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CHAPTER I

INTRODUCTION

1.1 HISTORICAL BACKGROUND

Audit Quality Management Framework (AQMF):

I-Leadership and Direction

Quality Management Elements (QME): A- Tone at the top

Key Instruments Employed(KIE) : Constitution of India Art.148 to151

In India, stamp duties were first imposed in Bengal during 1797, by Regulation VI of 1797. It was then intended as an addition to public resources. Subsequently, Stamp Acts XXXVI of 1860, X of 1862, XVIII of 1869 and I of 1879 were passed by the Governor General in Council prior to the present Indian Stamp Act, II of 1899 the stamp law as contained in these Acts, is in most respects modeled upon English Stamp law.

The present Central Act II of 1899 (The Indian Stamp Act) is according to its preamble, an Act to consolidate and amend the law relating to stamps. It is intended to repeal all earlier enactment on the subject, to re-enact in a consolidated form all the earlier Acts and to introduce certain amendments in the light of the defects noticed in the working of the Stamp Law.

1.2 CONSTITUTIONAL PROVISIONS AND LEGISLATIVE BACKGROUND

Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty, is a subject included in the Concurrent List of the Seventh Schedule of the Constitution of India (item 44 of the List III – Concurrent List), while duties or fees collected by means of judicial stamps are regulated by State Legislation vide item 3 of List II (State List). Under Article 246(1) read with entry 91 of the List I (Union List) of the Seventh Schedule to the Constitution of India, parliament has exclusive powers

to make laws with respect to any of the matters regarding rates of stamp duty in respect of bills of exchange, Cheques, promissory notes, bill of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. In respect of other documents, the legislature of any State has exclusive power to make laws for the State (vide item 63 of list II-State List). Under Article 268 of the Constitution, stamp duties on documents mentioned in List I (Item 91) are also collected and appropriated by the State within which such duties are leviable.

The Indian Stamp Act, 1899 and the Karnataka Stamp Act 1957, impose duty on various instruments specified in the Schedule thereto at the rates prescribed therein. Such duties are paid by the persons, who are required to pay as per Section 30 of Karnataka Stamp Act, 1957, by either using impressed stamp paper of proper denomination or by affixing stamps of proper denomination on them. The Karnataka Stamp Rules 1958 have been framed by the Government of Karnataka for the purpose of the Act by virtue of powers vested in them, which lay down the detailed procedure for the determination and collection of Stamp Duty.

Article 246 (2) of the Constitution and items 6 and 47 of List III of the Seventh Schedule confer upon the State Legislature/ Parliament the power to make laws for the registration of deeds and documents and for the levy and collection of fees in respect of the registration of such deeds and documents. In so far as levy and collection of registration fees is concerned, the Indian Registration Act, 1908, the Karnataka Registration Rules, 1965, the Table of Registration Rules, 1965 and the Table of Registration Fees broadly outline the system of assessment and collection of revenue under registration fees.

By virtue of the powers vested under Section 78 of the Indian Registration Act, the Government of Karnataka have prepared a Table of Fees payable for the registration of documents, searching the registers, making or granting copies of reasons, entries or documents before, on or after registration, safe custody and return of documents, attending private residences, filing printed copies, issue of commissions, for every registration under Section 30 and for such other matters as appear to the State Government necessary to effect the purposes of this Act.

1.2.1 ENACTMENTS

At present the following Acts and Rules are in force.

For Stamp Duty:

- The Karnataka Stamp Act, 1957
- The Karnataka Stamp Rules, 1958
- The Karnataka Municipal Corporations Act, 1976
- The Karnataka Municipalities Act, 1964
- The Karnataka Panchayat Raj Act, 1993
- The Karnataka Stamp (Prevention of Under Valuation of Instruments) Rules, 1977
- The Karnataka Stamp (Franking Impression of Stamps) Rules, 2000
- The Karnataka Stamp (Constitution of Central Valuation Committee for Estimation, Publication and Revision of Market Value Guidelines of Properties) Rules, 2003
- The Karnataka Stamp (payment of duty by means of e-stamping) Rules, 2009

For Registration Fees:

- The Indian Registration Act, 1908
- The Karnataka Registration Rules, 1965

CHAPTER –II

ORGANISATIONAL SET UP INCLUDING POWERS OF DEPARTMENTAL OFFICERS

2.1. FOR STAMP DUTY

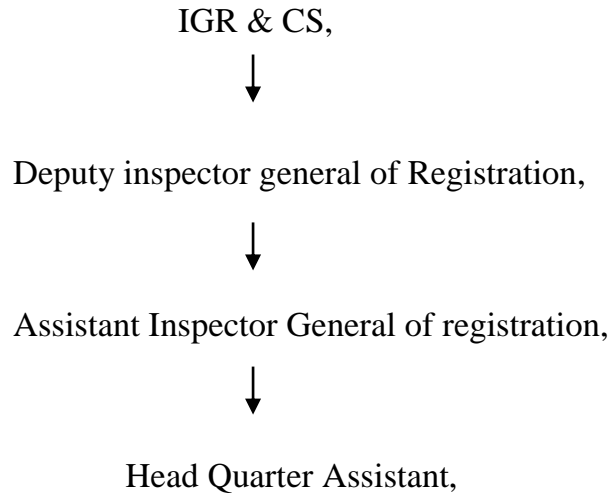
Organizational set up

AQMF: I-Leadership & Direction

QME: A- Tone at the Top

KIE: Section 67(B) Karnataka Stamp Act 1957

The head of the department in the State for administering the Acts and the Rules made there under is the Inspector General of Registration and Commissioner of Stamps. He has jurisdiction over the entire State. The authorities mentioned below are the officers administering the Acts and the Rules at the state level.



The Deputy Commissioners and the Sub-Registrars are the officers administering the Acts and the Rules at the District, Sub-division and Taluk levels respectively.

- i) District Registrar
- ii) Head Quarter Assistant to District Registrar
- iii) Sr Sub-Registrars/Sub-Registrars

Powers to enter premises and inspect documents (Sec. 67-B)

Where the Deputy Commissioner or an Assistant Commissioner or any officer not below the rank of a Sub-Registrar authorized by the Deputy Commissioner or Chief Controlling Revenue Authority has reason to believe that any of the instruments specified in the schedule has not been charged at all or incorrectly charged with duty leviable under this Act or the Indian Stamp Act, 1899, he shall have power to enter and search any premises where he has reason to believe that any such document are kept and to inspect them, take notes or extracts or seize and impound them under Section 33. A search warrant issued by a Judicial Magistrate having jurisdiction over the area is required before any such search can be carried out at a residential accommodation, and all such searches should be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) .

If upon such inspection the officer conducting the search is of opinion that any instrument chargeable with duty is not duly stamped he shall require the person liable to pay the proper duty or the amount required to make up the same and also penalty not exceeding five times the amount of the deficient duty thereof if any leviable, and in case of default the amount of duty and penalty shall be recovered in accordance with provisions of Section 46. Before taking any action under this sub-section, a reasonable opportunity of being heard shall be given to the person likely to be affected thereby.

2.2. REGISTRATION RULES

Organizational set up

AQMF: I-Leadership & Direction

QME: A- Tone at the Top

KIE: Registration Manual

The head of the department in the State for administering the Registration Act and the Rules made there under is the Inspector General of Registration.

For the work relating to levy of the registration fees, there is a three-tier departmental set up:

- a) The Inspector General for the State of Karnataka is the Chief Controlling Officer for the entire State.
- b) At the District level, there is a District Registrar for each District. He is also the Registering authority for the entire District. The Deputy Commissioner is the Ex-officio District Registrar of the District. He is assisted by a Headquarters Assistant designated as the Inspector of Registration offices.
- c) The Sub-Registrars at the Taluk level (some times there may be more than one Sub-Registrar office in the Taluk) are the Principal Field Officers, i.e., the main registering authorities who levy, collect and remit the registration fee to the treasuries.

CHAPTER III

AUDIT OF STATE RECEIPTS

3.1 INTRODUCTION

AQMF:I-Leadership and Direction

QME:A-Tone at the top

KIE: (i) CAG's DPC Act-Section 16

(ii) MSO (Audit)

Audit of receipts is one of the most important functions assigned to the Comptroller and Auditor General of India (C&AG) under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) (DPC) Act, 1971.

In pursuance of the provisions of the Constitution and C&AG's (DPC) Act, 1971, the C&AG has framed Auditing Standards that prescribe the norms of principles and practices which the auditors are expected to follow in the conduct of audit. These are also consistent with the contemporary global best practices including those of International Organization of Supreme Audit Institution (INTOSAI) and Asian Organization of Supreme Audit Institution (ASOSAI).

3.2 GENERAL PRINCIPLES OF STATE RECEIPT AUDIT

Audit of State Receipts will be regulated by the general principles governing the audit of receipts as laid down in Chapter III of C&AG's Manual of Standing Orders (Audit) {MSO(A)}, C&AG's Auditing Standards, guidelines of INTOSAI, ASOSAI and the provisions of this manual.

It is primarily the responsibility of the departmental authorities to see that all receipts due to Government are correctly and properly assessed,

realized and credited to Government account. Audit of receipts includes an examination of the systems and procedures and their efficacy in respect of:

1. Identification of potential tax assesses, ensuring compliance with laws as well as detection and prevention of tax evasion; Any payment for which a party may be liable is actually demanded, received and brought to account and the receipts are correctly calculated and credited to Government account in time.
2. Pursuit of claims with due diligence and that these are not abandoned or reduced except with adequate justification and proper authority;
3. Prompt investigation of loss of revenue through fraud, default or mistake including, if required, through the review of other similar cases. The departmental machinery is sufficiently safeguarded against error and fraud and that, so far as can be judged, the procedure is calculated to give effect to the requirements of law. Such examinations are carried out as it thinks fit with respect to the correctness of the sums brought to account in respect of revenue receipts.
4. Exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
5. Appropriate action to safeguard the interests of the Government on the orders passed by departmental appellate authorities;
6. Any scheme as may be introduced by the Government from time to time;
7. Any measures introduced to strengthen or improve revenue administration;
8. Amounts that may have fallen into arrears, maintenance of records of arrears and action taken for the recovery of the amounts in arrears;
9. Other ancillary and non-assessment functions including expenditure incurred by the departments;
10. Achievement of targets, accounting and reporting of receipts and their cross verification and reconciliation with the accounts records;

11. Amounts of refunds, rebates, drawbacks, remissions and abatements to see that these are correctly assessed and accounted for. It should be seen that the Executive has not granted any unjustified remission to tax payers.
12. It will not in any way substitute itself for the Revenue authorities in the performance of the statutory duties.
13. Where the information available on an individual case is insufficient to enable the audit to ascertain how the requirements of the law have been complied with, audit may consider as its duty to ask for any further information to enable it to form the judgment required of it as to the effectiveness of the system.
14. Audit of receipts will be regulated mainly with reference to the statutory provision and as judicially interpreted or financial rules or orders which may be applicable to the particular receipts involved.
15. Adequate regulation exists for proper accountal of Government Revenue
16. In the case of a department which is a receiver of public money, proper checks are imposed to ensure prompt detection and investigation of irregularities, double refunds, fraudulent or forged refund vouchers or other loss of revenue through fraud, error or willful omission or negligence to levy or collect taxes or to make refunds and suggest such appropriate improvements in procedures.
17. Audit is to satisfy itself by such test-checks, as it may consider necessary that the internal procedure adequately provides for and actually secures against all types of irregularities in the functioning of the department which is detailed in the KE Act and Rules there under.
18. Deviation from prescribed norms is examined.
19. Any other matter, as may be determined from time to time.

Further, audit is not to review judicial pronouncements. Also, as per instructions contained in SRA Circular dated 6.7.2009 audit need not raise objections on matters which are pending in courts.

Under Section 18(2) of the DPC Act, 1971, it is the statutory obligation of the officer-in-charge of the office/department being audited, to afford all facilities for the inspection/audit and comply with the requests for information in as complete form as possible and with all reasonable expedition.

In the subsequent chapters, the basic provisions of the Acts and the rules governing the assessment and collection of Stamp duty and Registration fees etc., are set out. Being only a summary, this can in no sense be regarded as a substitute for the Act itself and therefore, it should be treated merely as a preliminary step to enable the auditor to grasp the essentials of the administration of the Karnataka Stamp Act, 1957 and rules made there under. For a further and exhaustive study, the provisions of the Acts and the case laws should be relied upon.

CHAPTER IV

AUDITING STANDARDS

AQMF: I-Leadership & Direction

QME: C-Strategic Direction & Planning

KIE: Chapter I ,II, III,& IV of Auditing standards of C&AG

Auditing Standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of Audit. They provide minimum guidance to the Auditor that helps to determine the extent of auditing steps and procedures that should be applied in the audit and constitute the criteria or yardstick against which the quality of audit results are evaluated.

The auditing standards of the INTOSAI have been suitably adapted with due consideration of the Constitution of India, relevant Statutes and rules for the auditing standards for the SAI.

(para 2.1 and 2.2 chapter 1 auditing standard of C&AG)

4.1 INTOSAI's Auditing Standards

The general framework of the auditing standards of INTOSAI has been deduced from the Lima, Tokyo and Seoul declarations, the statements and reports adopted by INTOSAI in various congresses, and the report of the United Nations Expert Group Meeting in Public Accounting and Auditing in Developing countries.

The auditing standards consist of four parts:

- (a) Basic postulates
- (b) General Standards in Government Auditing
- (c) Field Standards
- (d) Reporting Standards

(para 2.3 chapter 1 of Auditing standards of C&AG)

4.2 BASIC POSTULATES

The basic postulates for auditing standards are basic assumptions, consistent premises, logical principles and requirements which help in developing auditing standards and serve the auditors in forming their opinions and reports, particularly in cases where no specific standards apply.

(Para 3.1 chapter 1 Auditing standards of C&AG)

4.3 GENERAL STANDARDS IN GOVERNMENT AUDITING:

This section deals with general standards. The general standards in government auditing describe the qualifications of the auditor and the auditee institution so that they may carry out the tasks related to field and reporting standards in a competent and effective manner.

(Para 1.1 chapter 2 Auditing standards of C&AG)

4.4 FIELD STANDARDS IN GOVERNMENT AUDITING

The field standards establish the framework for conducting and managing audit work. They are related to the general auditing standards, which set out the basic requirements for undertaking the tasks covered by the field standards. They are also related to the reporting standards, which cover the communication aspect of auditing, as the results from carrying out the field standards constitute the main source for the contents of the opinion or report.

The field standards applicable to all types of audit are:

(a) Planning: The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner.

(Para 4.1 of chapter 3 Auditing standards of C&AG)

(b) Supervision and Review: The work of the audit staff at each level and audit phase should be properly supervised during the audit; and a senior member of the audit staff should review documented work.

(Para 5.1 chapter 3 of Auditing standards of C&AG)

(c) Study and Evaluation of Internal Control: The auditor in determining the extent and scope of the audit, should study and evaluate the reliability of internal control.

(Para 6.1 chapter 3 Auditing standards of C&AG)

(d) Compliance With Applicable Laws and Regulations: In conducting regularity (financial) audits, a test should be made of compliance with applicable laws and regulations. Any indication that an irregularity, illegal act, fraud or error may have occurred which could have a material effect on the audit should cause the auditor to extend procedures to confirm or dispel such suspicions.

(e) Audit Evidence: To confirm and support the auditor's judgment and conclusions and to increase the efficiency and effectiveness of the audit; adequate, competent, relevant and reasonable evidence or documentation should be obtained. It will serve also as a source of information for preparing reports or answering any enquiries from the audited entity or from any other party;

The auditor should bear in mind that the content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience, and knowledge. Working papers should be sufficiently complete and detailed to enable an experienced auditor having no previous connection with the audit subsequently to ascertain from them as to what work was performed to support the conclusions.

(Para 9 chapter 3 Auditing standards of C&AG)

(f) Analysis of Financial Statements: In regularity (financial) audit, and in other types of audit when applicable, auditors should analyze the financial statements to establish whether acceptable accounting standards for financial reporting and disclosure are complied with. Analysis of financial statements should be performed to such a degree that a rational basis is obtained to express an opinion on financial statements.

(g) Examination of Fraud/Defalcation cases: Weak and suspect areas vulnerable to risk of defalcation, fraud, etc are also to be highlighted in the Audit Reports. Important points dealing with fraud are listed below:

- Manipulation, falsification or alteration of records or documents
- Misappropriation/misapplication of assets
- Suppression or omission of the effect of transactions from records or documents.
- Recording of transactions without substances.
- Misapplication of accounting policies.

4.5 REPORTING STANDARDS:

The Reporting standards set down the framework for reporting the results of audit concisely, with accuracy, objectivity, and clarity and in a constructive manner and for appropriate, conclusive and preventive follow up action.

