

(b) "Institution of Surveyors of India" means the Institution of Surveyors registered under the Societies Registration Act, 1860 (21 of 1860).

(4) Notwithstanding anything contained in clause (a) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the Indian Institution of Architects, persons referred to in the said clause (a) who are qualified for registration under section 25, and the persons so nominated shall hold officer for such period as the Central Government may, by notification in the Official Gazette, specify.

(5) Notwithstanding anything contained in clause (f) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the State

Governments concerned, persons referred to in the said clause (f), who are qualified for registration under section 25, and the person so nominated shall hold officer for such period as the Central Government may, by notification in the Official Gazette, specify.

4. President and Vice-President of Council-

(1) The President and the Vice-President of the Council shall be elected by the members of the Council from among themselves :

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President.

(2) An elected President or Vice-President of the Council shall hold officer for a term of three years or till he ceases to be a member of the Council, whichever is earlier, but subject to his being a member of the Council, he shall be eligible for re-election:

Provided that-

(a) the President or the Vice-President may, by writing under his hand addressed to the Vice-president or the President, as the case may be resign his office;

(b) the President or the Vice-President shall, notwithstanding the expiry of this term of three years, continue to hold officer until his successor enters upon office.

(3) The President and the Vice-president of the Council shall exercise such powers and discharge such duties as may be prescribed by regulations.

5. Mode of elections-

(1) Elections under this Chapter shall be conducted in such manner as may be prescribed by rules.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government by notification in the Official Gazette in this behalf, and the decision of the Tribunal shall be final :

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

6. Terms of office and casual vacancies-

(1) Subject to the provision s of this section, an elected or nominated member shall hold officer for a term of three years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is later.

(2) An elected or nominated member may, at any time, resign his membership by writing under his hand addressed to the President, or in his absence, to the Vice-President, and the seat of such member shall thereupon become vacant.

(3) A member shall be deemed to have vacated his seat-

(i) if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council; or

(ii) if he ceases to be a member of the body referred to in clause (a), clause (g) or clause (h) of sub-section (3) of section 3 by which he was elected or nominated, as the case may be; or

(iii) in the case where he has been elected under clause (c) of sub-section (3) of section 3, if the ceases to hold his appointment as the head of an institution referred to in the said clause.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person so elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible fore re-election or re-nomination, but not exceeding three consecutive terms.

7. Validity of act or proceeding of Council, Executive Committee or other committees not to be invalidated by reason of vacancy, etc.- No act or proceeding of the Council or the Executive Committee or any other committee shall be invalid merely by reason of-

(a) any vacancy in, or defect in the constitution of, the Council, the Executive committee or any other committee, or

(b) any defect in the election or nomination of a person acting as a member there of, or

(c) any irregularity in procedure not affecting the merits of the case.

8. Disabilities.- A person shall not be eligible for election or nomination as a member of the Council, if he-

(a) is an undischarged insolvent; or

(b) has been convicted by a court in India for any offence and sentenced to imprisonment for not less than two years, and shall continue to be ineligible for a further period of five years since his release.

9. Meetings of Council-

(1) The Council shall meet at least once in every six months at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

(2) Unless otherwise prescribed by regulations, nine members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

(3) In the case of an equal division of votes, the President, or in his absence, the Vice-President or, in the absence of both , the member presiding over the meeting, shall have and exercise a second or casting vote.

10. Executive Committee and other committees-

(1) The Council shall constitute from among its members an Executive Committee, and may also constitute other committees for such general or special purposes as the Council deems necessary to carry out its functions under this Act.

(2) The Executive Committee shall consist of the President and the Vice-President of the Council who shall be member ex-officio and five other members who shall be elected by the Council from among its members.

(3) The President and the Vice-president of the Council shall be the Chairman and Vice-Chairman respectively of the Executive Committee.

(4) A member of the Executive Committee shall hold office as such until the expiry of his term as a member of the Council but subject to his being a member of the Council, he shall be eligible for re-election.

(5) In addition to the powers and duties conferred and imposed on it by this Act, the Executive committee shall exercise such powers and discharge such duties as may be prescribed by regulations.

