



THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

for
June, 2021 Examination

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

MODULE 1

PAPER 1

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Lesson 13 - Arbitration and Conciliation Act, 1996

Details of Change

Hon'ble President of India promulgated 'The Arbitration and Conciliation (Amendment) Ordinance, 2020' on November 04, 2020 with an objective to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award are induced by fraud or corruption.

Amendments in the ordinance *inter-alia* include amendments to Section 43J of **Arbitration and Conciliation Act, 1996**, which prescribes qualification, experience and norms for accreditation of arbitrators, is substituted with the following section.

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the Regulations.

Accordingly, the qualifications for appointment as arbitrators, which were earlier prescribed in the principal Act, will now be through Regulations.

For more details visit:

<http://www.egazette.nic.in/WriteReadData/2020/222941.pdf>

<https://www.livelaw.in/top-stories/centre-promulgates-arbitration-conciliation-amendment-ordinance-2020-165431>

Lesson 14 - Indian Stamp Act, 1899

1) Finance Act, 2019 amends Indian Stamp Act, 1899

Implementation of Amendments in the Indian Stamp Act, 1899 and Rules made from 1st July, 2020 for Rationalized Collection Mechanism of Stamp Duty across India with respect to Securities Market Instruments

The Amendments in the Indian Stamp Act, 1899 brought through the Finance Act 2019 and Rules made thereunder have come into effect from 1st July, 2020 vide notifications dated 30th March, 2020.

Impact

This system will help develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development.

To achieve the rationalization of stamp duty structures, the amendments, *inter-alia*, provide for the following structural reforms —

- i. The stamp-duty on sale, transfer and issue of securities shall be collected on behalf of the State Government by the collecting agents who then shall transfer the collected stamp-duty in the account of the concerned State Government.
- ii. In order to prevent multiple incidences of taxation, no stamp duty shall be collected by the States on any secondary record of transaction associated with a transaction on which the depository / stock exchange has been authorised to collect the stamp duty.
- iii. In the extant scenario, stamp duty was payable by both seller and buyer whereas in the new system it is levied only on one side (payable either by the buyer or by the seller but not by both, except in case of certain instrument of exchange where the stamp duty shall be borne by both parties in equal proportion).
- iv. The collecting agents shall be the Stock Exchanges or authorized Clearing Corporations and the Depositories.
- v. For all exchange based secondary market transactions in securities, Stock Exchanges shall collect the stamp duty; and for off-market transactions (which are made for a consideration as disclosed by trading parties) and initial issue of securities happening in demat form, Depositories shall collect the stamp duty.
- vi. The Central Government has also notified the Clearing Corporation of India Limited (CCIL) under the jurisdiction of RBI and the Registrars to an Issue and/or Share Transfer Agents (RTI/STAs) to act as a collecting agent. The objective is to bring OTC derivative transactions reported to CCIL and physical space (non-demat) transactions in mutual funds handled through RTI/STAs under the ambit of stamp duty regime so as to avoid any tax arbitrage.
- vii. The collecting agents shall within three weeks of the end of each month transfer the stamp-duty collected to the State Government where the residence of the buyer is located and in

case the buyer is located outside India, to the State Government having the registered office of the trading member or broker of such buyer and in case where there is no such trading member of the buyer, to the State Government having the registered office of the participant.

- viii. The collecting agent shall transfer the collected stamp-duty in the account of concerned State Government with the Reserve Bank of India or any scheduled commercial bank, as informed to the collecting agent by the Reserve Bank of India or the concerned State Government.
- ix. The collecting agent may deduct 0.2 per cent of the stamp-duty collected on behalf of the State Government towards facilitation charges before transferring the same to such State Government.
- x. For many segments, there is reduction in duty. For example, the rate prescribed is lower for issue of equity/debentures and for transfer of debentures (including re-issue) to aid capital formation and to promote corporate bond market.
- xi. For equity cash segment trading (both delivery and non-delivery-based transactions) and options, since rates are to be charged only on one side in line with the new scheme, it can be stated that there is an overall reduction in tax burden.
- xii. Secondary market transfer of instruments which are traded with differences in a few basis points, like interest rate / currency derivatives or corporate bonds are being charged at a very lower rate from the existing rates. For the newly introduced 'repo on corporate bonds', a far lower rate is specified, since similarly positioned repo on Government Securities is not subject to duty.
- xiii. No stamp duty shall be chargeable in respect of the Instruments of transaction in stock exchanges and depositories established in any International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005.
- xiv. Tax arbitrage is avoided by providing the same rate of stamp duty for issue or re-issue or sale or transfer of securities happening outside stock exchanges and depositories.
- xv. Mutual funds, being delivery-based transactions in securities, were supposed to have been paying the duty as per various State Acts. All mutual fund transactions are thus liable for stamp duty and the new system has only standardized the charges across states and the manner of collection of stamp duty.

The Regulators (RBI & SEBI) have been authorized by the Central Government under the Indian Stamp Act, 1899 to issue clarificatory circulars/ operational guidelines on specific issues so as to ensure smooth implementation from 1st July, 2020.

For more details visit:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1635399>

<http://egazette.nic.in/WriteReadData/2019/209695.pdf>