(Chapter IV of Auditing standards of C&AG)

(A) Local Audit Reports

On the completion of each audit assignment, the audit reporting process begins with submission of an Inspection Report setting out the audit observations and conclusions in an appropriate form to the Head of any Office or Department which has been audited with a request to submit replies and clarifications/comments on the audit observations. Depending on the veracity and relevance of replies/clarifications received and the materiality of the

observations in the Inspection Reports, these are further processed for reporting in the Audit Report submitted by the SAI for being placed in the concerned Legislature.

(B) The form and content of all audit opinions and reports are based on the following general principles:

- (a) Proper title, helping the reader to distinguish it from statements and information issued by others.
- (b) The opinion or report should be properly dated and signed.
- (c) The opinion or report should include reference to the objectives and scope of the audit and should be complete in relation to the material reported.
- (d) The opinion or report should identify the financial statements (in the case of regularity (financial) audits) or area (in the case of performance audits) to which it relates.
- (e) Audit opinions and reports should identify the legislation or other authority providing for the audit.

(Para11 chapter IV of Auditing standards of C&AG)

(C) The following standards apply equally to all these reports with variations in the scope of these reports.

- The content of Inspection Reports should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence and be independent, objective, fair, complete, accurate, constructive, and concise.
- The auditor should issue the reports in a timely manner for use by management, legislature, and other interested users.
- With regard to fraudulent practice or serious financial irregularities detected by audit, a written report should be prepared. This report should indicate the scope of audit, main findings, total amount involved, modus operandi of the fraud or the irregularity, accountability for the same, and recommendations for improvement of internal control system, fraud

prevention and detection measures to safeguard against recurrence of fraud/ serious financial irregularity.

- In reporting on irregularities or instances of non compliance with laws or regulations, the auditors should be careful to place their findings in the proper perspective. The extent of non-compliance can be related to the number of cases examined or quantified monetarily.

(D) Follow up of Audit Reports:

Adequate, prompt and proper follow up action by the entity on and in the light of audit conclusions projected will enhance the effectiveness of audit and promote public accountability.

Systems and procedures should be in place and implemented for securing appropriate conclusions and preventive follow up action on audit reports. In subsequent audits and otherwise, the Auditor should examine and report whether satisfactory action was taken on the audit reports.

(E) Report distribution

Written audit reports are submitted by the audit Organization to the appropriate officials of the Organization audited. Copies are also sent to other officials who may be responsible for taking action on audit observations and conclusions. However, the report is not a public document till it is presented to the legislature.

CHAPTER V

AUDIT PROCEDURE (PLANNING) AND AUDIT EXECUTION

5.1 NEED FOR AUDIT PLANNING

AQMF: III-Audit Management

QME: J-Audit Planning

The field standards forming part of auditing standards includes planning. There is a need for introduction of a strong, more professional and result oriented system of audit based on basic Accounting/Auditing principles with focus on the safeguarding of the Government Revenue. For this, various factors like total work load involved, optimum utilization of available manpower resources, revenue trends, sensitivity of the product to suppression or evasion. of tax, duty etc., have to be taken into consideration for a comprehensive audit plan which should be prepared keeping in mind the auditing standards.

5.2 BASIC REQUISITES.

- 1) The audit work should be planned in a manner to ensure high quality audit in a timely and economic, efficient and effective way. The Auditor may re-align the plan in the course of audit in the light of developments and disclosures when such revisions become necessary.
- 2) The Auditor should plan for optimum utilization of audit resources and also for specific audit assignments for their orderly conduct in an economical, efficient and effective manner.
- 3) The Auditor should prepare, plan and prioritize audit assignments with reference to outlays, contemporaneous relevance and administrative and socio economic importance as well as quality and quantity of available audit resources and skills.

- 4) Determine the most efficient and effective audit approach and specify the audit objectives and the tests necessary to meet them;
- 5) Review the internal audit of the audited entity and its work program; assess the extent of reliance that might be placed on internal audit;
- 6) Provide for a review to determine whether appropriate action has been taken on previously reported audit findings.

5.3 AUDIT EXECUTION

(A) Demarcation of Duties

There should be clear demarcation of duties of the personnel in the audit parties. The Officer in charge of the Audit Party shall prepare distribution of work, to be indicated in writing, keeping in view the suitability of the individual official for performing the duties proposed to be entrusted or other relevant factors such as the absence of any of the members of the Audit Party. The audit personnel should be involved in clearly defined areas of work so that their contribution in terms of quality and quantum of audit results can be identified and their accountability ensured.

(B) Responsibilities of Inspecting Officers

AQMF: III-Audit Management

QME: P-Supervision & Review

The Inspecting Officer will remain responsible for the efficiency of the inspection/ Audit as a whole, though some items of work may, in accordance with the local instructions or local usage, be entrusted to the subordinate staff. He must guide the members of the party in their work and determine the extent of independent action to be allowed to each of its members with reference to their experience, qualities and capacity to act independently. In cases, where it is considered appropriate, he should stipulate that the memos be issued only with his approval. The Inspecting Officer should also keep himself posted with

the progress of audit and the observations that have been communicated to the office inspected.

(C) Audit procedure and preliminary checks.

The audit procedure and checks dealt with in this chapter have to be interpreted in the context of basis and purpose of audit. Audit procedure and practices are, therefore, not invariable for all times, they are only means to end, hence, if an end is not served means must change. Therefore, audit procedure and checks mentioned below which are not exhaustive and are only indicative, need to be grounded in sound common sense and be supplemented by originality and imagination in their adoption.

(D) Verification of credit and reconciliation of figures and miscellaneous items of check

The responsibilities of Audit do not cease with the completion of the verification of the correctness of the assessment of the demand and its realization, though these are important tasks in themselves. No less important are the verification of the facts of remittance of the sums realised as taxes, duties, fees, penalties, etc., into the treasury and the reconciliation of the treasury figures relating to such remittances with the departmental figures. This is the logical culmination of the duties connected with Receipts and which would otherwise remain incomplete and unsatisfactory.

It is the primary duty of the department of Government concerned to ensure that the figures of the remittances made as per treasury accounts are reconciled month after month, with the figures as per books of account kept by it. Such a reconciliation will not only facilitate rectification of errors in accounting such as mis-classifications but will also serve to detect more serious errors due to fraud, defalcations and the like. Cases have not been rare where due to omission in this respect misappropriation of the tax and duty

collections, presentation of bogus challans and drafts, fraudulent tampering with the records, etc., have occurred. This is however, a work which due to its laborious nature, is often neglected by the departments but Audit will be failing in its duty if it does not bring such serious lapses to the notice of the concerned Heads of Department/Government with a view to ensure that this important item of work is invariably done every month.

a) Selection of months for verification of credits:

Besides ensuring reconciliation of departmental figures of receipts with those figures appearing in treasury accounts month after month, two months credits for each year of audit as appearing in the departmental records may also be checked with the original records of the treasury, so as to ensure that the money received has actually been credited into treasury. The certificate of verification of credits for two months selected may be specifically recorded in the memorandum forwarding the local audit reports.

b) Verification of remittances where the period of audit exceeds three years

It was clarified by head-quarters (instructions dated 28.02.1984) that when the period of audit to be covered exceeds three years, the audit may be restricted to the last three years immediately preceding the year of audit and verification of remittances to be done for two months for each year of audit.

In case of instances of non-tracing of credits for the selected period, the verification of credit should be extended to the entire period of audit to rule out any kind of misappropriation, fraud, etc

(c) Recovery of interest on delayed remittances

As contained in Reserve Bank of India Circular No RBI/2005/209 dated 18.11.2005 and No RBI/2006-07/291 dated 21.3.2007 interest shall be imposed

on banks that are collecting State Government receipts for the delay in crediting the amounts to Government account. The period of delay in respect of transactions shall attract “delayed payment interest” at Bank Rate +2% (ie., Bank Interest 6%+2% =8%). During the course of scrutiny of remittances, comments may be included on delayed remittances necessitating recovery of interest.

(d) Standing orders on role of audit in relation to cases of fraud and corruption: The headquarters office letter No. 126/Audit (AP)/2004 dated 6-9-2006 has issued standing orders inter alia contains instructions on the role audit in relation to fraud and corruption, detection of fraud and corruption, reporting suspected cases of fraud and corruption to the authorities and follow up on such matters etc.

(1) Considerations of fraud in receipt audit

Audit should not in any way substitute itself for the revenue authorities in the performance of their statutory duties. However the Auditors should satisfy themselves that the requirements of legality and regularity are observed in individual assessments and in general that the departmental machinery is sufficiently safeguarded against error, fraud and corruption.

In the audit of receipts, it would be necessary in the case of a Department which is a receiver of public moneys to ascertain what arrangements (internal controls) are in place to ensure the prompt detection, investigation and prevention of irregularities, double refunds, fraudulent or forged refund vouchers or other loss of revenue through fraud, error or willful omission or negligence to levy or collect taxes or to make refunds. Auditors may also suggest appropriate improvements in the system and procedures for prevention, detection, and reporting of cases of fraud and corruption.

(e) Assurance Certificates

These Certificates are to be given by the Sr.AO/AO/AAOs/SOs/Sr.Ar/Ar of audit team in the prescribed format.

(f) Non-production of files

All field parties are instructed to include a para at the end of the Report under the heading “Records not produced and records not maintained”, showing both the categories separately, as two sub-paragraphs in the last paragraph of the local audit report. The particulars of records seen in local audit may be indicated in a separate list to be forwarded to the Receipt Audit Head Quarters section for use.

G) Internal Control System

AQMF: IV-Client & Stake holders Relations

QME: W-Internal Audit

Issues on Lack of Internal Control System within the organization for possible comments may be incorporated in the Local Audit Report.

(h) Maintenance of Audit Note Book by field parties

All field parties should maintain an Audit note book. This may be utilized to record the list of important circulars issued by C.&A.G and RSA Headquarters and also important and interesting points noticed during local inspection. This book should be handed over along with the circular files, codes, etc., to the successor Assistant Audit Officers for their guidance and continuity. The Receipt Audit Officers are requested to see that Audit note books are maintained by the field parties

(i) Communication of Results of Audit

AQMF: III-Audit Management

QME: N. Conducting of Audit

KIE: (i) Para 6.1.20 to 6.1.22 of MSO (Audit)

(ii) Orders of Hqrs: C&AGs letter No.2374-Tech/Admn-I/367-65
dt.7.8.1965

The results of local audit and inspections should be set forth in an inspection report consisting of the following parts.

Part I

- a) Introductory.
- b) Outstanding objections in brief from previous reports.
- c) Schedule of persistent irregularities.

Part II

Current audit (A, Revenue)

Section. A Major Irregularities that is likely to materialize into draft paragraphs of the Audit Report and cases of system failure.

Section. B Irregularities, which, though not major, are required to be brought to the notice of higher authorities and followed up by the Accountant General, and instances of recoveries to be effected or regularized.

Current audit (B, Expenditure)

Section. Major irregularities,

Section. B Irregularities, though not major are required to be brought to notice of higher authorities,

Part –III

Test Audit Note Contain minor irregularities, to which a schedule of items settled on the spot, should be attached. The procedural irregularities in respect of which the head of the office has held out assurances about following correct procedure in future should be noted in this Schedule.

As a rule, trivial matters, which can be and have been set right on the spot or are of no consequence to the finances of the Government, need not be mentioned. However, if a number of similar errors or irregularities are noticed, it may be desirable to mention their type, citing one or more instances, so that proper instructions may be issued for future guidance of the Government servants concerned. The Inspection Report should be completed before the Inspecting Officer leaves the office inspected and it should not be signed until the officer in charge of the office (or any other office acting on his behalf) has been given the opportunity of reading and discussing it and suggesting any omissions or modifications. Proper reference to section, rule or order quoted in the para and cross reference to paras and audit enquiries should be made by the field parties. Annexures should be serially numbered giving reference in each annexure to the relevant para. Reasons for dropping any objections during discussion, etc., should invariably be recorded for information of the main office. The Test Audit Note does not require a reply in detail, but it should be verified at a subsequent inspection that adequate notice was taken of it.

The local audit report shall be sent Head quarters section RAPC (state) within five days from the date of conclusion of Audit.

Some of the important matters to which attention should generally be paid by the Local Audit staff and Officer-in-charge are mentioned in the Secret Memorandum of Instructions regarding the Extent of Audit.

CHAPTER VI
HEAD QUARTERS SECTION

6.1 WORKING OF HEADQUARTERS SECTIONS

AQMF : III-Audit Management

QME: S. Reporting and Follow up

KIE: (i) Para 6.1.21to6.1.23 of MSO(Audit)

1. The Headquarters Revenue Audit Section, should arrange to obtain Government Orders, Notifications, Departmental Circulars, Instructions, Clarifications and Judgment of Courts, etc., affecting the Registration Department and examine them. If it is found necessary to take up any issue with Government or the IGR & CS, it should be done promptly. Copies of important orders or circulars should be communicated to the Audit Parties for their guidance. Review of the Audit Reports of other States should also be undertaken and cases of important irregularities commented in these reports should be communicated to the audit parties for their guidance.

2. The programme of local audit of offices should be drawn sufficiently in advance at least one month before the local audit. The Head-quarters sections should send the previous Local Audit Report with other connected records to the field party so as to reach the party at the time of commencement of next local audit. The Local Audit Reports of the audited institutions should be received in head-quarters sections concerned within one week from the last date of audit.

3. The vetting sections should watch the receipt of Local Audit Reports. Delays of more than one week in the receipt of the draft reports from the field parties should be examined and brought to the notice of the Group Officer for remedial action. The Local Audit Report should be edited at head-quarters and

issued within a month of completion of the local audit, duly approved by the Group Officer.

4. As envisaged in head-quarters office letter No. 117 (Aud.Plg) /59-96 dated 26.2.1998 while issuing the local audit report, it should be ensured that only serious objections having draft paragraph's potential or their requiring recovery or regulation on the system failure, etc are included in the report. At the time of vetting the local audit reports, the Branch Officer in-charge in head-quarters would satisfy himself that paragraphs as aforesaid nature only have been included in the local audit report and record a certificate to the effect.

5. Major irregularities and audit observations should be brought to the notice of the Government and the IGR & CS by addressing special letters.

6. First replies to the local Audit Reports have to be furnished by the Head of Offices within a period of four weeks. Replies to Part – III, Test Audit Note, is not required to be watched by Head quarters section. It is enough if the disposal is checked during next audit.

7. Reports section of head-quarters will be responsible for processing draft paragraphs to be included in the Report of Comptroller and Auditor General of India (Revenue Receipts) , Government of Karnataka. It also fixes the following additional parameters for review of performance –

The section should suitably club audit observations to ensure that draft paragraph would involve a minimum financial impact in monetary terms. At present, the minimum limit fixed is Rs.5 lakh.

The following additional parameters for review of performance has been prescribed by Headquarters Office –

- a. Revenue collected by the audited entity during the year
 - b. Amount audited during the year (ie., the gross annual revenue contributed by the units/assessee selected for audit)
 - c. Amount objected during audit conducted during the year and included in the Inspection Reports/reviews issued.
 - d. Amount accepted by the Auditee out of C above
 - e. Amount recovered during the year out of the above
 - f. Amount recovered in respect of earlier years
 - g. Amount objected to and reported through DPs proposed for current years' audit reports
 - h. Amount accepted out of g above.
 - i. Changes in Rules, Procedures, Acts, etc as a result of audit (Headquarters DO letter no 311/RA/INDT/502-2009/CE/DP dated 2.6.2009).
8. An objection book and adjustment register should be maintained for recording the money value objections included in the local audit reports. The items should be pursued vigorously by initiating correspondence with the departmental officers with a view to expediting their settlement. The above register should be closed every month.
9. A watch register is maintained separately for watching the receipt of draft local audit reports from the field parties, vetting in the headquarters section and issue to the departmental officers after approval by the Group Officer. The Register should be closed weekly and submitted to the Group Officer (RSA) during the first week of every month.
10. Similarly, another progress register (generally known as Vth Register) is maintained for watching the receipt of replies to the local audit reports from the departmental officers. The register should be closed and submitted to the Group Officer on the 5th of every month. This register should be examined periodically with a view to see whether there are any delays of more than one

month in the receipt of replies to the local audit reports and to bring such cases to the special notice of the Head of the Department for necessary action.

11. Assurance Memo to be signed by the Head-quarters section as prescribed.

6.2 SETTLEMENT OF OBJECTIONS

Head quarters Office Circular No. 25 of 1984 prescribes the procedure for settlement of objections in Revenue Sector Audit.

