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AMENDMENTS TO THE BOMBAY STAMP ACT, 1958 – RECOMMENDATIONS OF BOMBAY CHAMBER OF COMMERCE AND INDUSTRY

*Set out below are some suggestions that may be considered by the Government for revising stamp duty rates set out in Schedule 1 of the Bombay Stamp Act, 1958 (" **Bombay Stamp Act**"). Our recommendations are based on an analysis of the impact of the stamp duty rates on commerce in the State of Maharashtra and a comparison of the rates prevailing in the National Capital Territory of Delhi.*

General Observations

1. Based on the Hobbesian philosophy that every citizen of a state will be required to contribute to the state exchequer in return for protection from the state, various countries across the world introduced duties on instruments and transactions. Stamp duties were initially introduced as and continue to be a main source of revenue for states in India.

2. However, over a period of time, though there has been an increase in the stamp duty rates applicable in various states, the absolute returns to the state have diminished on account of the fact that factors such as inefficiency in tax administration have not been rectified and the high rates have contributed to increased evasion. For example, in the year 2000-2001, given that the stamp duty payable on a mortgage was much higher in the state of Maharashtra as compared to the state of Gujarat, a number of transactions involving the issuance of debentures (on which stamp duty as payable on a mortgage of immoveable property was required to be paid) were structured in Gujarat to reduce the amount of stamp duty payable. Press reports however suggest that with the introduction of a cap on the stamp duty payable on the same under the Bombay Stamp Act, companies issuing debentures preferred to issue the debentures in the state of Maharashtra. Studies further show that with respect to real estate transactions, lowering the stamp duty payable on such transactions by some states in India has resulted in an increase in revenue for such states. For example, when the State of Rajasthan reduced the stamp duty rates from 12% to 7% in 1996-1997, studies conducted by the World Bank show that the revenues increased by 36 percent between 1996-1997 and 1998-1999.

3. The Mumbai High Court is considered to be the most appropriate jurisdiction for any litigation relating to commercial matters. In light of the competency of the Mumbai High Court and other factors (such as resource availability etc.), companies / parties would in the ordinary course prefer to establish their registered offices in the state of Maharashtra or execute transactions in the state of Maharashtra. Thus, if the state were to consider including reasonable stamp duty rates (and caps) in the Bombay Stamp Act, there will be a positive impact on the commerce in the state. An increase in commercial activities in the state would also have other ancillary benefits, such as an increase in employment opportunities, increased local tax collections, etc.

4. Rationalization of the stamp duty rates will incentivize parties to regularize their transactions and would result in increased collection of taxes both at the central and state government levels. Any initial loss in revenue as a result of lower stamp duty rates can be offset by appropriately designed intergovernmental transfers. Additionally, instead of imposing very high stamp duty rates, the Government should consider (a) including a gradation system with respect to the imposition of stamp duty, based on the volume of the transaction etc., and (b) reforming the tax administration system in the state (including evolving specific guidance values for real estate properties).

Specific Recommendations

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A.	**AGREEMENTS WITH MONETARY VALUE**			
1.	Article 5 (h-A) (iv) – Stamp duty on an agreement creating an obligation, right or interest and having monetary value but not covered under any other article Stamp duty payable – if the amount agreed does not exceed Rs. 10 lakhs – 0.1% of the total value of the contract In any other case – 0.2% of the total value of the contract	We would request that the Government clarify the agreements that are sought to be covered under this Article. In its current form it includes all service contracts, loan agreements, security agreements, investment agreements, etc. Previously, there was a cap of Rs. 10 lakhs. Please consider introducing a cap on the total amount of stamp duty payable under this provision. If 10 lakhs is deemed to be too low, a graded cap can be introduced, depending on the nature and value of the agreement.	There is no corresponding provision under the Delhi Stamp Act and for agreements that are not specifically mentioned in Article 5 therein, the stamp duty payable is Rs. 50.	In light of the high stamp duty rates in the State of Maharashtra, parties normally execute documents outside the State of Maharashtra, where the stamp duty rates are lesser. Consequently, the state loses revenue. Previously, inspite of the high stamp duty rates, parties still considered execution of such agreements in the Maharashtra on account of the cap on the stamp duty payable under this provision (Rs. 10 lakhs being the maximum stamp duty payable). This was mostly because of the competency of courts in Mumbai in commercial matters. However, with the deletion of the cap in the recent amendments to the Bombay Stamp Act, execution of such agreements in Maharashtra could become commercially unviable.