11. Fees and allowances to President, Vice President and members.- The President, the Vice-President and other members of the Council shall be entitled to such fees and allowances as the Council may, with the previous sanction of the Central Government fix, in this behalf.

12. Officers and other employees.-

(1) The Council shall-

(a) appoint a Registrar who shall act as its Secretary and who may also act, if so decided by the Council, as its treasurer;

(b) appoint such other officers and employees as the Council deems necessary to enable it to carry out its functions under this Act;

(c) with the previous sanction of the Central Government, fix the pay and allowances and other conditions of service of officers and other employees of the Council.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), for the first three years from the first constitution of the Council, the Registrar of the Council shall be a person appointed by the Central

Government, who shall hold office during the pleasure of the Central Government.

(3) All the persons appointed under this section shall be the employees of the Council.

13. Finances of Council-

(1) There shall be established a Fund under the management and control of the Council in to which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the Fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the Fund distinguishing capital from revenue.

(4) The annual accounts of the Council shall be subject to audit by an auditor to be appointed annually by the Council.

(5) As soon as may be practicable at the end of each year, but no later than the thirtieth day of September of the year next following, the Council shall cause to be published in the Official Gazette a copy of the audited accounts and the report of the Council for that year and copies of the said accounts and report shall be forwarded to the Central Government.

(6) The Fund shall consist of-

(a) all moneys received from the Central Government by way of grant, gift or deposit;

(b) any sums received under this Act whether by way of fee or otherwise.

(7) All moneys standing at the credit of the Council which cannot immediately be applied shall be deposited in the State Bank of India or in any other bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

14. Recognition qualifications granted by authorities in India-

(1) The qualifications included in the Schedule or notified under section 15 shall be recognised qualifications for the purposes of this Act.

(2) Any authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette.Amend the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring

that it shall be a recognised qualification only when granted after a specified date :

Provided that until the first Council is constituted, the Central Government shall, before issuing any notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette.

15. Recognition of architectural qualifications granted by authorities in foreign countries-

(1) The Central Government may, after consultation with the Council, direct, by notification in the Official Gazette, that an architectural qualification granted by any university or other institution in any country outside India in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be a recognised qualification for the purposes of this Act or, shall be so only when granted after a specified date or before a specified date :

Provided that until the first Council is constituted the Central Government shall, before issuing any notification as aforesaid, consult the expert committee set up under the proviso to sub-section (2) of section 14.

(2) The Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a register of architects, for settling of a scheme of reciprocity for the recognition of architectural qualifications, and in pursuance of any such scheme, the central Government may, by notification in the Official Gazette, direct that such architectural qualification as the Council has decided should be recognised, shall be deemed to be a recognised qualification for the purposes of this Act, any such notification may also direct that such architectural qualification shall be so recognised only when granted after a specified date or before a specified date.

16. Power of Central Government to amend Schedule.- Notwithstanding anything contained in sub-section (2) of section 14, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Schedule by directing that an entry be made therein in respect of any architectural qualification.

17. Effect of recognition.- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognised qualification shall be a sufficient qualification for enrolment in the register.

18. Power require information as to courses of study and examinations.- Every authority in India which grants a recognised qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations

are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

19. Inspections of examinations-

(1) The Executive Committee shall, subject to regulations, if any, made by the Council, appoint such number of inspectors as it may deem requisite to inspect any college or institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that college or institution.

(2) The inspector shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff, equipment, accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend.

(3) The Executive committee shall forward a copy of such report to the College or institution and shall also forward copies with remarks, if any, of the college or institution thereon, to the Central Government.

20. Withdrawal of recognition-

(1) When upon report by the Executive Committee it appears to the Council-

(a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution, or

(b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution,

do not conform to the standards prescribed by regulations, the council shall make a representation to that effect to the appropriate Government.

(2) After considering such representation the appropriate Government shall forward it along with such remarks as it may choose to make to the college or institution concerned, with an intimation of the period within which the college or institution, as the case may be, may submit its explanation to the appropriate Government.

(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government, in respect of the college or institution referred to in clause (b) of sub-section (5), shall make its recommendations to the Central Government.