According to Para 4(1) of the circular, the objections may be treated as settled once the department accepts the objection and the demand are raised. Audit need not wait till the collections of amount, settlement of the Para need not be delayed on the ground that the appeal has been filed against the demand and the adjudication of the appeal is pending.

According to the delegation of powers by the erstwhile Accountant General (W,F&RA) , the following officers are permitted to drop the objection as settled.

1. Where the objection has been accepted by the Department and taken to demand

All Part II A Paras – By DAG/RSA
All Part II B Paras – By SR. AO/AO

2. When the objection has not been accepted by the department and it is not possible to sustain the objection and hence made proposal to drop the objection.

All Paras with money value of –
Above Rs.25, 000.....By the Pr.Accountant General
Above Rs.1, 000 but
Below Rs.25, 000 By Deputy Accountant General/RSA
Below Rs.1, 000..... By Sr. Audit Officer/Audit Office

CHAPTER - VII

LEVY OF STAMP DUTY

7.1 INTRODUCTION

AQMF: III-Audit Management

QME: N-Conducting of Audit

KIE: (i) Karnataka Stamp Act 1957

(ii)Karnataka Stamp Act(Frinking impression of Stamps)Rules,2000

(iii)Karnataka Stamp (payment duty by means of e-stamping)Rules,2009

Registration of a document with a registering authority involves levy of stamp duty and Registration fee.

The object of stamp Act is three fold, viz.:

- To raise the revenue by taxing instruments;
- To penalize by rendering an unduly stamped instrument to be inadmissible in evidence, and also
- To provide penalty against evasion of stamp duty.

General principles governing levy of stamp duty

1. The basic principle of the Indian stamp Act is that it levies the duty on the instruments and not on the transaction covered by the instruments.

2. The stamp duty on an instrument depends on the real nature on substance of the transactions recorded in the instruments and not on any title or description or nomenclature given by the parties who execute the instruments. It is only the actual character of the transactions and the true nature of the rights created by the instruments that are decisive in such matters. It is

however, open to parties to select and adopt a particular form of transaction so as to attract less duty.

3 The third principle is that the sufficiency of stamp duty leviable on a document must be determined by looking at the document and what is stated therein and not on any other evidence. The valuation for the purpose of stamp duty is also to be based on the value on the date instrument is executed and not with reference to subsequent changes.

4. Stamp duty chargeable on an instrument should be determined with reference to law in force on the date of execution of the instrument but the levy of penalty is to be determined with reference to the law in force at the time of the presentation of the document in evidence.

5. Schedules specifying the rates of stamp duty form part of the statute and must be read together with it, if there is any inconsistency between the schedule and the stamp Act, the latter prevail.

Stamp duty is levied only on the instruments specified in the Schedule to the Karnataka Stamp Act, 1957 (hereinafter referred to as the Act) . The salient features of the major Sections of the Karnataka Stamp Act, 1957 having a bearing on the levy of stamp duty are reproduced below.

7.2 DEFINITIONS

Bond (Section 1(2)(ab))

(a) any instrument where by 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, where by 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.

“Central valuation Committee” (Section.2 (1)(ac) means, the central valuation committee constituted under Section 45-B.

“Chargeable” means, (Section 2(1)(b) as applied to an instrument executed or first executed after commencement of this Act.

“Chief Controlling Revenue Authority”. (Section 2(1) (c) means the officer appointed by the State Government to be the Commissioner of stamps for Karnataka.

“Conveyance” (Section 2(1) (d) includes.

- (i) Conveyance on sale;
- (ii) Every Instrument;
- (iii) Every decree or final order of any civil court;
- (iv) Every order made by the High court under section 394 of the companies Act, 1956 in respect of amalgamation of companies, (Section 2(1)(d)

duly stamped (Section 2(1) (e) – as applied to an instrument means that the instrument bears impressed stamp of not less than the proper amount and that such stamp has been impressed in accordance with law for the time being in force in the territories of the State of Karnataka.

Executed and execution (Section 2(1) (f) – used with reference to instruments mean ‘signed’ and ‘signature’.

Immovable property (Section 2(1) (gg)) – includes land, buildings, rights to ways, air rights, development rights, whether transferable or not, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Impressed Stamp (Section 2(1) (h)) - means (i) impression made with franking machine, (ii) a certificate or endorsement made and attested as may be prescribed by the Deputy commissioner or the authorized officer or the proper officer, as the case may be in the territories of the State of Karnataka.

Instrument (Section 2(1) (j)) - includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

Market Value (Section 2(1) (mm)) – in relation to any property, which is the subject-matter of an instrument, means the price which such property would have fetched, in the opinion of the Deputy Commissioner or the Appellate Authority or the Chief Controlling Revenue Authority, if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.

Provided that notwithstanding anything contained in this Act or in the Articles, in respect of an instrument executed by or on behalf of or in favor of the State Government or the Central Government or a local authority or other authority constituted by or under any law for the time being in force or a body incorporate wholly owned or controlled by the Central Government or the State Government the market value of the property shall be the value of consideration for such conveyance as set forth in the instrument.

Stamp (Section 2(1) (r)) – means impressed stamp and “stamp paper” means a paper bearing the impressed stamp

7.3 INSTRUMENTS CHARGEABLE WITH DUTY (Section 3)

Section 3 of the Act provides that subject to certain exemptions contained in the Schedule the following instruments shall be charged with the duty of the amount indicated in that Schedule as proper duty there for.

- Every instrument mentioned in that Schedule, which not having been previously executed by any person, is executed in the territories of the State of Karnataka on or after the commencement of the Act; and
- Every instrument mentioned in that Schedule which not having been previously executed by any person, is executed out of the State of Karnataka on or after that day, relates to any property situated or to any matter or thing done or to be done, in the territories of the State of Karnataka and is received in the territories of the State of Karnataka.

Provided that no duty shall be chargeable in respect of

- Any instrument executed by or on behalf of or in favour of the State Government in cases where, but for this exemption, the State Government would be liable to pay the duty chargeable in respect of such instrument.
- Any instrument for 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, 1958.

Any material alteration (that which changes the legal effect of the instrument) made with the consent of the parties in an instrument, after it is completed renders a new stamp necessary, as its effect is to make it in substance a new instrument. An alteration which merely expresses what would otherwise have been implied is immaterial. Addition of descriptive words after the name of one of the parties does not require a fresh stamp. Any alteration

made in an instrument to supply certain point left out does not require a fresh stamp. When the defect of mis-description in a deed arises not from intention but from mistake and the mistake is rectified on discovery by consent of parties, the alteration merely makes the contract what it was originally intended to have been and no new stamp is necessary. If an instrument is signed on different dates by the principal and his surety, it requires additional stamp, unless the surety's signature is in virtue of a previous agreement. An endorsement made in a previous agreement enlarging the time for its performance by a few days will amount to a fresh agreement.

An instrument becomes chargeable with stamp duty only on being executed. Under Section 2(f) the term 'execution' means 'signature'. General signature is the writing or otherwise affixing, a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed. In the circumstances of a particular instrument, a signature affixed to a document may relate only to a part of the given instrument. The remaining portion of the document will consequently be taken as not executed.

7.4 INSTRUMENTS CHARGEABLE WITH ADDITIONAL STAMP DUTY

According to Section 205 of Karnataka Panchayat Raj Act 1993, Section 140 of the Karnataka Municipal Corporation Act 1976 and Section 99 of Karnataka Municipalities Act, 1964, an additional duty is payable on deeds relating to transfer of property etc., in certain cases (i.e., sales, gift, mortgage, exchange and lease in perpetuity) . Such additional duty is collected along with stamp duty with the approval of

the State Government. The additional duty so collected will be allocated to Village Panchayats, Municipalities and Corporations periodically.

Note: If the property under transfer is situated in panchayat area, additional stamp duty at 3% and 2% if ,situated in corporation/Municipal area, shall be paid on sale, gift, usefructuary mortgage, exchange and lease in perpetuity.

7.5 CERTAIN INSTRUMENTS CHARGEABLE WITH ADDITIONAL DUTY

According to Section 3-B of the Karnataka Stamp Act 1957, for the purpose of various infrastructural projects across the State, equity investment in the Bangalore Mass Rapid Transport Limited and for Mukhya Mantri Grameen Rasthe Abhivruddhi Nidhi, additional duty at the rate of ten percent on such duty is chargeable on any instrument of conveyance, exchange, settlement, gift or lease in perpetuity of immovable property with effect from the first day of April 1998.

7.6 ASSESSMENT OF STAMP DUTY

Compulsory assessment of stamp duty by any authority, at the time of execution of instruments, is not contemplated in the Act. The instrument is to be stamped in compliance with the provisions of the Act, and when an impressed stamp paper is used, document is to be written on the reverse side in such a way that the stamp paper cannot be used for or applied to any other instrument. If this –provision of the Act is contravened; the instrument is to be treated as ‘unstamped’. The Act entrusts every person having by law or consent of parties, authority to receive evidence and every person in charge of public office, other than a Police officer, with duty of examining every instrument chargeable with stamp duty when produced or comes before him, in order to ascertain whether it is stamped with the value and description required

by the law in force in the State, when such instrument was executed or first executed. Thus an opportunity for verification of stamp duty paid arises when a document is produced in order to establish a right, remedy, liability etc.,

The documents executed are brought before the registering authorities as registration authenticates the legal status of the documents. Also certain deeds are to be compulsorily registered under the law of registration. Thus the registering officer is the main officer before whom instruments are produced, and he is required to satisfy that stamp duty has been paid correctly and properly. The act disqualifies every instrument chargeable with duty, but not duly stamped, from admission in evidence for any purpose by any person having by law or consent of parties authority to receive evidence. Similarly, no person or public officer is to act upon, register or authenticate any instrument not duly stamped.

7.7 DISTINCTIVE FEATURES OF SECTIONS 4, 5 AND 6 OF THE ACT

Section 4 deals with several Instruments used in single transaction of sale, mortgage, or settlement. The Principal Instrument only shall be chargeable with the duty prescribed in the schedule for conveyance, mortgage, or settlement.

Section 5 deals with Instruments relating to several distinct matters; and

Section 6 deals with Instruments falling under two or more descriptions in schedule shall be chargeable only with the highest of the duties prescribed.

7.8 PAYMENT OF HIGHER DUTY IN RESPECT OF CERTAIN INSTRUMENTS (SECTION 7)

Not with standing anything contained in Section 4 to 6, Section 7 of the Act deals with cases where higher duty is leviable. The Section also provides

that instruments should not be received in evidence unless the duty has been paid thereon. The Court may, however, permit payment of duty and then receive the instruments as evidence.

7.9 BONDS OR OTHER SECURITIES ISSUED ON LOANS (SECTION 8)

- (1) Notwithstanding anything contained in this Act any local authority raising a loan by the issue of bonds or other securities shall be chargeable with a duty of one per cent on the total amount of the bonds or other securities. Such bonds or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.
- (2) This will apply to the bonds or the securities, of all outstanding loans of the kind mentioned therein, and all such bonds or other securities shall be valid, whether the same are stamped or not.
- (3) In the case of willful neglect to pay the duty required, the local authority shall be liable to forfeit to the Government a sum equal to ten per cent upon the amount of duty payable and a like penalty for every month after the first month during which the neglect continues.

7.10 POWER TO REDUCE, REMIT OR COMPOUND DUTIES (SECTION 9)

The Government may by Rule or order reduce or remit, whether prospectively or retrospectively, the duties with which any instrument or any class instruments or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of person, or in favour of any members of such class are chargeable.

[The cases of such reduction or remission have been listed in the Appendices attached to the Act].

7.11 STAMPS AND MODE OF USING THEM

(a) Mode of payment of duty (Section 10)

All duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps according to the provision contained in Section 10 or when no such provision is applicable thereto, as the Government may by rule direct. The rules made under sub-Section (1) may, inter-alia, regulate in the case of each kind of instrument – the description of stamp which may be used and in the case of an instrument affixed or endorsed with certificate of stamp, the manner of recording such certificate.

(b) Franking Impression of Stamps

The Karnataka Stamp (Franking Impression of Stamps) Rules 2000 came into force on 01/02/2001. The Franking machines are used for franking impression of stamps on all kinds of instruments on which Stamp Duty is payable (Rule 3) The franking machines are installed at the office of the Superintendent of Stamps, Bangalore, offices of the District Registrar and offices of the Sub-Registrars. The parties desirous of having stamps impressed on all kinds of instruments shall make an application along with the instrument and value of stamps to the impressed by challans or cash or pay order or Bankers cheque or Demand Draft to the proper officer (Rule 4 (9)) .

On receipt of the application with challan or DD etc thereof, the proper officer, after satisfying himself of the credit made by the parties, shall emboss the instruments by means of franking machine with the requisite amount of Stamp Duty. Thereafter, the proper officer shall affix his signature in the space provided on the impressed stamps (Rule 4(10)) .

The procedure of operating the machine, loading and reloading, daily recording of meter readings etc, as prescribed in Rule 4(2) to 4(8) will have to be followed by the proper officer.

(c) Payment of Stamp Duty by cash in certain cases (Section 10 A)

Notwithstanding anything contained in Section the Stamp Duty payable on an instrument may also be paid in cash by Challan in the banking treasury or treasury, countersigned by an officer empowered to do so by the State Government, or by Demand Draft or by Pay Order drawn on a branch of any Scheduled Bank. An endorsement made on the instrument by such an officer of the amount of duty paid shall have the same effect as payments made in accordance with the requirements of Section 10. This mode of payment, however is inadmissible in the following cases

1. Payment of stamp duty chargeable on the instruments specified in Entry 91 of List 1 of the 7th Schedule to the Constitution of India.
2. The instruments presented after two months from the date of their execution or first execution.

Section 14 stipulates only one instrument to be on same stamp and no second instrument chargeable with duty shall be written upon a piece of stamped paper, on which an instrument chargeable with duty has already been written.

Endorsement is permissible on any instrument for the purpose of transferring any right created as evidenced, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

(d) Payment of stamp duty through e- stamp certificate,

Any person paying stamp duty may approach any of the Approved intermediaries/Authorized collection centers and furnish the requisite details in Form 3 along with the payment of stamp duty amount, for getting the e-stamp certificate. Rule 20 (e-stamping rules 2009)

- (1) The payment for purchase of e-stamp may be by means of cash, pay order, Bankdraft, Electronic clearing system, Real time gross settlement or by any other mode of transferring funds as authorized by the Appointing Authority.
- (2) The authorized Collection Centre shall issue e- stamp certificate for the amount received through any of the modes of payments mentioned sub-rule (1)

(e) Denoting duty (Section 16)

In case, the duty with which an instrument is chargeable, or its exemption from duty, depends on the duty paid in respect of another instrument, the fact of payment of last mentioned duty shall, on production of both the instruments, be denoted upon such first mentioned instrument, by endorsement under the hand of the Deputy Commissioner.

7.12 TIME OF STAMPING INSTRUMENTS

Section 17 provides that instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution except in the case of an instrument in respect of which stamp duty has been paid under Section 10-A.

Section 18 stipulates that every instrument chargeable with duty executed outside India may be stamped within three months after it has been

first received in the State. Where any such instrument, cannot, with reference to the description of stamp, prescribed there for, be duly stamped, by a private person, it may be taken within the said period of three months to the Deputy Commissioner who shall stamp the same with a stamp of such value as the person so taking such instrument may require and pay for it.

7.13 PAYMENT OF DUTY ON CERTAIN INSTRUMENTS EXECUTED OUT OF KARNATAKA (SECTION 19)

In respect of an instrument executed out of the State and subsequently received in the State; the amount of duty chargeable on such instrument shall be the amount of duty chargeable under the Schedule on a document of the like description executed in the State of Karnataka less the amount of duty already paid on such instrument in any other state in India.

7.14 DUTY BY WHOM PAYABLE (Section 30)

In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne:

- (a) In the case of any instrument, by the person drawing, making or executing such instrument.
- (b) In the case of conveyance (including a re-conveyance of mortgaged property) by the grantee; in the case of lease or agreement to lease – by the lessee or intended lessee;
- (c) In the case of counterpart of lease – by the lesser;
- (d) In the case of power of attorney – by the principal;
- (e) In the case of an instrument of exchange by the parties – in equal shares;
- (f) In the case of a certificate of enrolment in the roll of advocates maintained by the State Bar Council – by the Advocate enrolled;
- (g) In the case of a certificate of sale – by the purchaser of the property to which such certificate relates; and

- (h) 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.

