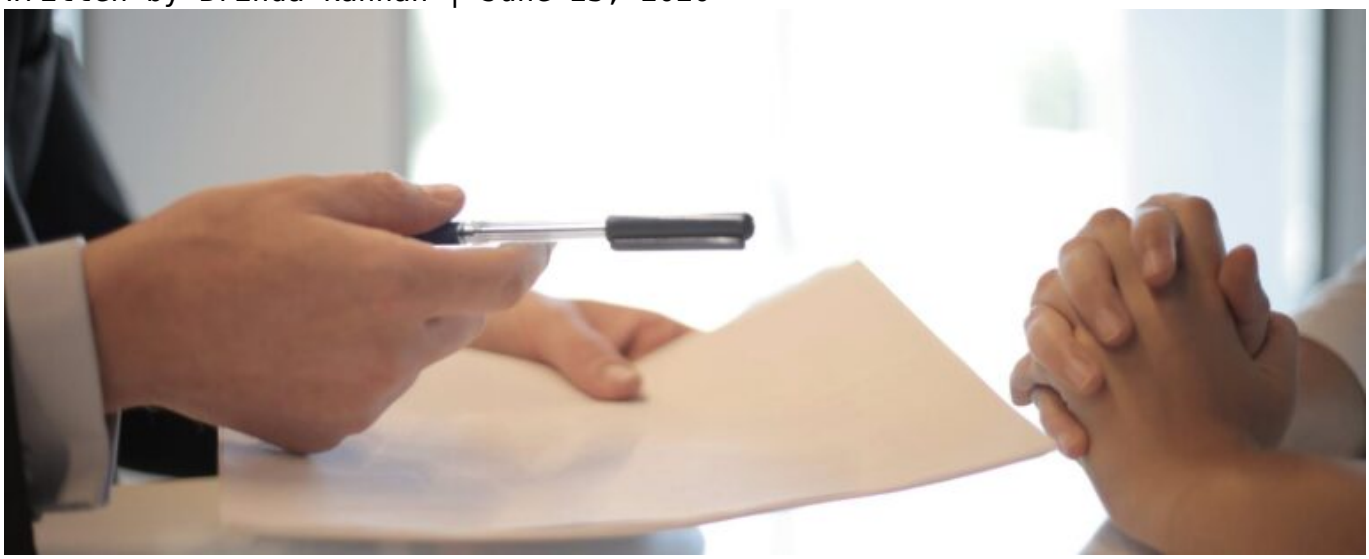
Quandary in Stamping and Execution of Agreements during Covid-19

written by Brinda kannan | June 23, 2020



How to undertake Stamping and Execution Covid-19 - During Agreements

The nationwide lockdown announced by the Government of India due to COVID-19 has challenged the operations of various businesses in many ways. Stamp duty, an indirect tax charged by the government during the execution of various documents or instruments, is one among many who are impacted by the halt in activities due to the lockdown.

The Central and state governments have their own jurisdiction to levy the stamp duty. In India, it is mandatory to pay the stamp duty while executing any type of document. Wherever a financial aspect is involved and the document is being executed, it is mandatory to pay the stamp duty either to the central government or the state government.

Execution Of Agreements

In this situation of COVID–19, it is well known that no commercial transactions are on hold. The executants of the agreement rather prefer to execute the documents with their physical presence but these days with the need to follow social distancing, execution of agreements with physical presence leads to chaos and causing difficulty in getting the documents executed.

There are three different ways to pay the stamp duty:

- E-Stamping Facility
- Papers bearing impressed stamps
- Using a franking machine

In the pandemic crisis, the options of paper bearing impressed stamps and using a franking machine are ruled out since most of the vendors are not operating. But not all the states have all the options mentioned above. However, the states having all three options are legally enforceable.

Conservative Way Of Execution Of Agreements

The conservative method of entering into a contract has always been by physically present and signing the documents. This method has been considered to be more authentic. At this present situation of following social distancing, the conservative method will lead to chaos.

E-contracts to the Rescue

The introduction of e-contract has been a revolutionary change. e-contracts are not paper-based. The main requirement of an e-contract is a digital signature. E-contracts are mainly used when the parties entering into an