(4) The Central Government-

(a) after making such further enquiry, if any, as it may think fit, in respect of the college or institution referred to in sub-section (3), or

(b) on receipt of the explanation from a college or institution referred to in clause (a) of sub-section (5), or where no explanation is submitted within the period fixed, then on the expiry of that period,

may, by notification in the Official Gazette, direct that an entry shall be made in the Schedule against the architectural qualification awarded by such college or institution, as the case may be, l declaring that it shall be a recognised qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.

(5) For the purposes of this section, "appropriate government" means-

(a) in relation to any college or institution established by an Act of Parliament or managed , controlled or financed by the Central Government, the Central Government, and

(b) in any other case the State Government.

21. Minimum standard of architectural education.- The Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India.

22. Professional conduct-

(1) The Council may by regulations prescribe standards of professional conduct and etiquette and a code of ethics for architects.

(2) Regulations made by the Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force.

CHAPTER III

REGISTRATION OF ARCHITECTS

23. Preparation and maintenance of register-

(1) The Central Government shall, as soon as may be, cause to be prepared in the manner hereinafter provided a register of architects for India.

(2) The Council shall upon its constitution assume the duty of maintaining the register in accordance with the provisions of this Act.

(3) The register shall include the following particulars, namely:-

(a) the full name with date of birth, nationality and residential address of the architect;

(b) his qualification for registration, and the date on which he obtained that qualification and the authority which conferred it;

(c) the date of this first admission to the register;

(d) his professional address; and

(e) such further particulars as may be prescribed by rules.

24. First preparation of register-

(1) For the purposes of preparing the register of architects for the first time, the Central Government shall, by notification in the Official Gazette, constitute a Registration Tribunal consisting of three persons who have, in the opinion of the Central Government, the knowledge of, or experience in, architecture; and the Registrar appointed under section 12 shall act as Secretary of the Tribunal.

(2) The Central Government shall, by the same or a like notification, appoint a date on or before which application for registration, which shall be accompanied by such fee as may be prescribe by rules, shall be made to the Registration Tribunal.

(3) The Registration Tribunal shall examine every application received on or before the appointed day and if it is satisfied that the applicant is qualified for registration under section 25, shall direct the entry of the name of the applicant in the register.

(4) The first register so prepared shall thereafter be published in such manner as the Central Government may direct and any person aggrieved by a decision of the Registration Tribunal expressed or implied in the register so published may, within thirty days from the date of such publication, appeal against such decision to an authority appointed by the Central Government in this behalf by notification in the Official Gazette.

(5) The authority appointed under sub-section (4) shall, after giving the person affected an opportunity of being heard and after calling for relevant records, make such order as it may deem fit.

(6) The Registrar shall amend, where necessary, the register in accordance with the decisions of the authority appointed under sub-section (4).

(7) Every person whose name is entered in the register shall be issued a certificate of registration in such form as may be prescribed by rules.

(8) Upon the constitution of the Council, the register shall be given into its custody, and the Central Government may direct that the whole or any specified part of the application fees for registration in the first register shall be paid to the credit of the Council.

25. Qualification for entry in register.- A person shall be entitled on payment of such fee as may be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India and-

    (a) holds a recognised qualification, or

    (b) does not hold such a qualification but, being a citizen of India, has been engaged in practice as an architect for a period of not less than five years prior to the date appointed under sub-section (2) of section 24, or

    (c) possesses such other qualifications as may be prescribed by rules :

    Provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification-

    (a) recognised under sub-section (1) of section 15 unless by the law and practice of a country outside India to which such person belongs, citizens of India holding architectural qualification registrable in that country are permitted to enter and practise the profession of architect in such country, or

    (b) unless the Central Government has, in pursuance of a scheme of reciprocity or otherwise, declared that qualification to be a recognised qualification under sub-section (2) of section 15.

26. Procedure for subsequent registration-

    (1) After the date appointed for the receipt of applications for registration in the first register of architects, all applications of registration shall be addressed to the Registrar of the Council and shall be accompanied by such fees as may be prescribed by rules.

    (2) If upon such application the Register is of opinion that the applicant is entitled to have his name entered in the register he shall enter thereon the name of the applicant:

    Provided that no person, whose name has under the provisions of this Act been removed from the register, shall be entitled to have his name re-entered in the register except with the approval of the Council.