7.15 ADJUDICATION AS TO STAMPS, IMPOUNDING AND ENDORSEMENT OF INSTRUMENTS

Section 31 to 41 of the Karnataka Stamp act stipulate the powers of the Deputy Commissioner as regards adjudication as to stamps, endorsement of having paid the duty, powers of impounding of instruments etc.,

- (1) **Examination and impounding of instruments:-** Every person having by law or consent of parties authority to receive evidence and every person in-charge of public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same.(**Section-33**)

7.16 POWER OF REVENUE AUTHORITY TO REFUND PENALTY OR EXCESS DUTY IN CERTAIN CASES (SECTION 44)

- (1) Where any penalty is paid under Section 34 or Section 39 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 any provisions of this Act, such authority may upon application in writing made within six months from the date of registration of the instrument or the order charging the same, refund the excess. Provided that with the sanction of the State Government the Chief Controlling Revenue Authority may make the refund after the period specified in sub-Section (1) or (2) .

**7.17 UNDER-VALUED INSTRUMENT OF CONVEYANCE ETC., –
HOW TO BE DEALT WITH (SECTION 45-A)**

(1) If the registering officer appointed under the Registration Act 1908, while registering any instrument of conveyance, gift, exchange of property, settlement, reconstitution of partnership, dissolution of partnership, an agreement to sell (covered under sub-clause (i) of clause (e) of Article 5, a lease covered under item (vi) of sub clause (a) , item (ii) of sub clause (b) and item (ii) of sub clause (c) and of sub-clause (d) of clause (1) of Article 30, a power of attorney covered under clause (eb) of Article 41, release [Article 45(a) (i)] or conveyance under decree or final order of any Civil Court, has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth, he shall arrive at the estimated market value and communicate the same to the parties. If the parties disagree to pay the duty in accordance with such valuation, he shall keep the process of registration pending and refer the matter to the Deputy Commissioner for determination of market value of the property as well as the proper stamp duty payable.

(2) On receipt of a reference as stated above, the Deputy Commissioner shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as the State Government by rules prescribe, determine by order as far as may be within ninety days from the date of receipt of the reference, the market value of the property which is the subject matter of the instrument and the duty payable thereon. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty with interest at 12 per cent per annum if he does not pay within ninety days from the date of order of the Deputy Commissioner. Provided that the payment of interest is not applicable to instruments executed prior to 31st day of March 2006

(3) The Deputy Commissioner, may sue motto, within two years from the date of registration of any instrument not already refer sub-Section(3)of Section 45(A) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine by order, the market value of such property and the duty payable thereon in accordance with the procedure provided for in sub-Section (2) of Section 45-A. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty with interest at twelve percent per annum if he does not pay within ninety days from the date of the order of Deputy Commissioner. The payment of interest is not applicable to instruments executed prior to 31st day of March 2006. Nothing contained in sub-Section 3 of Section 45-A shall apply to any instrument registered before the commencement of the Karnataka Stamp (amendment) Act, 1975.

(4) The order of the Deputy Commissioner under sub-Section (2) or (3) under Section 45-A shall be communicated to the person liable to pay the duty. A copy of every such order shall also be sent to the registering officer concerned.

(5) Any person aggrieved by an order of the Deputy Commissioner under sub-Section (2) or (3) of 45A may, prefer an appeal before the Deputy Inspector-General of Registration of the Department of Registration and Stamps and all such appeals shall be preferred within such time and be heard and disposed off in such manner as the State Government may by rules prescribe.

No appeal shall be admitted unless the party has deposited, in the prescribed manner, fifty percent of the difference in the amount of duty as determined by the Deputy Commissioner under Sub-Section 2 or 3. This shall be returned to the party if the stamp duty paid is found to be sufficient after determination by the appellate authority or the Deputy Commissioner or on a remand of the case. If on the other hand, the duty paid is found to be insufficient, the party shall pay the difference in duty along with interest at 12 per cent per annum if he does not pay within 90 days from the date of order of the Deputy Commissioner or 60 days from the date of order of the appellate authority. The payment of interest is not applicable to instruments executed prior to 18/08/1999.

7.18 CONSTITUTION OF CENTRAL VALUATION COMMITTEE.

Under Section 45-B of the Act

(1) The State Government shall by notification, constitute a Central Valuation Committee, under the chairmanship of Inspector General of Registration and Commissioner of Stamps, for estimation, publication and revision of market value guidelines of properties in any area in the State at such intervals and in such manner as may be prescribed, for the purpose of section 45-A.

(2) The Central Valuation Committee is the final authority for the formulation of policy, methodology and administration of the market value guidelines in the State and may for the said purpose constitute market valuation sub-committees in each sub-district and district comprising of such members as may be prescribed, for estimation and revision of the market value guidelines in the State.

(3) Sub-committees so constituted shall function under the Central Valuation Committee and shall follow such procedures as may be prescribed and shall be subject to reconstitution whenever found necessary".

7.19 RECOVERY OF DUTIES AND PENALTIES (SECTION-46)

All duties, penalties and other sums required to be paid under this Chapter may be recovered along with simple interest at such rate as may be specified by the State Government, by the Deputy Commissioner by distress and sale of the moveable property of the person from whom the same are due or by any other process for the time being, in force for the recovery as arrears of land revenue.

All duties, penalties and other sums required to be paid under this chapter shall be a charge on the property which is the subject matter of the instrument.

7.20 RECOVERY OF STAMP DUTY NOT LEVIED OR SHORT LEVIED (SECTION 46-A)

Where any instrument chargeable with duty has not been duly stamped, the Chief Controlling Revenue Authority or any other officer authorized by the state Government may, within five years from the date of commencement of the Karnataka Stamp (amendment) Act, 1980 or the date on which the duty became payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him.

Provided that where the non-payment was by reason of fraud, collusion or any willful miss-statement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made there under with intent to evade

payment of duty, the provisions of this sub-Section shall have effect, as if for the words five years the words ten years were substituted:

Provided further that nothing in this sub-Section shall apply to instruments executed prior to first day of April 1972.

NOTE: *Where the service of a notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of 5 years or 10 years as the case may be.*

The Chief Controlling Revenue authority or the authorized officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-Section (1) determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

Any person aggrieved by an order under sub-Section (2) may prefer an appeal before the KAT within 3 months from the date of such order. Any duty payable under this Section shall be recovered in accordance with the provisions of Section 46.

All duties, penalties or any other sums paid or received under any of the provisions of this act shall be certified on the instruments in the manner prescribed.

7.21 ALLOWANCES FOR STAMPS IN CERTAIN CASES

Section 47 to 52 of the Karnataka Stamp Act provides for granting allowance for spoiled stamps and printed forms by the Deputy Commissioner.

7.22 REFUNDS

In the case of stamp duty, refunds are allowed in the following cases under the Karnataka Stamp Act 1957.

- (a) When stamp duty is paid in excess of what is due (Section 44(2) .
- (b) When the stamps are spoilt (Section 47 and 51)
- (c) Stamped papers used for printed form no longer required for use (Section 49) .
- (d) Stamps misused (Sections 50 and 51)
- (e) Where stamps are not required for use (Section.52)

In the case of refunds in respect of spoiled stamps, the spoiled stamps are destroyed by the departmental officer and a certificate to the effect is recorded in the register maintained for the purpose and also in the bills for refunds. Refunds under Section.47,50,51 and 52 are sanctioned by the authorities mentioned in the relevant Sections. The State Government may if satisfied that it is just and equitable to grant relief in any case or class of cases,

- i. other than the above cases or
- ii. after the period specified in any of the above cases, may by order direct the grant of such relief and the Deputy Commissioner shall dispose of such order.

CHAPTER –VIII

INSTRUMENTS UNDER THE KARNATAKA STAMP ACT

AQMF: III-Audit Management

QME: N. Conducting of Audit

KIE: Article 5e(i), 5e(ii), 5(f), 6, 14, 20, 26, 28, 30, 32A, 34, 41, 45, 48 of Karnataka Stamp Act 1957

Stamp duty is payable on instruments mentioned in the Schedule to the Karnataka Stamp Act, 1957. While certain instruments included therein have been defined under Section 2 of the Act, in the case of certain other instruments, their meaning and extent of application are given in the Schedule itself. Descriptive notes are available against certain instruments. These form the guidelines to classify a document therein and decide the duty payable thereon. As regards the extent and scope of each Article dealt with in the Schedule, there has been a large number of judicial decisions. In the following paragraphs, certain important instruments under the Karnataka Stamp Act and judicial interpretations thereon are discussed.

8.1 AGREEMENT RELATING TO SALE OF IMMOVABLE PROPERTY WHERE IN PART PERFORMANCE OF THE CONTRACT .

(i) Possession of the property is delivered or is agreed to be delivered without executing the conveyance.

Rate of duty : same duty as a conveyance [No.20(1)] on the market value of the property.

(ii) Possession of the property is not delivered.

Rate of duty: Fixed duty as per schedule under Art 5(e)(ii)

Note ; Where a reference of power of attorney, granted separately by the seller to purchaser, in respect of the property which is the subject matter of such agreement; is made in the agreement, the possession of the property is deemed to have been given for the purpose of this clause.

(iii) Joint development agreement

If relating to construction or development of an immovable property, including a multi-unit house or building or unit of apartment or flat or portion of a multistoried building by a developer or builder or promoter or by whatever name called having stipulation that, for such construction or development the property shall be held jointly by the developer or builder or promoter or by whatever name called and the owner or lessee, as the case may be of such property, or that it shall be sold jointly by them or that a part of it shall be held jointly by them and the remaining part thereof shall be sold jointly by them.

Rate of duty: Fixed duty as per schedule under Art 5(f).

Note:-The clause 5(f) was omitted by Act No 16 of 2011, w.e.f 1-4-11 and inserted by Act No15 of 2012 w.e.f 1-4-12.The classification/ treatment of JDA-GPA for the year has been brought out in Circular No. Law others-04-2011-12dt14-06-11. The document shall be classified under Article 5(e), 16, 20(1),41(e) & 41(eb) based on the contents of the document.

8.2 AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS ETC.,(Equitable mortgage) [ART.6]

In order to apply this Article the document should merely contain the bargain between the parties with regard to the deposit of title deeds pawn or pledge and conditions subsidiary or ancillary to the deposit of title deeds. A distinction between a pledge and a mortgage is that while under a pledge,

delivery of possession is essential whereas in a mortgage there need only be a bailment. Delivery of possession may be either Actual or constructive. Handing over the key of the go down amounts to the handover of constructive possession in respect of properties stored therein. In the case of mortgage, the right of property is transferred by way of security and transfer of possession is not essential.

As regards immovable property, this Article applies to mortgage by deposit of title deeds.

Where the document evidencing deposit of the title deeds contains also a condition enabling the lender to sell the property on default in payment on the agreed date, the power of sale creates an interest not only in the title deeds but also in the property itself and the document is chargeable as a regular mortgage deed. (Mad B.P.242-R Mis.25.3.1909 Page 126 of Madras Stamp Manual (1958) and Muthaiah Chetty Vs Kothandaramaswamy Chetty; 31 ML.3. 347; 4 L.W. 472.)

Where the deed contained many provisions which are never found in an agreement with regard to the deposit of the title deeds, such as provision with regard to the acceleration of the due date for the payment of the mortgage debt, it was held that it was a provision which had nothing whatever to do with the deposit of title deeds. Title deeds having been deposited and that fact having been recorded, this was an obligation which was undertaken by the mortgagors to pay the mortgage debt earlier than as the due date if he did not carry out any one of the conditions mentioned in that clause. The document is, therefore, a mortgage without possession (Article 37) (In re: Indian Stamp Act, ILR (1954) BOM).

8.3 Cancellation of instrument- (ART:14)

Cancellation of any instrument previously executed on which stamp duty has been paid as per any article of schedule and not otherwise specifically provided for by the schedule [same duty as on the original instrument if such cancellation has the effect of reconveyance by the original instrument: if the original instrument is a conveyance on sale, then such cancellation of instruments, as per Article 20(1), on the market value of the property as on the date of such cancellation.

Rate of duty: Same duty as a conveyance (No-20(1) on the market value of the property, on the date of execution of such cancellation.

8.4 CONVEYANCE (ART: 20)

In sub clause (d) of Section 2, conveyance has been defined to include (a) conveyance on sale, and (b) every instrument by which property whether movable or immovable, is transferred to or vested in any other person and which is not otherwise specifically provided for by the Schedule.

Instruments relating to agreement relating to deposit title deeds, certificate of sale, composition deed, exchange of property, gift, lease, mortgage-deed, mortgage of a crop, re-conveyance of mortgaged property, release, settlement, transfer of charge, transfer of lease; and trust are not conveyance because they have been specifically provided for by the Schedule. All transfer of property not otherwise specifically provided for by the Schedule are chargeable as 'conveyance'.

The transfer of a decree by sale, an assignment or reassignment of a debt, a transfer of a debt, a transfer of the good will or a business of a trade

mark and patent and amendment of the benefit of a contract are instances of conveyances.

The subject matter of the conveyance must be property. Property is that which belongs to a person exclusive of others, and can be subject of bargain and sale to another.

Article 20 dealing with 'conveyance' excludes transfers charged or exempted under Article 52 and are in the nature of residuary provision applicable to transfers of property involves (transfer from a living person to another). But consideration is essential for these Articles to apply.

Conveyance duty is charged upon the agreed price even though part of the consideration might be payable only on a contingency which may or may not happen.

Incidental covenants relating to title etc., in a sale deed do not require any separate duty.

Where land is sold, and the vendee takes from the vendor the growing crops, the crops passes an interest in the land by conveyance. Where fixtures, standing timber or any other of the inheritance are taken at a valuation, the amount the valuation must be included in the consideration and duty paid thereon.

A hire purchase agreement, being merely an agreement to hire the machinery etc., in question with an option on the part of the hirer to purchase,

does not amount to conveyance, but is only an agreement coming under an ‘Agreement or memorandum of an agreement not otherwise provided for (Art

5) (Linotypa and Machiner Limited, and the Windsor Boe of Calcutta, In re 44, Cal 2; I.C. 175)

A licence granted by a company giving to the licensee the exclusive right to carry on the asphalt business with the asphalt supplied by the company, within certain limits, in consideration of a sum of money, cannot be regarded as property conveyed by the document. But an assignment of the right under the licence would be liable to conveyance duty as assignment of a benefit of contract (Limmer Asphalt Baving Company Vs Commissioner of Inland Revenue (1872) L.r.7 E.211)

The fact that for want of registration the document purporting to effect a transfer of property is ineffective and cannot operate to transfer the property cannot affect the question of stamp duty. (Chief Controlling Revenue Authority Vs Vanara Industrial and Banking Syndicate Limited 91968) ILR.3 Mad.1:A.I.R.1969 Mad.1)

- (1) Documents transferring assets and liabilities of company in liquidation to another company in accordance with a scheme of arrangement approved by the Court are to be stamped as conveyance. (Sahayanidhi Limited Vs Subramanya Nadar (1950) AIR 1951 Nad 209 (FB)
- (2) A conveyance may be executed also on the conversion of Partnership into a limited company. A transfer of the property belonging to a Partnership to a company the share holders of which consisted exclusively of the members of the Partnership, who executed the transfer was held chargeable as a conveyance. (In re The Kandoli Tea Company, 13 Cal.43)

A conveyance may be executed also by a promoter, a land owner or a developer by whatever name called, pertaining to premises of flat or apartment or transfer of share by or in favor of co-operative society or company pertaining to premises or unit and the market value of the property. (Inserted by Act No.19 of 1994 w.e.f., 1-4-1994)

- (3) a release deed for consideration in respect of specific properties owned by them as concerns would be charged only as a release (Board of Revenue V. Murugesu Mudaliar LLR (1955) Mad. 1133; AIR 1955 M 641 (F.8))
- (4) A document styled a release by which the executants entitled to a share in a going pressing factory transfers absolutely the whole of that share to the other person interested in the factory on receiving a specific sum of money is a conveyance, (In re Hiralal Naralram, 32 Bom.505)
- (5) An agreement to transfer property in the future cannot be treated as a conveyance though possession also is delivered. (In re Eswar Das, 1939 NLF 37)
- (6) **Rate of duty:** Same duty as a conveyance [No.20 (1)] on the market value /Guideline value of the Department or consideration for property which is the subject matter of such sale, whichever is higher.

8.5 EXCHANGE OF PROPERTY (ART: 26)

This article applies to exchange of property both movable and immovable. Exchange of property is not defined in the Stamp Act. Under Section.118 of the Transfer of property Act, 1882, when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an 'exchange'.

If there be no mutual sale, and one property whether movable or immovable is exchanged for another, or another property together with some money, and the transaction is effected by means of an instrument, whether executed by one party or both, it will be taxable under this Article.

