

## ERGO

*Analysing developments impacting business*

### AMENDMENTS TO MAHARASHTRA STAMP ACT: INCREASE IN THE CEILING ON STAMP DUTY FOR SECURITY

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The Government of Maharashtra (GoM) has by the Maharashtra Stamp (Amendment) Act, 2021 (2021 Amendment Act) amended Article 6 (*Agreement Relating to Deposit of Title Deeds, Pawn, Pledge or Hypothecation*), Article 33 (*Further Charge*), Article 40 (*Mortgage Deed*), Article 41 (*Mortgage of Crop*) and Article 54 (*Security Bond or Mortgage Deed*) of Schedule I of the Maharashtra Stamp Act, 1958 (Maharashtra Stamp Act). The 2021 Amendment Act has been passed to (i) accommodate the revenue deficit pursuant to the rationalisation of stamp duty costs under the Maharashtra Stamp (Amendment and Validation) Act, 2021 and (ii) put a maximum ceiling on the stamp duty paid on instruments related to mortgage, hypothecation and pledge.

The key amendments to the Maharashtra Stamp Act brought about by the 2021 Amendment Act are as follows:

- *Amendment to Article 6 of Schedule I:* The 2021 Amendment Act has increased the existing ceiling of stamp duty payable on an agreement relating to deposit of title deeds, pawn, pledge or hypothecation where the amount secured exceeds INR 5 lakhs, from INR 10 lakhs to INR 20 lakhs. This has been done by amending column (2) of Article 6(1)(b) and Article 6(2)(b). As stated above, the increase of stamp duty by twice the amount of the maximum duty payable prior to the 2021 Amendment Act has been made to accommodate the revenue deficit pursuant to the Maharashtra Stamp (Amendment and Validation) Act, 2021.

Further, a proviso has been added in column (2) of Article 6(1)(b) and Article 6(2)(b) to the effect that in case of instrument executed in favour of consortium of banks, the duty chargeable shall not exceed INR 50 lakhs. To provide some context, pursuant to the judgment of the Hon'ble Supreme Court of India in the matter of *Chief Controlling Revenue Authority v Coastal Gujarat Power Limited (Civil Appeal No. 6054 of 2015)* dated 11 August 2015 (Coastal Gujarat Judgment), execution of documents by a company with every bank or financial institution was treated as a 'distinct matter' and 'distinct transaction' and hence was required to be stamped accordingly. The provisos put a maximum ceiling of stamp duty of INR 50 lakhs if the instrument creates security in favour of the consortium of banks.

- *Amendment to Article 33 of Schedule I:* The 2021 Amendment Act has modified the stamp duty payable on instrument imposing a further charge on mortgaged property, where possession of the subject property is not given or agreed to be given, from '0.5% of the amount of further charge secured by such

instrument subject to the cap of INR 10 lakhs' to '0.3% of the amount of further charge secured by such deed, subject to maximum of INR 20 lakhs, where the amount secured exceeds INR 5 lakhs'. This amendment has effectively aligned Article 33 to Article 40(b) of the Maharashtra Stamp Act, which stipulated stamp duty for mortgage deed.

- *Amendment to Article 40(b) of Schedule I:* The 2021 Amendment Act has increased the existing ceiling on stamp duty payable on a mortgage deed (not being, *inter alia*, an agreement relating to deposit of title deeds, pawn, pledge or hypothecation (under Article 6)), where possession of the subject property is not given or agreed to be given and the amount secured exceeds INR 5 lakhs, from INR 10 lakhs to INR 20 lakhs.
- *Amendment to Article 41 of Schedule I:* The 2021 Amendment Act has increased the stamp duty payable on mortgage of a crop, whether the crop is or is not in existence at the time of mortgage, from 'INR 1 for every INR 200 or part thereof' to '0.1% of the amount secured by such deed, subject to the minimum of INR 100 if the amount secured by such deed does not exceed INR 5 lakhs' and '0.3% of the amount of secured by such deed, subject to cap of INR 20 lakhs, where the amount secured exceeds INR 5 lakhs'.
- *Amendment to Article 54 of Schedule I:* The 2021 Amendment Act has modified the stamp duty payable on a security bond or mortgage deed from '0.5% of the amount secured by such deed subject to the cap of INR 10 lakhs' to '0.1% of the amount of secured by such deed, subject to the minimum of INR 100, if the amount secured by such deed does not exceed INR 5 lakhs' and '0.3% of the amount secured by such deed, subject to cap of INR 20 lakhs, where the amount secured exceeds INR 5 lakhs'.

## Conclusion

The 2021 Amendment Act has come in quick succession of the Maharashtra Stamp (Amendment and Validation) Act, 2021 by which the GoM reinforced the Coastal Gujarat Judgment. One of the welcome changes brought about by the 2021 Amendment Act is the ceiling on the maximum stamp duty payable on consortium security documents. However, the 2021 Amendment Act has substantially increased the stamp duty costs for non- consortium related security documents as well as bilateral security arrangements. Further, the maximum ceiling on stamp duty under Articles 6 and 40 of Schedule I does not cover non-bank creditors like the non-banking financial companies or the asset reconstruction companies. While the intent of GoM is to support industrial and commercial sector, the impact of the revisions in stamp duty rates are likely to only further burden the industry since the increase of stamp duty is across board on the security documents.

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