    (3) Any person whose application for registration is rejected by the Registrar may, within three months of the date of such rejection, appeal to the Council.

    (4) Upon entry in the register of a name under this section, the Registrar shall issue a certificate of registration in such form as may be prescribed by rules.

27. Renewal fees-

    (1) The Central Government may, by notification in the Official Gazette, direct that for the retention of a name in the register after the 31st day of December of the year following the year in which the name is first entered in the register, there shall be paid annually to the Council such renewal fee as may be prescribed by rules and where such direction

has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates.

(2) Where the renewal fee is not paid before the due date, the Registrar shall remove the name of the defaulter from the register :

Provided that a name so removed may be restored to the register on, such conditions as may be prescribed by rules.

(3) On payment of the renewal fee the Registrar shall, in such manner as may be prescribed by rules, endorse the certificate of registration accordingly.

28. Entry of additional qualification.- An architect shall, on payment of such fee as may be prescribed by rules, be entitled to have entered in the register any further recognised qualification which he may obtain.

29. Removal from register-

(1) The Council may, by order, removing from the register the name of any architect-

(a) from whom a request has been received to that effect, or

(b) who has died since the last publication of the register.

(2) Subject to the provisions of this section, the Council may order that the name of any architect shall be removed from the register where it is satisfied, after giving him a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make,-

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence which, in the opinion of the Council, involves moral turpitude; or

(c) that he is an undischarged insolvent; or

(d) that he has been adjudged by a competent court to be of unsound mind.

(3) An order under sub-section (2) may direct that any architect whose name is ordered to be removed from a register shall be ineligible for registration under this Act for such period as may be specified.

(4) An order under sub-section 92) shall not take effect until the expiry of three months from the date thereof.

30. Procedure in inquiries relating to misconduct-

(1) When on receipt of a complain made to it, the Council is of opinion that any architect has been guilty of professional misconduct which, if proved, will render him unfit to practice as an architect, the Council may hold an inquiry in such manner as may be prescribed by rules.

(2) After holding the inquiry under sub-section (1) and after hearing the architect, the Council may, by order, reprimand the said architect or

suspend him from practice as an architect or remove his name from the register or pass such other order as it thinks fit.

31. Surrender of certificates.- A person whose name has been removed form the register under sub-section (2) of section 27, sub-section (1) or sub-section (2) of section 29 of sub-section (2) of section 30, or where such person is dead, his legal representative, as defined in clause (11) of section 2 of the Code of Civil Procedure, 1908, (5 of 1908) shall forthwith surrender his certificate of registration to the Registrar, and the name so removed shall be published in the Official Gazette.

32. Restoration to register.- The Council may, at nay time, for reasons appearing to it to be sufficient and subject to the approval of the Central Government, order that upon payment of such fee as may be prescribed by rules, the name of the person removed from the register shall be restored thereto.

33. Issue of duplicate certificates.- Where it is shown to the satisfaction of the Registrar that a certificate of registration has been lost or destroyed, the Registrar may, on payment of such fee as may be prescribed by rules, issue a duplicate certificate in the form prescribed by rules.

34. Printing of register- As soon as may be after the 1st day of April in each year, the Registrar shall cause to be printed copies of the register as it stood on the said date and such copies shall be made available to person applying therefor on payment of such fees as may be prescribed by rules and shall be evidence that on the said date the person whose names are entered therein were architects.

35. Effect of registration-

(1) Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act.

(2) After the expiry of two years from the date appointed under sub-section (2) of section 24, a person who is registered in the register shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any institution recognised by the Central of State Government.

CHAPTER IV

MISCELLANEOUS

36. Penalty for falsely claiming to be registered- If any person whose name is not for the time being entered in the register falsely represents that it so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees.

37. Prohibition against use of title-

(1) After the expiry of one year from the date appointed under sub-section (2) of section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to-

(a) practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";

(b) a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

(i) "landscape architect" means a person who deals with the design of open spaces relating to plants trees and landscape;

(ii) "naval architect" means an architect who deals with design and construction of ships.

(2) If any person contravenes the provision s of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both.

38. Failure to surrender certificate of registration.- If any person whose name has been removed from the register fails without sufficient cause forthwith to surrender his certificate of registration, he shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing failure, with an additional fine which may extend to ten rupees for each day after the first during which he has persisted in the failure.