agreement are from different parts of the world.
The present situation and standstill of the economy can help in the usage and growth of e-contracts making the executions faster thus developing the businesses.
Electronic Signature is used for executing the e-contracts. The e-signature comes into the picture through the Information Technology (Amendment) Act, 2008 and also it is important to abide by the Indian Contract Act, 1872 while executing an e-contract.
Validity of E-Contract
Under Section 10A of the Information Technology Act, 2000, e-contracts have gained recognition to enforce any contract through electronic means.
Section 10 A of the Information Technology Act states that –
"*10A - Validity of contracts formed through electronic means.–Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.*"[1]
But under the First Schedule of the Information Technology Act, the sale of immovable property or any interest in a property is not included.[2]
While entering into an e-contract, it is mandatory that the agreement is abided by the Indian Contract Act, 1872. For the purpose of evidentiary value, the Indian Evidence Act, 1872 comes into role.
Stamping Of Agreements
In 2019, the Indian Stamp Act, 1899 was amended for the prevention of tax evasion. The amendment was to come in to force from April 1, 2020, but unfortunately due to the outbreak of COVID–19 the amendment is to come into force from 1st July 2020.[3]
The method of E-Stamping is one of the easiest ways to execute an agreement. For this, a web portal is available for payment of the stamp duty. In the system of e-SBTR (Electronic Secure Bank and Treasury Receipt), E-Stamping facilities are provided in the authorized bank, therefore, reducing time and other administrative expenses.
Traditional Methods of Stamping
The conservative method of stamping of the agreement includes Franking and Physical Stamping. In the method of Franking even before the parties affix their signature the document may be printed and stamped by way of franking. Next comes the physical stamping, In this method, e-agreement should be taken. With the help of impressed stamps or adhesive stamps, the agreement can be stamped on the day of execution of the agreements.
Consequences of Non- stamping
There are few consequences to be faced by the parties entering into an agreement. All three methods of stamping mentioned above are attracted to the consequences of non-payment of stamps under the stamp duty laws. For example, instruments that are not duly stamped cannot be considered as evidence under Section 35 of the Indian Stamp Act. Any document with financial interest that has not been stamped shall not be considered as evidence in the Court of Law.

E-Stamping
E-Stamping was introduced to make the stamp duty payment easier.
Stock Holding Corporation of India Limited ("SHCIL") is responsible for all

the e-stamps used in the country. SHCIL has been appointed by the Central Government and is also responsible for the maintenance of records. There are various benefits of using e-stamps. E-Stamping is basically tamper-proof and a lot of time can be saved by using E-Stamping. A unique identification number is generated to check the authenticity of the e-stamp.

There are cons in the system of e-stamping as well. For example, if the e-stamp certificate is lost then a duplicate copy cannot be issued. Even though the payment is made online, the actual stamp paper has to be collected physically from their respective vendors. It is a challenge in the current day situation to collect the physical stamp paper.

The next problem faced in e-stamping is a late fee. If the payment is delayed then a late fee is levied. The Collector has discretionary powers to accept delayed payments if an appropriate reason is given. The Collector may not collect the late fee if the party approaches the Collector suo moto.

However, with regard to the late fee due to delayed payment, the Maharashtra Stamp Act is flexible to an extent. According to Section 17 of the Maharashtra Stamp Act, the stamp duty can be paid the next day after the execution.

In the case of Navinraj vs. Gnanasekar,[4] it was held that the Collector should consider all the circumstances and also the financial position of the parties entering into an agreement before the collection of late fees.

On April 20, 2020, the Ministry of Finance requested the State Governments to give proper instructions to the Collector before collecting the late fee with regard to loan agreements or any other instruments with regard to the loan. The communication has only requested the state governments and has not mentioned any directions concerning the penalty.

Validity Of E-Stamping

The parties entering into an agreement through e-stamping should fill a form along with the amount that has to be paid for stamp duty at an Authorized Collection Centre after which the e-stamp certificate would be generated. The stamp duty can be paid as cash, demand draft or through RTGS or NEFT. The authenticity of an e-stamp can be verified online.

Conclusion

To carry out Stamping and Execution of Agreements during Covid-19, it is important that the documents can be executed and at the same time be valid under the court of law. It is understood that e-agreements are valid under the court of law and they are liable for stamp duty as well. E-Contracts promote different parties from across the world to enter into a contract at the same time being legally valid.

E-Stamping encourages a reduction in corruption and improving transparency. Yet there could be technical glitches to be faced by the parties executing an agreement through e-stamping which might be a major challenge to execute an agreement. The state legislation can be flexible in levying delayed payment fees. Even still there are certain states which have to show more importance to e-contracts and e-stamping. And in rural areas, people still do not have adequate knowledge in technology, hence it would be very challenging in rural areas to adapt to this e-stamping. It could also be challenging for lawmakers and government departments.

- [1] https://indiankanoon.org/doc/123351751/
- [2] https://lawgic.info/first-schedule-of-the-information-technology-act-2000/

- [3] https://nsdl.co.in/downloadables/pdf/2020-0039-Policy-GoI%20notification%20dated%20March%2030,%202020.pdf
- [4] https://indiankanoon.org/doc/99299347/

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