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B.	**CORPORATE ACTIONS**			
2.	Article 5 (c)(ii) - Stamp duty payable on an agreement relating to the purchase or sale of shares, bonds, debentures, debenture stock or any other marketable security of a like nature Stamp duty payable - .01% of the total value of the agreement	Please consider introducing a cap on the stamp duty payable on an agreement relating to sale of shares.	Per the provisions of the Indian Stamp (Delhi Amendment) Act, 2007 ("**Delhi Stamp Act**"), stamp duty on an agreement relating to the sale or purchase of shares is capped at Rs. 1000.	Items set out in sl. Nos. 2 to 7 of this Memorandum, deal with corporate actions taken by the Company which are often linked to the place of the registered office of the company. The high stamp duty rates in Maharashtra are causing companies to establish their registered offices in other states. Such a practice results in a loss of revenue for the state exchequer both as a result of non – receipt of stamp duty and other taxes (such as VAT) or other fees (such as fees payable under the Shops & Establishments Act) not being received by the state. Further, establishment of registered offices within the state also has other ancillary benefits as the company would be carrying on its operations within the state.
3.	Article 10 – Articles of Association of a Company Stamp duty payable – 0.2% of share capital of the company, subject to a maximum of Rs. 50 lakhs.	Please consider reducing the cap, as separate stamp duty is payable on the share certificate.	0.15% of the authorized share capital of a company, subject to a maximum of Rs. 25 lakhs.	Please see 2 above. In addition, a number of activities are linked to the incorporation / increase in share capital of a company and currently stamp duty is payable on each of these actions, without corresponding credit being given. For example, at the time of incorporation, stamp duty is payable on the Memorandum / Articles of Association, on the share subscription agreement (if any)

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				and on the share certificates. This substantially increases the cost to the company of raising funds by way of a capital issuance.
4.	Article 17 – Certificate or other document evidencing the right or title of the holder to any shares, scrip or stock in or of any incorporated company or other body corporate or to become proprietor of share, scrip or stock in or of any such company or body corporate Stamp duty - .01% of the value of the shares, scrip or stock (which value includes the premium amount, if any)	We would recommend that the stamp duty be levied on the par amount of the shares only, especially if separate stamp duty has been paid on the share subscription agreement.	While the value of stamp duty is the same as in Mumbai, given that the stamp duty is payable only on the par value of the shares, the stamp duty payable in states like Delhi is much lower than in Maharashtra.	Please see 2 & 3 above. Given the more beneficial provision in states like Delhi, companies often hold the board meeting at which such shares are allotted outside the state of Maharashtra, causing a loss of revenue to the State.
5.	Article 25 (da) – conveyance relating to an order of the High Court in respect of an amalgamation or reconstruc-tion under S. 394 of the Companies Act, 1956. Stamp duty @ 10% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and amount of consideration paid for such amalgamation (amount of duty	In the budget speech for the year 2009-2010, it was announced that the ceiling of Rs. 25 crores was proposed to be done away with. Please consider retaining the cap on stamp duty.	No corresponding provision. Currently, orders of the High Court under S. 394 of the Companies Act, 1956 are not stamped in Delhi.	Please see 2 above. The rationale for stamp duty was to earn revenue for the state without hampering commerce. If the change proposed in the budget speech is implemented, it could result in a number of restructurings becoming commercially unviable. It could force companies to not only move their registered office out of Maharashtra but also their operations.

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	not to exceed 5% of the true market value of the immoveable property or 0.7% if the aggregate of the market value of the shares issued or allotted). **Vide a notification dated May 06, 2002, the maximum duty chargeable on an amalgamation is Rs. 25 crores.**			
6.	Article 39 – Memorandum of Association Stamp duty payable – 0.2% of share capital of the company, subject to a maximum of Rs. 50 lakhs If the memorandum of association is accompanied with the articles of association - Rs. 200	Please consider reducing the cap, as separate stamp duty is payable on the share certificate.	If the memorandum of association is accompanied with the articles of association - Rs. 200 If the memorandum of association is not accompanied by the articles of association – Rs. 500	Please see 2 above. In addition, a number of activities are linked to the incorporation / increase in share capital of a company and currently stamp duty is payable on each of these actions, without corresponding credit being given. For example, at the time of incorporation, stamp duty is payable on the Memorandum / Articles of Association, on the share subscription agreement (if any) and on the share certificates. This substantially increases the cost to the company of raising funds by way of a capital issuance.