Where one property is given in exchange for another property and nothing more is said about the consideration proceeding from one to the other of the two parties, the transaction is an exchange. Similarly where one Article is transferred in consideration of another Article plus money, there being no indication of the elements of mutual sale, the transaction would be an exchange. (AIR 1937 Madras 259)

Two instruments, one executed by the purchaser of a new motor lorry in exchange of an old one, reciting payment of a portion of the difference in prices in cash and agreeing to pay the balance in installments, have been held not to be an exchange under this Article but only an agreement falling under Article 5 (Iman Baksh V Emperor 1936 AL.J 368: AIR 1937 All 190)

This Article does not cover a transfer between more than two persons. (U.P Boards Order in file No.173 (1) 28th August, 1919 cited at page 146 of U.P. Stamp Manual (1945)

Rate of duty: Same duty as a conveyance[No.20 (1)] for a market value equal to the market value of the property of greatest value which is the subject matter of exchange.

8.6 GIFT INSTRUMENT (ART: 28)

Gift is the transfer of a certain existing property (movable or immovable) made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance the gift is void.(The transfer of property Act 1883 Section 122) . Gift is not defined in the Stamp Act. However, instruments of settlement (Article 48) Transfer (Article 52) and have been excluded from the purview of this Article.

A gift may be made subject to some conditions. The donor may for example, stipulate that the donee will maintain the former out of the profits of the property given (12 Mad.89) .

Where the deed contains a provision of the re-transfer of the property given on the happening of some event, it will not be a deed of gift. Similarly deeds of relinquishment and surrender will not be gifts (Reference 91898) 21 Mad 422 and AIR 1947 All 104) .

An instrument purporting to be a will does not become a deed of gift merely because some past Acts of disposition are recited in it. (Haribai V Krishna Rao 22 Bom.632 at P.635)

Rate of duty: (a) where donee is not a family member of the donor: same duty as a conveyance [No 20(1) for a market value equal to the property which is the subject matter of gift.

(b) where donee is a member of a family of the donor, fixed duty as per schedule under Art 5(e)(ii) [family in relation to the donor for this purpose means, father, mother, husband, wife, son, daughter, daughter-in-law, brother, sister, and grand children.]

8.7 LEASE OF IMMOVABLE PROPERTY (ART: 30) AND LICENCE OF IMMOVABLE OR MOVABLE PROPERTY (ART: 32A)

Under Section 2(I) of the Karnataka Stamp Act, 1957, lease means a lease of immovable property and includes also:

- (i) An agreement or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;
- (ii) An agreement or other undertaking in writing executed by the renters of abkari and opium farms;
- (iii) Any instrument by which tolls of any description are let;
- (iv) Any writing on an application for lease intended to signify that the application is granted.

The definition in the Act is not self-sufficient. Things which would not strictly be styled lease of immovable property are also included in the definition. The word lease signifies the transfer by one (the land lord) to another (the tenant) an interest in immovable property, the interest transferred being the right to exclusive enjoyment.

Lease is defined differently in the Transfer of Property Act, 1882 in the following words:

“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 and 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’.

The definition of lease given in the Stamp Act is wider than the one given in the Transfer of Property Act. The term immovable property is used in the Transfer of Property Act in a restricted sense than that given in Section 3(26) of the General Clauses Act, 1897. The definition in the General Clauses Act, which includes standing timber and growing crops as immovable property is to be adopted for purposes of the Stamp Act. Under the General Clauses Act, immovable property includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

When a lessor executes a deed of lease and the lessee executes a counterpart of the lease undertaking to cultivate, occupy and pay rent, only the deed of lease and not the counterpart of the lease would be taxable. Under this Article, lease includes under-lease and sub-lease.

Whether an instrument is a lease or licence will depend on the substance of the transaction effected.. A lease creates an interest in the property whereas a licence creates a mere personal right to possession. The test for determining whether a document is a lease or licence is to see whether sole and exclusive occupation is given to the grantee, so as to amount to a transfer of an interest in

immovable property to the grantee. Ordinarily a lease is a grant of property, the consideration being usually the payment of rent. A licence on the other hand is permission to do some act, which without such permission, would be unlawful to do.

An agreement modifying the terms of a lease is not by itself a lease. But an agreement extending the period of an existing lease would be a lease for the period by which the original period is extended. (Standard Coal Company Vs. CCRA Bengal 1943 2 Cal.323)

Toll is an imposition of tax for the privilege of using a bridge, road, ferry, market or may be for catching fish, cutting and appropriating trees for fuel etc., such privileges are not regarded in law as an interest in immovable property, and still any instrument by which such privileges are let would be a lease for purposes of stamp duty.

In order that a document may fall under Article 30(1) , it is necessary that the annual rent must be reserved. Rent is money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to be lesser by the lessee as consideration of the lease. 'Rent reserved' means rent in respect of which there is a liability and in respect of which there is a covenant on the part of the lessee to pay the amount mentioned and stated in the document. If the lessee, therefore, pays an amount in respect of the rent prior to the liability arising that payment is, nothing more than an advance made by the lessee to the lessor. The lease would thus fall under Article 30(b) as a lease granted for money advances.

Premium is price paid or promised by the lessee to the lessor in consideration of the lease. Where the lease is granted for lump sum consideration as a premium, conveyance duty is payable on the amount, even though payment of the whole or part of such premium may be deferred or only payable on a contingency.

Rent is distinguished from premium as rent is payable as and when it accrues whereas liability of premium arises at the time of contract of lease. Premium is paid in consideration of the element of conveyance implied in lease and quantified in lump. Rent relates to enjoyment of property.

An agreement to lease is chargeable as a lease even though it made mention of the execution of a formal lease deed later. (Reference 17 Mad.280; 4 MLS 104 (SB))

Duty Payable: Average Annual Rent (AAR)+Security deposit (Including premium, fine money advanced) x Rate of percent as per schedule under Article 30.

Calculation of AAR –Rent per month x 12 x period of lease

Period of Lease,

Note: 1. Maintenance fee, Parking fee, Rent towards cafeteria and fit out, if paid separately by the lessee to the lesser, are also to be considered as a part of rent for the purpose of calculation of AAR.

8.8 MORTGAGE DEED (ART: 34)

Under Section 2 (i) (n) 'Mortgage deed' is defined as to include 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 right over or in respect of specified property.

The definition of a mortgage deed given in the Stamp Act is wider than its definition under Section 58 of the Transfer of Property Act, 1882. ‘Charges’ defined in Section 100 of the Transfer of Property Act are also included in the definition of mortgage deed in the Stamp Act.

According to Section 58 of the Transfer of Property Act, 1882, a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, on existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. “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 charge on the property (Sc.100 of the transfer of Property Act) ”.

Thus the ingredients of a mortgage deed for purposes of the Stamp Act are –

- (1) the purpose is securing money advanced or to be advanced;
- (2) the consideration is a loan, or an existing or future debt or the performance of an engagement;
- (3) a transfer or creation of a right by the mortgage in favour of the mortgagee; and
- (4) the right transferred or created must be in respect of a specified property movable or immovable.

A mere agreement to execute a mortgage deed is not a mortgage deed. Article 34 deals with mortgage deed with certain exceptions. Agreement relating to deposit of title deeds, pawn or pledge (Art 6) for Hypothecation, Bottomry bonds (Article 13) , Mortgage of a crop (Article 35) Respondentia bond (Article 46) or Security bond (Article 47) , are dealt with separately.

It is not enough to classify an instrument of transfer as mortgage deed that the document purports to effect a transfer, instead there must be a transfer, where the principal money secured is one hundred rupees and upwards. Instruments of mortgage deeds other than a mortgage by deposit of title deeds can be effected only by registration and attestation by two witnesses (Section 59), Transfer of Property Act) . Similarly, the property mortgaged must be in existence on the date of execution. There can be no transfer in respect of property not in existence. A film under production cannot be considered as specified property stated in the definition. However, a valid mortgage can be created on a property though not in existence on the date of execution if it can be identified.

Where the intention is to hypothecate the property for the purpose of making it a security, the deed is one of mortgage. (Jahir Mal V/s. Rani Indumati AIR 1914 A 11187).

Where the instrument itself creates a charge though providing for the execution of a mere formal deed it will be a mortgage deed for stamp purposes. (Dasundha V/s. Malhi AIR 1938 Lab.460) .

A mortgage of the right to receive the amounts due under certain contracts at the time it is executed is mortgage deed; but the mortgage of the

amounts that might fall due in future is not mortgage deed. (Miran Baksh V/s. Emperor AIR 1945 Lab.69)

A bond containing a covenant not to alienate any property until the amount covered by it is paid is only bond. But if the instrument contains further provisions that, if the properties specified in it be alienated, the instrument relating thereto should be deemed invalid, the instrument would operate as a mortgage of the properties comprised therein.

Rate of duty: (a) when possession of the property or any part of the property comprised in such deed is given by mortgagor or agreed to be given: Same duty as conveyance (No.20) for a market value equal to the amount secured by mortgage as set forth in the instrument.

(b) When possession of the property is not given, the duty payable is a fixed duty as per schedule Art34 (b).

Note: A Mortgagor who gives to the mortgagee a power of attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession thereof within the meaning of this Article.

8.9 POWER OF ATTORNEY (ART: 41)

Power of Attorney is a delegation of authority in writing by which one person is empowered to do an Act in the name of another. According to the definition given in Section (2p), it relates only to powers-of attorney proper and does not include all contracts creating the relationship of principal and agent. Instruments chargeable with a fee under the law relating to court fees have been excluded from the purview of Power of Attorney.

The person authorized to do any lawful Act instead of another is called attorney. A Power of Attorney enables the attorney to use the name of the principal and bind him on the instruments executed by him as the attorney. In the case of an agency the agent himself executes the instrument though the transaction is binding on his principal.

A Power of Attorney may be executed jointly by a number of persons as the principals. It may also be executed in favour of one person or a number of persons as the attorney or attorneys. A Power of Attorney is either general or special. A Power of Attorney in regard to a single transaction is known as a special Power of Attorney. Where the power authorizes the attorney to Act generally or in more than one transaction it is known as a general Power of Attorney.

The Legislature, in fixing different rates of stamp duty, does not take into account of the number of persons executing the power and the stamp duty is determined only by the number of agents appointed and the powers of such agents. Thus where a number of persons having a community of interest in the subject matter of the instrument execute a general Power of Attorney, it is liable to a single stamp duty only. If there is no community of interest, the instrument should be stamped with the aggregate of the duties for as many documents as there are executants.

A Power of Attorney when given for consideration and authorizing the attorney to sell any immovable property, duty equal to what is payable for the conveyance of the property, is to be paid. This clause will not affect a power given for effecting a sale. An instrument authorizing a person to receive on behalf of the executants such sums as should become due in the course of the execution of a certain work, is not an assignment of the claim but a Power of

Attorney. (Bhagavan Kishore Das Vs. Abdul Harsam Mohammed Ali, 3 Bom.49)

A document executed in favour of a person by thirty six persons jointly interested in a certain sum of money authorizing him to appear before a certain officer and receive payment thereof was held to be a Power of Attorney.

A letter empowering another to sell their joint land is not a Power of Attorney, if it does not authorize him to sell the land in the name of the person executing the letter. (Kala Khan Vs. Mathu Khan, 27 Punj.LR.78 92 IC 990: AIR 1926 Lah.229).

Where a document is not only a Power of Attorney, but also a mortgage deed and an agreement it will be governed by Section 5, as distinct matters. (Miren Baksh vs. Emperor, AIR 1945 Lah 69)

Powers of attorney are to be construed strictly. That is to say, whether an Act purporting to be done under a Power of Attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. (Styanarayana Murthi Vs. IT Appellate Tribunal, AIR 1958 Andhra 143) .

A Power of Attorney is revocable except when made for due consideration and forms part of security. (Frith Vs. Frith (1906) A.C. 254 Straud) .

In a case where a borrower under a mortgage by deposit of title deeds subsequently executing a Power of Attorney authorizing the lender to sell the property on behalf of the borrower and appropriate the sale proceeds to the amount due to the lender, the High Court of Madras, held that the Power of Attorney was clearly irrevocable and also purported to be so irrevocable till the loan was repaid or the properties were sold and that on the part of the Bank there was an executed promise in the form of a loan advanced. But the reciprocal consideration proceeding from the Company for this promise was executory. As long as that reciprocal promise remained executory the Company could take successive steps towards discharging the liability there under and for each successive step so taken, the loan advances earlier by the Bank or such part of it as remained un-discharged could operate as consideration. The execution of the irrevocable Power of Attorney constituted such a step in the discharge of the obligation, and the consideration, therefore, was relatable to the loan advanced earlier by the Bank. The Power of Attorney, therefore, fell as a Power of Attorney for consideration under Article 41(e) . (Chief Inspector of Stamps Vs. Murlidhar Kanodia – 1970 AIT L.J.464: AIR 1970 All 599 (S.B) .

Rate of duty: (a) when given for consideration and or coupled with interest and authorizing the attorney to sell any immovable property, the same duty as a conveyance on consideration or on market value of the property whichever is higher: Art41 (e)

(b) When power of attorney executed in relation to construction or development of an immovable property, the duty payable is a fixed duty, as per schedule under Art41(ea)

(c) When power of attorney executed to a person, other than family members, authorizing such person to sell immovable property situated in

Karnataka State, the same duty as a conveyance under Art 20(1) on the market value of the property which is the subject matter of power of attorney.(Art eb)

8.10 RELEASE (ART: 45)

A formal renunciation of claim, which the party relinquishing is entitled to put forward, is a release chargeable to stamp duty as release, whether the claim is legally correct or not.

A release can only feed title and cannot transfer title as such. A release should necessarily be in favour of someone who had already some title to the property and the effect of the release is only to enlarge that right.

In the case of co-owners each co-owner is in theory entitled to enjoy the entire property in part or in whole. It is, therefore, sufficient that between co-owners instruments of release is executed in order to pass on the right enjoyed by the transferor, instead of conveyance.

An instrument by which a vendor of immovable property who had taken an agreement for re-conveyance from the vendee gives up that right, it is not a conveyance but a release.

A deed of release is a one-sided document and binds the executants alone while a partition is an agreement between two or more persons who are bound by it. A partition deed by which co-owners divide property in severalty does not become a release merely because mutual release is an incidence of partition.

It is not necessary that the claim must be a genuine claim or a true claim. If there is a claim, true or false, which could be pressed by a party, and that claim is sought to be given up by writing, then that would amount to a release, within the meaning of Article 45. (Hussainbhar Vs. Abdullabhai – 1962 MpL 3 (Noted) 111) .

Whereby a document, a person voluntarily renounces for consideration coparcenary rights of succession to impartible estate, it is a release.

(Rajab Yarlagadha Sivarama Prasad Vs. Bhadur Zamindar Venkata Ramalinganna Prasad (1961) Andh.W.R.183) .

When a mortgage is redeemed on payment what is endorsed on the deed, there is no release but only a receipt of payment which is endorsed on the deed, there is no release but only a receipt of payment which is exempt from duty under exemption (a) to Article 53 of the Indian Stamp Act. But an endorsement on a mortgage deed containing express words relinquishment of the mortgage right while acknowledging the receipt of money due after excluding a portion of it, was held to require a released stamp.

A document executed by a benami, Court auction purchaser renouncing all claims he may have or be supposed to have in respect of the property purchased, in favour of the true purchaser is chargeable as a release.

Article 45 pre-supposes the existence of a claim on some person or property which claims the person executing the document of release renounces. Where such a foundation is completely lacking, there can be no question of release. (Takhti Bai V/s.The State, AIR 1957 Raj.125)

A deed under which reversioner relinquishes his claim is a release. (Krishnaji Narayan Hardikar V/s.Balakrishna 33. Bom 657; 74 Bom.LR 735)

An instrument of transfer of possession and life time interest by widow to her sons who would succeed to the transferred property of her deceased husband on her death, was held to be a gift and not release. (Khetramani Debya In the matter of 17 Pat.95 AIR 1938 Pat.33 (SB) .

A document executed by father of joint family releasing his interest in part of joint property in favour of his only son has been held to be gift deed and not a release deed. (Tulsiramappa Vs. State, 1952 NLJ 440) .

Where two persons purporting to be co-owners of certain properties executed two documents styled releases whereby they agreed to divide them in severalty it was held that the documents amounted to an instrument of partition. (Hiralal –Nawalram 32 Bom.505) .

Rate of duty (a) where the release is not between the family members, the same duty as a conveyance on the market value of the property and or on the amount or value of claim or part of claim renounced as the case may be or consideration for such release. Whichever is higher.

(b) Where the release is between the family members, fixed duty as per schedule under Art45(b) [family in relation to a person , means husband, wife, son, daughter, father, mother, brother, wife /children of predeceased sister, wife of predeceased son and children of a predeceased son or predeceased daughter.]

8.11 SETTLEMENT (ART: 48)

Settlement is defined in Section 2(q) to mean any non-testamentary disposition in writing of movable or immovable property made –

- (i) in consideration of marriage;
- (ii) for the purpose of distributing property of the settler among his family or those for whom he desires to provide or for the purpose of providing for some person dependent on him; or
- (iii) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition, 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.