39. Cognizance of offences-

(1) No Court shall take cognizance of any offence punishable under this Act, except upon complaint made by order of the Council or a person authorised in this behalf by the Council.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try and offence punishable under this Act.

40. Information to furnished by Council and publication thereof-

(1) The Council shall furnish such reports, copies of its minutes, and other information to the Central Government as that Government may require.

(2) The Central Government may publish, in such manner as it may think fit, any report, copy or other information furnished to it under this section.

41. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against the Central Government, the Council or any

member of the Council, the Executive Committee or any other committee or officers and other employees of the Council for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

42. Members of Council and officers and employees to be public servants.- The members of the Council and officers and other employees of the Council shall be deemed to be public servants within the meaning of section 21(45 of 1860) of the Indian Penal Code.

43. Power to remove difficulties-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official to Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament and the provisions of sub-section (3) of section 44 shall apply in respect of such order as it applies in respect of a rule made under this Act.

44. Power of Central Government to make rules-

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following maters, namely:-

(a) the manner in which elections under Chapter II shall be conducted, the terms and conditions of service of the member of the Tribunal appointed under sub-section (2) of section 5 and the procedure to be followed by the Tribunal;

(b) the procedure to be followed by the expert committee constituted under the proviso to sub-section (2) of section 14 in the transaction of its business and the powers and duties of the expert committee and the travelling and daily allowances payable to the members thereof;

(c) the particulars to be included in the register of architects under sub-section (3) of section 23;

(d) the form in which a certificate of registration is to be issued under sub-section (7) of Section 24, sub-section (4) of section 26 and section 33;

(e) the fee to be paid under section 24, 25, 26, 27, 28, 32 and 33;

(f) the conditions on which name may be restored to the register under the proviso to sub-section (2) of section 27;

(g) the manner of endorsement under sub-section (3) of section 27;

(h) the manner in which the Council shall hold an enquiry under section 30;

(i) the fee for supplying printed copies of the register under section 34;

(j) any other matter which is to be or may be provided by rules under this Act.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

45. Power of Council to make regulations-

(1) The Council may, with the approval of the Central Government, make regulations no t inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the management of the property of the Council;

(b) the power and duties of the President and the Vice-President of the Council;

(c) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10, the time and places at which such meetings shall be held, the conduct of business thereat and the number of person necessary to constitute a quorum;

(d) the functions of the Executive Committee or of any other committee constituted under section 10;

(e) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;w

(f) the appointment, powers and duties of inspector;

(g) the standards of staff, equipment, accommodation, training and other facilities for architectural education;

(h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(i) the standards of professional conduct and etiquette and code of ethics to be observed by architects;

(i) any other mater which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

Sch.1. SCHEDULE.- THE SCHEDULE

(See section 14)

QUALIFICATIONS

1. Bachelor Degree in Architecture awarded by Indian Universities established by an Act of the Central or State Legislature.
2. National Diploma (formerly All Indian Diploma) in Architecture awarded by the All India Council for Technical Education.
3. Degree of Bachelor of Architecture (B.Arch.) awarded by the Indian Institute of Technology, Kharagpur.
4. Five-Year full-time diploma in Architecture of the Sir J.J.School of Art, Bombay, awarded after 1941.
5. Diploma in Architecture awarded by the State Board of Technical Education and Training of the Government of Andhra Pradesh with effect from 1960 (for the students trained at the Government College of Arts and Architecture, Hyderabad).
6. Diploma in Architecture awarded by the Government College of Arts and Architecture, Hyderabad till 1959, subject to the condition that the candidates concerned have subsequently passed a special final examination in architecture held by the State Board of Technical Education, Andhra Pradesh and obtained a special certificate.
7. Diploma in Architecture awarded by the University of Nagpur with effect from 1965 to the students trained at the Government Polytechnic, Nagpur.
8. Government Diploma in Architecture awarded by the Government of Maharashtra (or the former Government of Bombay).
9. Diploma in Architecture of Kalabhavan Technical Institute, Baroda.
10. Diploma in Architecture awarded by the School of Architecture, Ahmedabad.11.Membership of the Indian Institute of Architects.