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7.	Article 43(f) – Stamp duty on a Note or Memorandum & Article 51A - Record of Transaction Stamp duty payable – 0.01% of the value of the security, at the time of the purchase or sale	Under Article 43(f) of the Bombay Stamp Act, a note or a memorandum relating to a purchase or sale of marketable security is subject to stamp duty under that Article. Article 51A was introduced in the Bombay Stamp Act in 2005 and pursuant to such Article on a record of a transaction effected through a stock exchange, stamp duty will be payable at the rates mentioned in that article. Thus, since most transacttions relating to marketable securities are usually effected through the stock exchanges in Mumbai, there is ambi-guity in relation to whether notes or records relating to all transactions (whether or not they have a connection with the State of Maharashtra) will be required to be stamped in Maharashtra (on account of Article 51A). We would recommend that the two provisions be clarified.	While the stamp duty on a note or memorandum is the same as the stamp duty payable in Maharashtra, there is no corresponding provision to Article 51A.	There is currently ambiguity on whether every transaction put through the stock exchanges, i.e., the BSE and the NSE need to be stamped in the state. Given the corresponding provision to Article 43 in other state legislations and Article 51A in the Bombay Stamp Act, the probability of stamp duty being paid twice on the same transaction is high and adversely affects the structuring of a transaction.

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C.	**CONVEYANCE**			
8.	Article 5 (g-a) – Stamp duty on agreement relating to giving authority or power to a promoter or a developer for construction, development of or sale or transfer of any immoveable property Stamp duty payable – it is the same duty as is payable on a Conveyance and is in the range of 2-5% depending on the situation of the immoveable property. Stamp duty payable on the market value of the property	We would recommend (a) reducing the stamp duty rates on such agreements, and (b) introducing a cap on the stamp duty payable, as may be relevant. Further, we would recommend that the stamp duty payable be calculated on the amount agreed in the Agreement instead of the true market value (as the same may not be accurate).	There is no similar provision in the Delhi Act. Under the Delhi Act, such agreements are normally stamped at Rs. 50 (plus other duties that may be payable).	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level.

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				iv. undervaluation of the property also results in money laundering and feeds the 'black money' economy. Thus, not only are stamp duty revenues eroded as a result of the high rates but there is also the possibility of other tax yields such as excise tax, sales tax being affected. v. With respect to development agreements, it is possible that incidence of high stamp duty rates may result in a delay in the development of the properties (as the high stamp duty rates may delay the sale of property by the owners to the developers until the owner can by itself accumulate funds to develop the property itself). Instead of imposing high stamp duty rates, an attempt should be made to (a) formulate more accurate valuation guidelines for the purposes of computing the tax payable, and (b) overhaul the administrative machinery. This would result in higher tax collections. Further, in most states, for the purposes of calculating the stamp duty, the value agreed in the contract is taken as the value on which the stamp duty is payable (as opposed to the position in Maharashtra, where the stamp duty is payable on the market value of the property).

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9.	Article 25 – Conveyance Stamp duty payable is in the range of 2-5% depending on the situation of the immoveable property. Stamp duty payable on the **market value of the property.**	We would recommend (a) reducing the stamp duty rates on such agreements, and (b) introducing a cap on the stamp duty payable, as may be relevant. Further, we would recommend that the stamp duty payable be calculated on the amount agreed in the Agreement instead of the true market value (as the same may not be accurate).	3% of the consideration amount set forth in the instrument.	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level.

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10.	Article 36 – Lease Stamp duty payable – Depending on the term of the lease, the stamp duty payable is the same as that on a conveyance and for the purposes of calculation of the same, the value varies from 10 percent of the market value to 90 percent of the market value.	We would recommend that the stamp duty rates be lowered. Additionally, in other states such as Delhi, the stamp duty is calculated on the average annual rent payable and not on the market value.	The stamp duty payable is 3%. However, depending on the tenure of the lease, the value on which the stamp duty is payable varies (i.e., the stamp duty is calculated on the value of the average annual rent or two or three times the average annual rent)	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level. iv. undervaluation of the property also results in money laundering and feeds the 'black money' economy. Thus, not only are stamp duty revenues eroded as a result of the high rates but there is also the possibility of other tax yields such as excise tax, sales tax being affected.