An instrument to be classified as settlement has to be executed for one or the other of the purposes specified in the definition. The nomenclature of settlement given by parties to an instrument is not relevant for purpose of stamp duty. Testamentary dispositions such as will are excluded from the definition of a settlement. A settlement purports to effect an arrangement of rights and interests in property which may or may not include a provision for the life of the donee with reversion to the settler or his heirs. A settlement includes not only a document which has for its object the distribution of the property of the settler but of providing, whether by distribution or otherwise, for some person dependent on him.

A settlement is distinguished from a will; intention to have immediate operation though there might be provisions contemplating extension beyond the life time of the owner. One of the tests in determining whether an instrument is testamentary (will) is to see whether it is revocable. If it is not revocable it is not a will.

A settlement deed is not taken outside the scope of its definition by the mere fact of its including an agreement by the beneficiary to act in a particular way in consideration of the settlement.

‘Wakf’ created by Musalmans is to be treated as settlement.

A settlement purports to effect an arrangement of rights and interest in property as opposed to the conveyance or transfer of such property. A conveyance or a gift of property though to achieve any of the purposes envisaged in the definition of settlement will not be a settlement. The disposition referred to in the definition does not mean an absolute and unqualified disposition of property. A settlement may effect a provision for the life of the donee with reversion to the settler or his heirs. It may be in the nature of a trust though the creation of a trust as such may not always be necessary.

The creation of successive interest in property is not necessary in order to constitute a settlement. The provision for single individual may constitute a settlement. The beneficiaries, where there are more than one need not be conferred with separate interest either. In settlements under sub-clause (b) of the definition the purpose should be the distribution of property of the settler. Where such distribution is lacking, the instrument will not be a settlement.

Instruments recording terms of prior oral settlements are also settlements.

In the case of instruments of settlement duty is payable on the value of the property settled as set forth in such settlement. The settler is bound to give the true value of the property and cannot give any notional value he pleases and

if he omits to do so he contravenes Section 26 and incurs the penalty prescribed by Section 61. Although there is no provision in the Stamp Act for ascertaining the true value of the property for calculation of duty, and the Registrar cannot embark on an independent enquiry, he has power under the Registration Act to require the person seeking registration of settlement deeds to furnish particulars required for the calculation of the duty. If the value is understated he can refuse to accept the settler's evasive statement as to a particular amount being the value for purposes of stamp and registration and insist upon a valuation being given which purports to be the market value.

If an instrument making a disposition of property does not fall within the definition of settlement it will have to be charged with the higher duty prescribed for gift. Disposition is a word of much wider connotation than transfer. A transaction may amount to a disposition of property though it may not amount to a transfer of property. The expression includes any and every property of the settler.

In classifying documents as settlements or not settlements, the following decisions merit attention.

- (1) An instrument by which a life interest in a certain land was created in favour of the settler's sister with reversion to the settler and his heirs after her life time was held a settlement and not a gift.
- (2) A mere reservation of a life estate by the settlement (retention of a right to enjoy the property during one's life time) would not alter the instrument of settlement *Mallappa Vs Kogara Venkatappa, 1958, an L.T. 570*)
- (3) A transfer of land absolutely in pursuance of a compromise of a widow's suit for maintenance, is neither a gift nor a settlement, but must be stamped as a conveyance.

- (4) Where there is a transfer of property to certain trustees who are to manage it on behalf of the owner during his life time and in the event of his death to make certain arrangements and certain directions as to disposal of the income are also given and a right of revocation is also reserved in the owner, the document is not a settlement. (Niranjan Singh Judeo Vs. Junior secretary, Board of Revenues, ILR (1946) AIFR 1947 All 141 (F.B))
- (5) A settlement in addition to its ingredients as a settlement may contain any further agreement. Where in an agreement the mother transferred her rights in a property to her sons who also in their turn undertook to give her some annuity and grain for her maintenance, the instrument was deemed to be a settlement (Md.Rashid Ahmed Vs. Emperor, AIR 1937 Lab. 684)
- (6) Where by terms of an instrument future rental incomes of two houses were to be utilized by trustees for benefit of minor children of donor, it was a settlement falling under Article 48 (Settlement) and stamp under Article 54(trust) was not sufficient. (Board of Revenue Vs P. V. Sridhar Advocate (1964) ILR All.85 AIR 1964 All. 537 (S.B))
- (7) Where in a partition deed between four brothers, their father also joined with a view to confirm the oral gift of the property made previously by him in favour of his sons who divided the properties, it was held that it should be stamped also as a settlement deed being an instrument recording the disposition. Though the document is not a settlement document upon certain other persons, yet it becomes a settlement by reason of the artificial definition created by Section 2(q) that is to say it is a record of an earlier oral settlement. If the person settling the interest does not join the instrument then the reference to the settlement may be merely narrative of the origin of the title and the document could not operate as a gift. (Chief Controlling Revenue authority Vs. Mohammad Yoonus Said (1966) 1 MLJ 387: AIR 1966 Mad. 315 (FB))

Rate of duty: (i) Where disposition is not for the purpose of distributing the property of the settler among his family, the same duty as a conveyance for a market value of the property, which is the subject matter of settlement.

(ii) where the disposition is for the purpose of distributing the property of the settler among the members of his family; fixed duty as per schedule under Art48(ii)[Family in relation to settler means father, mother, husband, wife, son, daughter , daughter-in-law, brothers, sisters and grand children.]

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CHAPTER - IX

PROVISIONS RELATING TO INDIAN STAMP ACT

AQMF: I-Leadership & Direction

QME: A-Tone at the Top

KIE: (i) Constitution of India Art.148to151

(ii) Indian Stamp Act1899

Under Section 72 of the Karnataka Stamp Act, 1959 (Act 17 of 1959), the Indian Stamp act, 1899 (Central Act 2 of 1899 is made applicable to whole of the State of Karnataka in so far as it relates to matters specified in entry 44 of List II of the Seventh Schedule to the Constitution in respect of documents specified in entry 91 of list I of the said Schedule. Thus provisions of Indian Stamp Act alone are applicable in respect of stamp duty leviable on the following nine instruments executed within the territory of the State of Karnataka and the rates of duty thereon would be as per the Schedules to Indian Stamp Act.

1. Bills of exchange (section: 2(2) :
2. Bill of lading (sec: 2(4) :
3. Policy of insurance (section: 2(19) :
4. Debenture
5. Letters of credit
6. Promissory note (section:2 (22) :
7. Receipts (section: 2(23) :
8. Proxies
9. Transfer of shares

9.1 INSTRUMENTS ON WHICH CENTRAL ACT IS APPLICABLE (SN.3)

Subject to the provisions of the Indian Stamp Act and the exemptions contained in Schedule I thereof, the following instruments shall be chargeable

with duty of the amount indicated in that Schedule as proper duty there for respectively, viz.,

- a) Every instrument mentioned in that Schedule which not having been previously executed by any person is executed in India on or after the first day of July 1899.
- b) Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after 1.1.1899 and transferred or otherwise negotiated in India; and
- c) Every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which not having been previously executed by any person, is executed out of India on or after 1.7.1899 relates to any property situated or to any matter or thing done or to be done in India and is received in India.

CHAPTER - X

REGISTRATION

10.1 OBJECTS OF REGISTRATION

AQMF: III-Audit Management

QME:N. Conducting of Audit

KIE: (i) Constitution of India Art.148to151

(ii) Karnataka Registration Manual

The item Registration of deeds and documents appears as entry No.6 in list-III of seventh schedule of the constitution of India. In accordance with Article 246(2), the parliament and legislature of the state have concurrent powers to make on the subject. The Indian Registration Act 1908, a law passed by the Central Legislature and modified by both Central and State Legislature from time to time regulates the registration deeds and documents throughout India.

The main object of the law governing registration is not the raising of any substantial revenue like other taxation statutes but to give scrutiny to the duty and right of persons purchasing the real property. Amongst other things, the object is to provide a method of public registration of documents, so as to give information to people regarding legal rights and obligations arising or effecting a particular property and to perpetuate documents that may afterwards be of legal importance and also to prevent fraud.

The registration Act takes in to account only the documents and not the transactions. The Act does not require that a transaction affecting immovable property should be carried out by a registered instrument. All that it enacts is that when a document is employed

To effectuate any of the transactions specified in section 17 of the Indian Registration Act 1908, such document must be registered

10.2 EFFECTS OF NON-REGISTRATION (SEC 49)

No document required by Section 17 of the Indian Registration Act 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.

Provided that an unregistered document affecting immovable property and required by Indian Registration Act or the transfer of Property Act 1882 to be registered may be received as evidence of a contract in a gift for specific performance under Chapter II of the Specific Relief Act 1877 or as evidence of part performance of a contract for purposes of Section 53-A of Transfer of Property Act, 1882 or as evidence of any collateral transaction not required to be effected by registered instrument.

10.3 REGISTERABLE DOCUMENTS

Documents of which registration is compulsory (Sec 17)

Section 17 (1) The following documents shall be registered, if the property to which they relate is situated 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;
- (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

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.

Documents of which registration is optional (Section 18)

Any of the following documents may be registered under the Registration 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;
- (d) 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;
- (e) 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;
- (f) wills; and
- (g) all other documents not required by section 17 to be registered.

10.4 PLACE OF REGISTRATION, DOCUMENTS AND AUTHORITY TO REGISTER

A. Place for registering document relating to land (Sec28)

Except as otherwise provided in Part V of the Registration Act every document mentioned in Section 17 Sub-Section (1) Clauses (a) ,(b) ,(c) ,(d) and (e) Section 17 sub-Section (2) in so far as such document affects immovable properties and Section 18 clauses (a) ,(b) ,(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 situated.

B. Formation of sub-District

The Government Vide Notification No.RD 112/ MUNOMU/ 2011 dt19.07.2011 and 01-11-2011 have reconstituted the Registration District as per sub-section (2) of section 5 of the Registration Act, as specified below.

SL NO	Registration District	Registration sub-District (sub-Registry)	Date of formation
1	Gandhinagar	Gandhinagar	20-07-11
2	Rajajinagar	Rajajinagar	05-11-11
3	Shivajinagar	Shivajinagar	05-11-11
4	Jayanagar	Jayanagar	05-11-11
5	Basavanagudi	Basavanagudi	05-11-11

C. Place for registering other documents (Sec 29)

(1) All other documents 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 a State Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of the 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 of which all the persons claiming under the decree or order desire the copy to be registered.

D. Registration by Registrars in certain cases (Sec 30)

1. Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

2. The Registrar of a district in which a presidency-town is included and the Registrar of Delhi District may receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document relates.

E. Registration of acceptance for deposit at private residence (Sec 31)

Normally the registration or deposit of documents shall be made only at the Office of the Officer authorized to accept the same for registration or deposit.

Provided such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or deposit a will, and accept for registration or deposit such document or will.

10.5 PROCEDURE WHERE IMMOVABLE PROPERTY COVERED BY THE DOCUMENTS SITUATED IN SEVERAL SUB DIVISIONS /DISTRICTS (Sec 64 and Sec 65)

(i) Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situated 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 or himself in whose sub-Districts any part of such property is situated and such Sub-Registrar shall file the memorandum in his Book No.1.

(ii) Every Sub-Registrar on registering a non-testamentary documents relating to immovable property situated in more than one District also forward a 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 situated other than the District in which his own sub-District is situated.

(iii) The Registrar on receiving the same shall file in his Book No.1 the copy of the document and the copy of map or plan (if any) and shall forward a memorandum of the document to each of the Sub-Registrar subordinate to him within whose Districts any part of such property is situated and every Sub-Registrar receiving such memorandum shall file it in his Book I.

10.6 TIME FOR PRESENTING DOCUMENTS FOR REGISTRATION

Subject to the provisions of Section 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 execution. Provided that a copy of a decree or order may be presented within four months from the day on which it becomes final. **(Sec 23)**

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. **(Sec 24)**

A will may be presented for registration at any time or deposited with any Registrar in accordance with the provisions contained in Part VIII and IX of Indian Registration act. **(Sec 27)**

10.7 REGISTRATION OF DOCUMENTS PRESENTED AFTER FOUR MONTHS. (Sec 25 and 26)

(a) If owing to urgent necessity or unavoidable accident any document executed or copy of decree or order made in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar 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 registration fee, such document shall be accepted for registration.

(b) When a document executed by all or any of the parties out of India is not presented for registration within four months the registering officer shall if satisfied:

- (i) that the instrument was so executed
- (ii) 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.

(c) **The date of execution to be noted in a document-** A registering officer may require that the date of execution shall be entered in a document presented for registration whenever it is not found therein. **(Rule49)**

(d) **The date of execution of document how reckoned-** The date of execution of a document is the date on which it is signed by the party and the date which the document bears on which at its head is not necessarily the date of its execution though it is prima facie so. **(Rule-50)**

10.8 The fines for delays in presentation and appearance under Section 25 and 34 shall be as under **(Rule52)**

a.	When the delay does not exceed one week after the expiry of the time allowed for presentation or appearance	A fine equal to the registration fee
b.	When the delay exceeds one week but does not exceed one calendar month	A fine equal to twice the amount of registration fee
c.	When the delay exceeds one month but does not exceed two months	A fine equal to five times the registration fee

d.	When the delay exceeds two months but does not exceed four months	A fine equal to ten times the registration fee.
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The fine shall be levied in addition to the Registration fee actually leviable under any of the Article I to IV of the Table of fees and notes there under.

10.9 POWERS OF INSPECTOR GENERAL OF REGISTRATION TO REMIT THE FINES

The Inspector General of Registration may, in exercise of his discretion under Section 79 of the Indian Registration Act, remit wholly or in part the difference between any fine levied under Section 25 of Section 34, and the amount of the proper registration fee.

10.10 REFUSAL OF REGISTRATION

A. Reasons for refusal to be recorded (Sec 71)

Every Sub-Registrar refusing to register a document except on the ground that the property to which it relates is not situated within his sub-District, shall make an order of refusal and record his reasons for such order in 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.

Registering officers shall not accept for registration a document so endorsed unless and until the document is directed by the Registrar to be registered.

B. Order of refusal by Registrar (Sec 76)

Every Registrar refusing to –

- (i) register a document except on the ground that the property to which it relates is not situated within his District or that the document ought to be registered in the office of Sub-Registrar; or

- (ii) direct the registration of a document under Section 72 or Section 75 of the Registration Act shall make an order of refusal and record the reasons for such order in his Book No.2 and shall give the person executing or claiming under the document, a copy of the reasons so recorded. No appeals lie from any order by a Registrar under Section 76 of Section 72.

10.11 RESPONSIBILITY OF THE REGISTERING AUTHORITY

(Rule73)

- (i) It shall form no part of the Registering officers duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document provided execution is duly admitted; but in case of executants who are unable to read, the document shall be read out and if necessary explained to them. If the document is in a language which they do not understand, it must be interpreted to them.

- (ii) If registration is objected to by any person on any of the following grounds, viz.,
 - (a) that a person appearing or about to appear before the registering officer as an executants or claimant the person he professes to be or that he is a minor, an idiot, or lunatic.
 - (b) that the instrument is forged;
 - (c) that the person appearing as representative, assign, or agent has no right to appear in that capacity;

(d) that the executing party is not really dead as alleged by the party applying for registration, such objections shall be duly weighed by the Registering officer and if they are substantiated, registration shall be refused but under sub-Section (2) of Section 58, if execution is admitted registration should take place even if the executants refuses to sign the registering officers endorsement of admission.

10.12 IMPOUNDING OF DOCUMENTS

(1) If the period prescribed for presentation has elapsed but the document is still admissible on payment of fine, the registering officer shall, if he is a Sub-Registrar, suspend its registration, pending the orders of the Registrar.

(2) If the document is chargeable with duty under the Indian Stamp Act 1899 or the Karnataka Stamp Act 1957 and is not duly stamped the registering officer shall impound it and shall write immediately below the endorsement made on it under Rule 45, the words and figures impounded under Section 33 of Indian Stamp Act or Karnataka Stamp Act and shall sign the same with date and send it to the Deputy Commissioner, with reasons there for and the registration being suspended. Pending orders of the Registrar the registering officer may, however, record the admission of the execution and examination of witnesses.

(3) When the impounded document is received back from the Registrar after adjudication of stamp duty, the registering officer shall immediately give notice in writing to the present ant or to the authorized person either to take steps to complete the registration of the document or to take delivery of the document.

