

Stamp Duty on Arbitral Awards

The Maharashtra Stamp (Amendment) Ordinance 2024 (“Ordinance”), geared to introduce a new regime for stamping of arbitral awards, has revived the debate over the levy of stamp duty on arbitral awards and its implications.

Under the existing regime in Maharashtra, a fixed stamp duty of INR 500 (USD 5.9) is payable for awards. However, the upcoming regime shifts to an ad-valorem system, calculating the stamp duty based on the value of the award. Under the Ordinance, the stamp duty for awards concerning movable property is as follows:

- a) 0.75% of the total award amount when the award does not exceed INR 50 lakhs (USD 59,482.65);
- b) INR 37,500 plus 0.5% of the total award amount for awards exceeding INR 50 lakhs (USD 59,482.65) but not exceeding INR 5 crores (USD 5,94,814.50); and
- c) INR 2,62,500 plus 0.25% of the total award amount for awards exceeding INR 5 crores (USD 5,94,814.50).

The upcoming regime is expected to significantly increase the stamp duty payable for awards in Maharashtra, surpassing the burden experienced in Delhi. Although Delhi similarly employs an ad-valorem model, Delhi imposes a stamp duty of 0.1% on awards over INR 1,000. As outlined below, the upcoming Maharashtra regime will result in much higher stamp duties compared to the existing regimes in both Maharashtra and Delhi:

- a) For an award of INR 50,000 (USD 594.83), the stamp duty in Delhi is INR 50 (USD 0.59), while under Maharashtra's upcoming regime, it would be INR 375 (USD 4.46).
- b) For an award of INR 50,00,000 (USD 59,483.10), the stamp duty in Delhi is INR 5,000 (USD 59.48), while under Maharashtra's upcoming regime, it would be INR 37,500 (USD 446.06).
- c) For an award of INR 1,00,00,000 (USD 118,966.20), the stamp duty in Delhi is INR 10,000 (USD 118.97), while under Maharashtra's upcoming regime, it would be INR 87,500 (USD 1,040.82).
- d) For an award of INR 100,00,00,000 (USD 11,896,620), the stamp duty in Delhi is INR 10,00,000 (USD 11,896.62), while under Maharashtra's upcoming regime, it would be INR 27,62,500 (USD 32,859.03).

Under Maharashtra's existing regime, a flat stamp duty of INR 500 (USD 5.90) is applicable for all the above award amounts.

Non-payment of stamp duty can impede a party's ability to enforce such awards within India. Insufficiently stamped domestic awards may also be impounded by courts when



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such awards are challenged under Section 34 of the Indian Arbitration and Conciliation Act 1996 (“Arbitration Act”). However, the Indian Supreme Court has held that non-payment of stamp duty on a foreign award does not render such award unenforceable in India.

Failure to pay stamp duty is not considered as a ground to refuse enforcement of awards under the New York Convention, the UNCITRAL Model Law or the Arbitration Act. The restriction on enforcing awards on this ground stems from the Indian Stamp Act 1889, which classifies such awards as “instruments”, and aims to generate additional state revenue.

However, onerous stamping requirements could deter parties from choosing an Indian seat. In a significant ruling earlier this year, the Indian Supreme Court held that inadequate stamping of arbitration agreements is a curable defect and upheld the validity of such agreements. This judgment recognized the profound impact of stamp duty regulations on India's status as a global arbitration hub.

Similarly, state legislatures, while fulfilling the critical function of revenue generation, must ensure that stamp duty is structured in a way that preserves the commercial viability of arbitration. Striking the right balance will be essential for sustaining India's competitiveness in the global arbitration landscape.





Practice Area News

Amendments to Arbitration Act. The **Department of Legal Affairs** has introduced and invited comments on the Arbitration and Conciliation (Amendment) Bill 2024. The proposed amendments intend to boost institutional arbitration, reduce court intervention and ensure timely conclusion of arbitrations.

Delhi High Court Decides on Non-signatory Obligations. In *RBCL Piletech Infra v. Bholasingh Jaiprakash Construction Limited & Ors.* (2024 SCC OnLine Del 4913), the **Delhi High Court** held that a non-signatory can be compelled to arbitrate, even outside the group of companies' doctrine, if such non-signatory owes an obligation to the claimant under an interconnected agreement.

Vinesh Phogat's Plea before Court of Arbitration for Sport. In *Vinesh Phogat v United World Wrestling & IOC* (CAS OG 24/17), the **Court of Arbitration for Sport** dismissed Vinesh Phogat's appeal against the UWW's decision to disqualify her from the women's 50 kg wrestling finals at the Paris 2024 Olympics for being 100 grams over the weight limit.

Guidelines on Contracts for Arbitration and Mediation for Domestic Contracts of Public Procurement (No.F. 11212024-PPD). On **June 3, 2024**, the Ministry of Finance released guidelines on domestic procurement contracts by government agencies. Notably, these guidelines state that as a norm, arbitration in government contracts may be restricted to disputes with a value less than INR 10 crore; and any arbitration clause for exceeding amounts must receive approval from the relevant Secretary or an authorized officer.

In the Firm

• India ADR Week 2024

NDA served as the knowledge partner for India ADR Week 2024. In this year's edition, NDA collaborated with MCIA and CLA to create a comprehensive survey aimed at gathering in-depth practitioner feedback on arbitration in India.

• Young ICCA Regional Representative

Mr Ashish Kabra, Head of NDA's Singapore Office, has been appointed as a Young ICCA Regional Representative for the 2024-2026 term.

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