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				v. with respect to development agreements, it is possible that incidence of high stamp duty rates may result in a delay in the development of the properties (as the high stamp duty rates may delay the sale of property by the owners to the developers until the owner can by itself accumulate funds to develop the property itself). Instead of imposing high stamp duty rates, an attempt should be made to (a) formulate more accurate valuation guidelines for the purposes of computing the tax payable, and (b) overhaul the administrative machinery. This would result in higher tax collections. Further, in most states, for the purposes of calculating the stamp duty, the value agreed in the contract is taken as the value on which the stamp duty is payable (as opposed to the position in Maharashtra, where the stamp duty is payable on the market value of the property).

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11.	Article 40 – Mortgage Deed Stamp duty payable – When possession of the property or any part of the property is given by the mortgagor or agreed to be given – same as a conveyance under Article 25, Where possession of the property is not given or agreed to be given – 0.5% of the amount secured by the deed, subject to a maximum of Rs. 10 lakhs	We would recommend (a) reducing the stamp duty rates on such agreements, and (b) introducing a cap on the stamp duty payable, as may be relevant. Further, we would recommend that the stamp duty payable be calculated on the amount agreed in the Agreement instead of the true market value (as the same may not be accurate).	Where possession is given – same as conveyance (please note that the calculation is on the value in the contract) Where possession is not given - 2 % with a cap of Rs. 2 lakhs.	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level.

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12.	Article 60 – Transfer of Lease by way of an assignment. Stamp duty payable – same duty as conveyance on the market value of the property being transferred	We would recommend (a) reducing the stamp duty rates on such agreements, and (b) introducing a cap on the stamp duty payable, as may be relevant.	Same duty as a conveyance on the consideration in the agreement relating to the transfer of lease.	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level.

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D.	**MISCELLANEOUS**			
13.	Article 5 (h-A) (iii) – Stamp duty on an agreement relating to specific performance by any person or group of persons, where the value of the contract exceeds Rs. 1 lac. Stamp duty payable – (a) if the amount agreed does not exceed Rs. 10 lakhs – 0.25% of the amount agreed in the contract, subject to a minimum of Rs. 100, and (b) if other cases – 0.5% of the amount agreed in the contract	We would recommend the inclusion of a cap in the Article.	No corresponding provision in the Delhi Act.	Given that there is no cap on the stamp duty payable under the article, it is commercially unviable for parties to execute such agreements in the state. Thus, given the lower stamp duty rates in certain other states, such as Delhi, companies tend to establish their registered offices in such states so as to avoid paying such huge amounts as stamp duty.
14.	Article 47 – Partnership Stamp duty payable – Where there is no share contribution or it is less than Rs. 50,000 – Rs. 500 Where there is share contribution in excess of Rs. 50,000 – Rs. 500 for every Rs. 50,000 with a cap of Rs. 5000 Where the contribution is by way of property – same duty as conveyance on the market value of the property	We would recommend (a) reducing the stamp duty rates on such agreements, and (b) introducing a cap on the stamp duty payable, as may be relevant. Further, we would recommend that the stamp duty payable be calculated on the amount agreed in the Agreement instead of the true market value (as the same may not be accurate).	In cases where the capital of the partnership exceeds Rs. 500 – 1% with a ceiling of Rs. 5000	The following are the consequences of high stamp duty rates: i. adverse impact on resource allocation and are a deterrent to the exchange of property for more productive uses. ii. transactions in property are not reported, as a result of which the state exchequer loses a lot of revenue from such transactions in property. iii. significant undervaluation of transactions. Please note that the stamp duty is payable on the market value of the property. Consequently, in order to avoid payment of large amounts of stamp duty, the market

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				value of the property is normally undervalued. Such undervaluation of property not only has an adverse impact on the revenue collection for the State of Maharashtra but also impacts the collection of other taxes at different levels, for instance, the capital gains tax component of the individual income tax payable at the central level or property taxes at the state level. iv. undervaluation of the property also results in money laundering and feeds the 'black money' economy. Thus, not only are stamp duty revenues eroded as a result of the high rates but there is also the possibility of other tax yields such as excise tax, sales tax being affected. v. with respect to development agreements, it is possible that incidence of high stamp duty rates may result in a delay in the development of the properties (as the high stamp duty rates may delay the sale of property by the owners to the developers until the owner can by itself accumulate funds to develop the property itself).

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