10.13 LEVY AND COLLECTION OF FEES

Section 80 of the Registration Act lays down that all fees for registration of documents shall be payable on the presentation of such documents. Under Rule 192 of the Karnataka Registration Rules, the registering officer is responsible for the levy of the fees and to determine what fee should be paid with reference to the table of registration fee compiled by the State Government under Section 78 of the Act, Section 78 empowers the State Government to fix the various fees chargeable for registration and copies. Government of Karnataka has prescribed the fees chargeable for registration, searches and copies in their “Table of Fees” issued in Government Order No.RD.73 MUNOMU 2011 (1) dated.29-3-11.

Under Rule 221, of Karnataka Registration Rules, 1965, the State Government have prescribed the procedure for the levy of fees for safe custody and return of any document presented for registration and not claimed by a person entitled within 15 days from the date of notice. (Refer sub-Section 2 of Section 61 of the Act and Article XXIX of the Table of fee)

10.14 Collection when insufficient stamp duty has been paid-When owing to sheer carelessness or ignorance of stamp Act a Sub-registrar accepts and registers a deed on which insufficient duty has been paid, the loss to the government may be ordered to be made good by the sub-registrar on the final orders of the Inspector of registration, after which, the deficit items shall be taken to the prescribed Demand Register. (**Rule 170**)

10.15 REFUNDS

Refunds of amount collected will arise in the following cases:

- (i) when the party presenting the document desires in writing to withdraw it before the order of registration is passed;
- (ii) When the registering authority finally refuses the registration.

One half of the registration fee and all copying fee in respect of a document presented for registration which is subsequently withdrawn before the order of registration has been passed and in respect of a document of which registration is finally refused shall be refunded.(**Rule 193**)

Note :

(i) Any fine levied by the Registrar under Section 25 except those under Section 70 of the Act is not to be refunded. Similarly, any fee levied for issuing commissions, summons and for meeting attendance and traveling allowance charges shall not be refunded, if they have been earned or disbursed.

(ii) Refund of amounts as per rule 193 may be allowed by the Registrars if these cases do not exceed 3 years and by the Inspector General of Registration if they do not exceed 5 years from the date of collection (Rule 194).

List of documents to be produced at the time of Registration of properties.

As per Circular No.RD 56 MUNOSA 99,dt20-05-99The following are the list of documents required to be produced at the time of Registration of properties.

A. For purchase of Sites/Buildings

1. An affidavit stating that the transition in not violative of the categories mentioned in the Notification under Section22-A of Indian Registration Act.

2. Extract of assessment register for the purpose of valuation of the property. (Form 19 in case of municipal areas or Form- or 10 in case of panchayat Areas).
3. Form I prescribed in the Karnataka Stamp (prevention of Undervaluation)Rules.
4. Income tax clearance Certificate prescribed under Section 230-A of the Indian Income tax Act for the properties which are valued more than five lakhs.
5. Income-tax clearance Certificate in Form37-I prescribed under Section 269 of the Indian Income Tax Act issued by the appropriate authority of the Income Tax Act department, if the value of the property is more than Rs.25lakhs in the prescribed Area.
6. Permanent Account Number issued by the Income tax department or declaration in Form 60 or 61 if the value of the property involved in the transition is more than 5 lakhs, and where payment is made completely or partially through cash.
7. For vacant sites in areas where ULC Act is in force, an Acknowledgement for having submitted Application Form under Section 26 of the Act.

B. For purchasing of Agricultural land

1. An affidavit stating that the transaction is not violative of the categories mentioned in the Notification under Section 22-A of the Indian Registration Act.
2. Copy of the property involved in the transfer.
3. Copy of the Extract of mutation register regarding the latest mutation of the property.

4. If the property is granted land or occupancy rights have been granted under land reforms Act then NOC from the Tahasildars.
5. Form I prescribed in the Karnataka Stamp (prevention of undervaluation) Rules.
6. Declaration under Section 81-A of the land Reforms Act.
7. Income Tax clearance certificate in Form 230-A or in Form 37-I of the Indian Income Tax Act , if the value of the property is more than 5 lakhs, or 25 lakhs respectively.
8. Permanent Account Number (PAN) issued by the Income tax department or declaration in Form 60 or 61 , if the value of the property is more than 5 lakhs.

CHAPTER – XI

OTHER ACTS RELATING TO REGISTRATION

11.1 REGISTRATION OF MARRIAGES UNDER THE SPECIAL MARRIAGE ACT 1954

AQMF:III-Audit Management

QME:N- Conducting of Audit

KIE: Special marriage Act 1954

a) Introduction

The Special Marriage Act 1954 consolidates the earlier law on the subject, viz., the Special Marriage Act 1872 and provides for, subject to certain conditions and restricts the solemnization and registration of the special marriages.

b) Duties and powers of Marriage Officers

(i) Under Section 8 the Special Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure 1908 when trying a suit in respect of the following matters, namely:

- a. Summoning and enforcing the attendance of witnesses and examining them on oath.
- b. discovery and inspection
- c. compelling the production of documents
- d. Reception of evidence on affidavits and issuing commissions for examination.
- e. any proceeding before a marriage officer shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

(ii) If it appears to a Marriage officer that the objection made to an intended marriage is not reasonable and has not been made in good faith, he may impose

on the person objecting, costs by way of compensation not exceeding rupees one thousand and award the whole or any part thereof to the parties to the intended marriage. Any order for costs so made may be executed in the same manner as a decree passed by the District court within the local limits in whose jurisdiction the Marriage officer has his office.

c) Solemnization of marriages

A marriage between two persons under the Special Marriage Act 1954 may be solemnized if at the time of marriage the following conditions are fulfilled namely;

- a) neither party has a spouse living
- b) neither party is an idiot or a lunatic
- c) the male has completed the age of twenty one years and the female the age of eighteen years
- d) the parties are not within the degrees of prohibited relationship
- e) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories.

d) Registration of marriages

1. When a marriage is solemnized the marriage officer shall enter a certificate thereof in the specified form (Fourth Schedule) in a book to be kept by him for that purpose and to be called marriage certificate book. Such certificate shall be signed by the parties to the marriage and three witnesses.

2. Any marriage celebrated whether before or after the commencement of this Act other than a marriage solemnized under the Special Marriage Act 1872 or under this Act, may also be registered by a Marriage Officer in the territories to which this Act extends, if the following conditions are fulfilled namely:-

- a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since.
- b) Neither party has at the time of registration more than one spouse living
- c) Neither party is an idiot or a lunatic at the time of registration
- d) The parties have completed the age of twenty one years at the time of registration
- e) The parties are not within the degrees of prohibited relationship.
- f) The parties have been residing within the District of the Marriage officer for a period of not less than 30 days immediately preceding the date on which the application is made to him for registration of the marriage.

3. Upon receipt of an application signed by both the parties to the marriage for registration, the Marriage Officer after giving a public notice allowing a period of not less than thirty days for objections and after hearing objection received within that period, and if all the conditions cited above are fulfilled, enter a certificate of marriage in the marriage certificate book and such certificate shall be signed by the parties to the marriage and by three witnesses.

e) Levy and collection of fees (Rule 10)

The following fees shall be levied and collected by the Marriage officer:

		Rs
i)	For every notice of intended marriage of application for registration of marriage (to be paid by the parties to the marriage)	3.00
ii)	For recording an objection (to be paid by the objector)	2.00
iii)	For every enquiry into an objection (to be paid by the objector)	50.00

iv)	For every notice and for every summons to a witness to appear and give evidence or produce a document (to be paid by the objector)	0.50
v)	For solemnizing or registering a marriage (to be paid by the parties)	10.00
vi)	For a certified copy of entry:- a)in the marriage notice book other than an entry relating to an objection; or b) in the marriage certificate book (to be paid by the applicant)	2.00
vii)	For a certified copy of an entry in the Marriage Notice book other than a notice or any other proceeding not already provided for (to be paid by the applicant)	2.00
viii)	For solemnizing a marriage at any place outside the office of marriage officers, in addition to the fee in entry (v) above (to be paid by the parties to the Marriage)	15.00
ix)	For making search (to be paid by the applicant) a) if the entry is current year b) If the entry related to any previous year or years (for each such year)	0.50 1.00

NOTE:- Fee in respect of item viii may be appropriated by the Marriage officer. No T.A shall, however, be claimed in addition.

The fees prescribed above shall be paid either in person or remitted by money order to the marriage officer

iv) Registers and records maintained

(i) A **marriage certificate book** shall be kept as per Section 47 of the Special Marriage Act 1954. It is kept for inspection at all reasonable times and shall be admissible as evidence of the statements contained therein.

- (ii) **Certified extracts** of the Marriage Certificate Book shall be given to the applicant on payment of a prescribed fee.

- (iii) Every Marriage Officer in a State shall send to Registrar General of Births and Deaths and marriages of that State, a true copy of all the entries made in the Marriage Certificate Book since the last of such interval and in the case of Marriage Officers outside jurisdiction of this Act, the true copy will be sent to the authority as the Central Government specifies in this behalf.

11.2 KARNATAKA SOCIETIES REGISTRATION ACT, 1960

The Government in their order vide No CD 98CSR dt5-7-2012, have transferred the power of Registration of societies from the cooperative Department to Revenue Department. The Government has appointed District Registrar as Registrar of societies and to perform duties and functions of Registrar under the Act.(section 2(e) KSR Act 1960)

CHAPTER -XII

RECORDS, REGISTERS, RETURNS MAINTAINED BY THE DEPARTMENT

AQMF: III-Audit Management

QME: N-Conducting of Audit

KIE: Rule 210,211,212,24(i),24(ii),25 of Karnataka Registration Manual

In this Chapter, several records and registers maintained by the Registration department and returns submitted by them are dealt with in brief.

12.1 DATES OF CLOSING ACCOUNTS (RULE 210)

The Sub-Registrars at the District Head quarters shall close their accounts on the last day of each month and the Sub-Registrars elsewhere shall close accounts on the day on which the treasury in which the fees are remitted by them, closes its accounts each month.

12.2 SUBMISSION OF MONTHLY AND ANNUAL RETURNS (RULE 211)

1. Every Sub-Registrar shall on the last day of each month, submit to the Registrar, to whom he is subordinate, a monthly return in Part I of Form No.29 of Schedule 'A' to the Karnataka Registration Rules, 1965 and every Registrar shall on or before the 5th day of each month submit a monthly return in Part II of Form No.29 of Schedule 'A' on the basis of the monthly returns submitted to him by the Sub-Registrars to the Inspector General of Registration.

2. Every District Registrar shall submit annual returns on or before the date prescribed by the Inspector General of Registration from time to time in this behalf in Parts I-V of Forms 30 to 30-D of Schedule 'A' of the Karnataka Registration Rules, 1965 and shall fill up entries therein from similar form prepared in his office and those received by him from the Sub-Registrars. He should state clearly but in brief his opinion as to the significance of the

statistics. Every Sub-Registrar shall keep the returns in Parts I-V duly filled in at the close of every month and submit the same in the beginning of each quarter to his District Registrar for his perusal and return.

3. Every Inspector will also forward to the proper authorities such other returns as may be required either under the orders of the State Government or the Central Government (Rule 212).

Under Section 51 of Indian Registration Act, the following books shall be kept in all offices of registration.

Book 1: Register of non-testamentary documents relating to immovable property.

This register is maintained in Form I to Schedule 'A' of the Karnataka Registration Rules, 1965.

This register is maintained to copy the full text of the documents registered pertaining to immovable properties.

Book 2: Record of reasons for refusal to register

This register is maintained in Form 2 of Schedule A of the Karnataka Registration Rules, 1965

Book 3 : Register of wills and authorities to adopt

This register is maintained in Form No.3 of Schedule 'A' of the Karnataka Registration Rules.

Book 4: Miscellaneous register

This register is maintained in Form No.4 of Schedule 'A' of the Rules. In this register instruments (other than wills) which purport to operate to enact,

declare, assign limit or extinguish any right, title or interest to immovable properties and all other documents not required by Section 17 of the Indian Registration Act to be registered are entered.

Book 5 : Register of deposit of wills

This register is maintained in Form No.5 of Schedule 'A' of the Karnataka Registration Rules.

12.3 (i) DAILY REGISTER OF FEES AND OTHER RECEIPTS ('A') REGISTER

This is a very important register maintained in each Sub-Registrar's office. This register is maintained in Form No.7 of Schedule 'A' of the Karnataka Registration Rules 1965. In this register, full particulars of documents, such as date of presentation, name of persons presenting the documents or other application for encumbrance certificates, description of documents, consideration, stamp duty, municipal surcharge, Taluk board surcharge, number in the register, volume number of the register in which entered, date of return of the document, fees collected for registration of document, fees for copies granted etc., are noted. The entries are made daily in the order of occurrence. This register shall be in the personal custody of the registering officer and the entries in it shall be personally made by him. At the end of the day, the total fees realized shall be written in words also and he shall affix his signature (vide Rule 24(1) of Karnataka Registration Rules) .

(ii) Cash Book.-In every registration office, there shall be kept a column wise cash book in form as prescribed in Article 334 of the Karnataka financial code, 1958 vide form 8 of schedule A. The total of all the fees received shall be brought to account in cash book every day and the Registering officer shall sign the same in token of the correctness of the day's total.(Rule 24(ii) Registration Rules).

12.4 REGISTER OF POWERS OF ATTORNEY

Every registering officer shall keep a register of the powers of attorney authenticated or attested by him under Section 33 of the Indian Registration Act, in Form No.12 of the Schedule 'A' of the Karnataka Registration Rules, 1965. The entries in this register shall be made for each financial year (Rule25)

CHAPTER – XIII
PROCEDURE OF LOCAL AUDIT

**13.1. IMPORTANT CHECKS TO BE EXERCISED IN RESPECT
OF RECEIPTS UNDER STAMP ACT**

AQMF: III-Audit Management

QME:N-Conducting of Audit

KIE:(i) MSO (Audit)

(ii) Karnataka Stamp Act 1957

(iii) Karnataka Stamp Rules 1958

(iv) Karnataka Registration Manual

(v) Transfer of Property Act 1882

It should be seen in audit that

(a) in the case of instruments the stamp duty of which is computed based on the amount or value secured, (Articles 13.29,47) the duty collected is correct with reference to the amount or value actually secured by such lease deeds (Bottomry Bond, Indemnity Bond, Security Bond etc.,)

(b) where fixed rate of duty has been specified (Articles 18, 19,24,25,31 etc.,) the instrument is correctly classified under the relevant Article and the correct duty collected.

(c) in the case where duty is chargeable based on value or duty paid in respect of original or earlier deed (vide Articles 27,22,51) the stamp duty is correctly worked out with reference to such earlier document.

(d) in the case of instruments (vide Article 15,20,44 etc) where consideration is the criteria for payment of duty, whether the

consideration has been fully and truly set forth as disclosed from the deed or deeds executed.

(e) in the case of instruments the stamp duty of which is computed based on a rate per cent of the value of the instrument or on a slab rate (viz. Agreements, memorandum of association of a Company, leases, deeds of partition, instruments of divorce and dissolution of marriage) the correct rate of duty is levied and collected.

(f) every document has been correctly assessed to duty with reference Sections 4 to 6 of the Stamp Act and the computation of duty is correct and in accordance with the provision contained in these Sections.

(g) the additional duty (surcharge) leviable under other statutes has been correctly assessed and collected.

13.2. POINTS TO BE LOOKED INTO ON UNDER-VALUATION OF PROPERTIES/UNDER-STATEMENT

Under Section 45-A of the Karnataka Stamp Act if the registering officer while registering any instrument of conveyance, exchange or gift has reason to believe that the market value of the property has not been truly set forth, he may after registering the deed refer the same to the Deputy Commissioner for determination of market value and the proper duty leviable thereon. It should be seen in audit that market value of the property has been assessed as per these provisions and the correct duty levied and collected.

13.3. IMPORTANT CHECKS TO BE EXERCISED IN RESPECT OF RECEIPTS UNDER REGISTRATION

In the local audit of the records of Sub-Registrars/District Registrars the following points should be looked into:

1. Fees for the services rendered have been correctly levied in accordance with the Table of Fees laid down in the Acts/Rules.
2. Proper receipts are granted for the fees realized.
3. Check of main/subsidiary cash book, to see that all moneys received are accounted in the subsidiary cash book and carried over to the main cash book and deposited into the Treasury the next day and the remittances into the Treasury are supported by treasury receipted challans.
4. Monthly reconciliation is done between the departmental figures with those of treasuries.
5. Fines leviable under the Act and the Rules there under are actually levied and collected.
6. Remission of fines and refunds are supported by orders of competent authority.
7. Proper account of receipt books has been kept.
8. Inspection Reports of departmental officers should be scrutinized.
9. That the fees determined have been realized and credited to Government.
10. It should be seen that there are adequate procedures and regulations prescribed by the department to secure an effective check on the levy and collection of fees; and the documents are correctly classified as per the provisions of the Stamp Act so that there is no evasion of fee on account of misclassification.

13.4. CHECKS TO BE EXERCISED IN RESPECT OF RECEIPTS UNDER THE SPECIAL MARRIAGE ACT 1954

- (1) It should be seen that conditions laid down in Sections 4 and 5 of the Act are fulfilled before solemnization of the Special Marriage.
- (2) It should be seen that conditions stipulated in Section 15 of the Act are fulfilled before registration is made.
- (3) It should be seen that proper fee is recovered before registration.
- 4) It should be seen that certified extracts of Marriage Certificate Books are given after recovery of the prescribed fee (vide Rule 10) .
- (5) In the case of divorce instruments, it should be seen whether proper stamp duty under Article 25 of the Schedule to the Karnataka Stamp Act along with suitable registration fee had been levied and collected (Item IV of table of fee to Registration Rules) .

13.5. CHECKS TO BE EXERCISED IN RESPECT OF DUTY ON TRANSFER OF PROPERTY ACT

Stamp duty and registration fee are levied and collected in respect of the following important documents mentioned in the Transfer of Property Act

1. Instrument of sale
2. Instrument of Gift
3. Instrument of Mortgage
4. Instrument of exchange
5. Lease Deeds

The following points are to be looked into in the assessments of the above instruments:

- a. In the case of instrument of sale/gift, it should be ensured that the document is properly classified under Article 20 of Stamp Act. It should be ensured that appropriate stamp duty and registration fee under item

1(3) and (4) are duly assessed, levied and collected. Appropriate Additional Stamp Duty under the Karnataka Panchayat Raj Act 1993 is levied and collected.

- b. Mortgage are of three kinds:
 - i) Simple Mortgage
 - ii) Mortgage with possession
 - iii) Mortgage with deposit of title deeds.

The following points are to be looked into in respect of them:-

- 1) Simple Mortgage
 - a) It should be ensured that the instrument is properly classified as simple mortgage under Article 34(b) of the Schedule of the Stamp Act.
 - b) Appropriate stamp duty prescribed therein is levied and collected along with registration fee (Article 1(2) of the Table of fees.
- 2) Mortgage with possession
 - a) It should be ensured that the instrument is properly classified as such under Article 34(a) of the Schedule to the Stamp Act.
 - b) Appropriate stamp duty prescribed therein is levied and collected together with the required registration fee.
 - c) Appropriate Addl. Stamp Duty under the Karnataka Panchayat Raj Act 1993 etc are levied and collected.
- 3) Mortgage by Deposit of Title deed
 - It should be ensured that:
 - The facility of deposit of title deed is exercised only in the recognized, cities and towns in Karnataka.
 - a) the document is properly classified under Art.6 of the Schedule to the Stamp Act and the Stamp duty mentioned therein is levied and collected together with the required registration fee.

- 4) Lease Deeds
 - a) It should be ensured that the document is duly classified under Article 30 to the Schedule to Stamp Act.
 - b) Appropriate stamp duty under item (a) (b) or (c) of Article 30 of the Schedule to the KS Act are duly assessed, levied and collected together with the registration fee as per Article 1(2) read with note (3) there under.

13.6. CHECKS TO BE EXERCISED IN REGARD TO REGISTERS MAINTAINED

The following are some of the audit checks to be exercised in respect of some important registers maintained.

A. 'A' Register – Daily Register

It should be seen in audit that:

- (i) All the columns of the daily register are properly filled in;
- (ii) that the daily transactions are closed and totaled;
- (iii) that the money collected is remitted on the very day or the next working day promptly;
- (iv) that the reasons for pending registration is noted in the remarks column and the final disposal of each document noted subsequently in red ink;
- (v) that the documents are entered in the order of presentation;
- (vi) that proper fee is levied in the case of copy, applications and search applications; and
- (vii) that fresh serial numbers are given to the documents registered at the beginning of each financial year.

B. Register of Impounded documents.

It should be seen in audit that:-

- (i) all the documents impounded are noted in the register promptly;
- (ii) that the reasons for impounding the document are sufficient; and
- (iii) that the documents so impounded are disposed off and the penalty and the stamp duty levied on adjudication noted.

C. Register of unclaimed documents

It should be seen in audit that:

- (i) The documents pending delivery for more than thirty days are posted in the register immediately after the expiry of 30 days;
- (ii) that proper safe custody fees are recovered at the time of delivery of the documents;
- (iii) That the total number of documents recorded in the register tally with the actual number of documents in the possession of the registering officer;
- (iv) That the fee recovered is noted in the daily register and remittance register;
- (v) That prompt action is taken for the destruction of the documents left unclaimed for more than two years; and
- (vi) That the documents destroyed are noted in the register against the entries concerned.

D. Register of Deficient fees and Stamp duty

It should be seen in audit that:

- (i) The orders of the District Registrar/Inspector General of Registration regarding the recovery of deficient fees and stamp duty are recorded in the register promptly and filed separately;
- (ii) that proper private attendance fee is recovered.
- (iii) that the fee entered in the daily register and remitted to the treasury through remittance register.

E. I & J: File containing applications for searches and copies

It should be seen in audit that:

- (i) the fees for the issue of copy of the documents and search fee are properly levied and recovered in advance; and the fee recovered are promptly recorded in daily register and remitted to treasury through the remittance book.

(Fees Payable: As per Table XII&XIII of Registration Fees)

ANNEXURE – I
QUESTIONNAIRE FOR THE GUIDANCE OF LOCAL
AUDIT PARTIES (STAMP DUTY AND REGISTRATION
FEES)

1. Quantum of Audit

AQMF:III-Audit Management

QME:Other tools and guidance

Whether the quantum of audit prescribed by the Comptroller and Auditor General has been completed ?

2. Selection of documents

(i) Whether a list of documents to be audited has been prepared from the documents entered in Book No. I, III and IV. Total number of documents in Books I, III and IV and those over Rs 1 crore,50lakhs, Rs 25 lakhs and Rs 5 lakhs and above should be scrutinized and specified as shown in the table below.(As per approval by PAG/RSA/RAV/D/12-13/dt16-07-12.

Sl. No	Value of documents	Bangalore city, urban,& Rural district	District Head quarters	Taluk Head quarters	Other places	No of Documents during audit Period	No of Documents checked
1	Rs 1 crore & above	100%	-				
2	Rs50 Lakhs& above	50%	100%				
3	Rs25lakhs & above	25%	50%	100%			
4	Rs5lakhs & above	-	-	-	100%		
5	Other documents	10%	25%	25%	25%		

(ii) While selecting the documents for audit, has it been ensured that all typical documents falling within all the categories registered during the period of audit have been selected for audit?

3. Cash

- (i) Has the selected month been checked in full and general review of other months made?
- (ii) Has proper receipts granted for moneys realized?
- (iii) Has all amount received is accounted in the subsidiary cash book and carried over to the main cash book and deposited with the treasury the next day and the remittances are supported by challans?
- (iv) Has monthly reconciliation been made between departmental receipts with those of the treasuries?
- (v) Whether adequate procedure exists (internal audit) to secure effective check on the levy, collection and accountal of stamp duty and registration fees?

4. Stamp duty and Registration fees

- (i) Has the Article of the Schedule to the Stamp Act, under which the duty has been levied, been identified, located and the rate applied found correct?
- (ii) When several instruments are employed for completing a transaction, only the principal instrument charged to duty? The duty chargeable would be the highest which would be chargeable in respect of any of the said instrument so employed (Section.4).
- (iii) In the case of instruments the stamp duty of which is based on the amount or value secured, whether the duty collected is correct with reference to the amount or value actually secured by such deed/bottomry bond, indemnity bond, mortgage deed, security bond, etc.

(iv) Where fixed rate of duty is specified (Art 18,19,24,25 etc) , whether the instrument has correctly been classified under the relevant Article and the duty levied?

(v) In the case of deeds where duty is chargeable and the value of duty paid in respect of an original document (Article 22,27,51 etc.), whether the duty is correctly worked out with reference to such earlier document?

(vi) In the case of documents (vide Article 15,20,44 etc) where consideration is the criteria for payment of duty, whether the consideration is fully and truly set forth as seen from the deed executed?

(vii) In the case of deeds the stamp duty of which is executed on a rate per cent of the value of the instrument (Agreements, Memorandum of Association of a company, lease deeds and Partition etc), whether the correct rate of duty levied.

(viii) Whether every document is assessed to duty with reference to section 4 to 6 of Stamp Act and the computation of duty is correct in accordance with the provisions contained therein.

(ix) Whether the additional duty (surcharge) leviable under other statutes has been correctly assessed and collected (conveyance exchange, mortgage and gift)?

(x) Whether in the case of conveyance, gift, exchange the market value of the property indicated has been properly arrived as per State Government orders.

(xi) Whether, denotion of stamp duty allowed is in accordance with the provisions of the Act .

(xii) Has the arithmetical accuracy and the computation of duty been checked ?

(xiii) Documents should be studied and scrutinized to see whether stamp duty has been levied according to the substance/contents of the transaction embodied there in and not according nomenclature of the instrument.

(xiv) Has the special instruction appended to the Guideline value/market value of the Department, have been applied, for assessing the market value?

(xv) Priority should be given to check miscellaneous documents such as JDA, Release, Reconstitution of partnership firm, agreements to sale, GPAs, and documents where in denotion is allowed, where there is a scope for mis-classification of the document.

5. Registration

(i) Has the item in the Table of fees, issued by the State Government, been located and applied for is found correct?

(ii) Has the arithmetical accuracy in the calculation of fee been checked by the auditor?

(iii) Where fee is realized at ad valorem rates, whether the value of document taken for the purpose of application of the rate is correct in accordance with the provisions of the Act?

(iv) Where fees chargeable are a fixed amount, whether the amount collected is correct according to the relevant items in the Table of Fees?

6. Fines and Penalties

Whether fines and penalties under the Act/Rules are actually levied and collected? Whether remission of fines and penalties are supported by orders of competent authorities and conditions, if any, attached are fulfilled?

7 Exemptions

(i) Where an instrument is exempted from stamp duty, has the party ensured that exemption allowed is in accordance with the procedure prescribed in Section 9 of the Stamp Act and that conditions, if any, prescribed for such exemption have been fully satisfied?

(ii) Similarly where there is an exemption from payment of registration fee has the party ensured that there is proper authority for such exemption?

(b) District Registrar's Office

(i) Whether the prescribed quantum of check has been exercised in respect of cash book, receipt book, stock register and receipt etc.?

(ii) Whether the register of document writers, licence fee for issue and renewal has been properly maintained?

(iii) Has the fees for issue and renewal of licenses of document writers been collected in time at the rate prescribed under Karnataka Document Writers Rules, 1978.

(iv) Whether registers of Special Marriages have been maintained and the prescribed fee under the Rules for solemnizing the marriages under the Special Marriages Act realized at the prescribed rates?

(v) Audit should inter alia also cover the check of the documents coming under the provisions of Section 31,33,39 and 59 to 64 of the Karnataka Stamp Act.

(8) Refunds

(i) Has the party ensured that refunds are made within the period prescribed under the Act and that orders of proper authority exists for each claim?

(ii) Whether particulars of refunds have been noted in the register of refunds and the accounts/registers against the original entry

II. Revision of Market Value Guidelines

[The Karnataka Stamp (Constitution of Central Valuation Committee for estimation, publication and revision of market value guidelines of properties) Rules 2003]

i) Inspector General of Registration Office

a) Whether the CVC has issued a notification regarding constitution of Market Value Sub-committee in each sub-district/ district for the purpose of estimation and revision of the market value guidelines of the properties in the concerned sub-district / district (Rule 4)

b) Whether the CVC has sent instructions to all the sub-committee in the state during the first week of October for estimation of market value guidelines for the next year. (Rule 54) Whether the CVC has placed the recommendation of each district registrar before the Committee within 3rd week of January (Rule 7(1)).

c) Whether the CVC has taken the final decision on the estimation of market value of each district by the end of February (Rule 7(2)) .

d) Whether the final decision on the estimation on market value has been sent to the concerned Registrar in the 1st week of March of the next calendar year for enforcing the same for the purpose of registration (Rule 7(3)) .

e) Whether there is any delay in finalizing the revision of market value guidelines and the reason for such delay.

f) Whether there is any loss of revenue due to delay in finalization of market value guidelines.

ii) District Registrar / Sub-Registrar Office:

a) Whether the sub-committee on receipt of the instructions from the CVC, has given wide publicity for the intention of such estimation (Rule 5(2)) .

b) Whether public objections / suggestions were obtained within 15 days from the date of such publicity (Rule 5(2)) .

c. Whether the sub-committee has sent its recommendation to the District Registrar in the last week of December (Rule 5(2)) .

d. Whether the District Registrar has sent the scrutinized recommendation to the CVC during 1st of January (Rule 5(3)) .

e. Whether there are any delays in implementing the revised market value guidelines approved by the CVC and resultant loss of revenue to be incorporated in the LAR.

ANNEXURE – II

Note on Computerization of Registration Process

AQMF: III-Audit Management

QME: K-IT Tools

Introduction:- The process of registration was entirely manual till the year 2003, leading to a high waiting time and multiple trips to department offices for the citizens. The other negative implications of the manual process included high possibility of manual errors during registration and data entry, cumbersome process of retrieval of hard copy documents and possible damage and theft of document copies. Hence in 2003, the department decided to computerize its services to improve the efficiency of administration and quality of service rendered to citizens.

The services of the department of Registration were computerized through implementation of software application named 'KAVERI' Karnataka Valuation and e-Registration Initiative. It was implemented in 2003-04 and is operational across all the 234 Sub-Registrar offices and 34 District Registrar offices in the state.

Kaveri application has various modules to support the following department services related to registration.

- Document Registration
 - 1. Marriage Registration
- Firm Registration
- Property valuation
- Report generation
- EC search

- Vendor Management
- Court order Entry

The main features of Kaveri application include;

- Complete computerization of 5 step registration process with automatic fees and stamp duty calculation
- Automated valuation of the properties.
- Storage of digital images along with thumb print.
- Digitization of encumbrance data.
- Secure and reliable back up.
- Biometric login enabled for authentication & Authorization of service.
- MIS report generation.
- Generating online EC results during property registration in Bangalore District

II BHOOMI KAVERI INTEGRATION

Bhoomi is a software application developed by the revenue department to maintain agricultural land records in the state. The Kaveri application was integrated with Bhoomi in the year 2006 and subsequently through the years the level of integration has been progressively increased to achieve tight integration and seamless exchange of data between the two applications.

The following features have been added as part of the Kaveri-Bhoomi integration;

Survey No. extent of the land, name of the seller are being captured from Bhoomi during registration in Kaveri to avoid duplicate and fraudulent registration.

- Date on Government land, granted land, PTCL land, etc which have been marked in Bhoomi, is also taken in Kaveri so that such land can be barred from registration.
- J-slip with information on transfer of agricultural lands is transmitted electronically from Kaveri to Bhoomi soon after registration. Kaveri transmits mutation notice to Bhoomi to help Thasildar to print the mutation notice and serve it to the concerned parties. This feature avoids delay in mutation and eliminates human errors in manual J- slips.
- SMS service sends message on registration of the document and various stages of mutation to parties both in Kannada and English.

III Any where Registration and anywhere EC

The 'Any where registration & Encumbrance aims to provide citizens with the freedom of availing department services at multiple offices by removing jurisdictional limitations. The anywhere Registration and EC initiative was implemented across SROs in Bangalore Urban District in November 2011.

The aims of this initiative is to provide the following benefits to the citizens,

- The removal of jurisdictional limitations, to provide the right to choose the SROs within the district.
- The citizens can choose the SRO that is convenient to them in terms of geographical location and accessibility, saving travel time, effort, and money.

- Can choose the SROs where the officials are more cooperative, efficient and user friendly,
- Can choose office with less work load.

III APPLICATION OF IDEA PACKAGE.

The following applications may be provided to all the systems with the audit party.

- a. Latest version of **IDEA** package.
- b. Cloning of windows 2000 server package
- c. Sql.

The following strategy may be adopted wherever, the system is provided with the above application

- a. On reaching the office, the audit party can copy of the mdf by using **SQL**.
- b. Then the same can be exported to idea.
- c. After copying to idea, it can be analyzed/prioritized based on the volume/nature of documents registered.

The following levels can be introduced while selecting the documents. These are indicative only.

- i) All the documents with a value of more than one crore may be selected in a complete manner and also the documents classified based on the Articles in which they are registered.
- ii) Then the second priority can be given based on the documents registered based on Articles, 5 agreements, 41 GPA, 45 release deeds, 30 lease deeds etc.,
- iii) If the office is registered more documents in the value range less than one crore, above strategy can be modified accordingly.