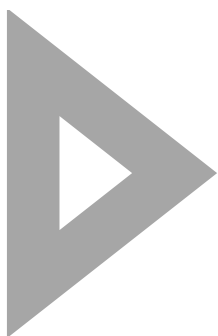


3rd April, 2020

Execution & Stamping of Agreements **during** COVID-19- **A Ready Referencer**



Legal intelligence Series - COVID | XV

AHMEDABAD | BENGALURU | NEW DELHI | KOLKATA | MUMBAI

Every country's economy is based on Agreements and contracts wherein two or more parties agree to a **certain defined, listed and expressed terms & conditions put down in black and white** which becomes binding upon signing of the parties involved.

Further, the agreements being the heart and soul of a business, they need to be enforceable documents. The enforceability of such documents are subject to the satisfaction of the provisions under **the Indian Stamp Act, 1899** read with **the Registration Act, 1908**. Accordingly, they should be duly stamped for being a valid document in the eyes of the law.

However, in a situation like the present, where nation-wide lockdown has been imposed for a period of 21 days, execution and stamping of documents is a challenge.



The following questions arise:

1. **What will happen to the commercial transactions in the country?**
2. **How will the businesses move ahead and undergo deals?**
3. **How will the parties enter into an Agreement and get it executed**
4. **What happens to the payment of Stamp duty during the Pandemic?**

These questions are being dealt in our present white paper under the Pandemic Legal Intelligence Series.

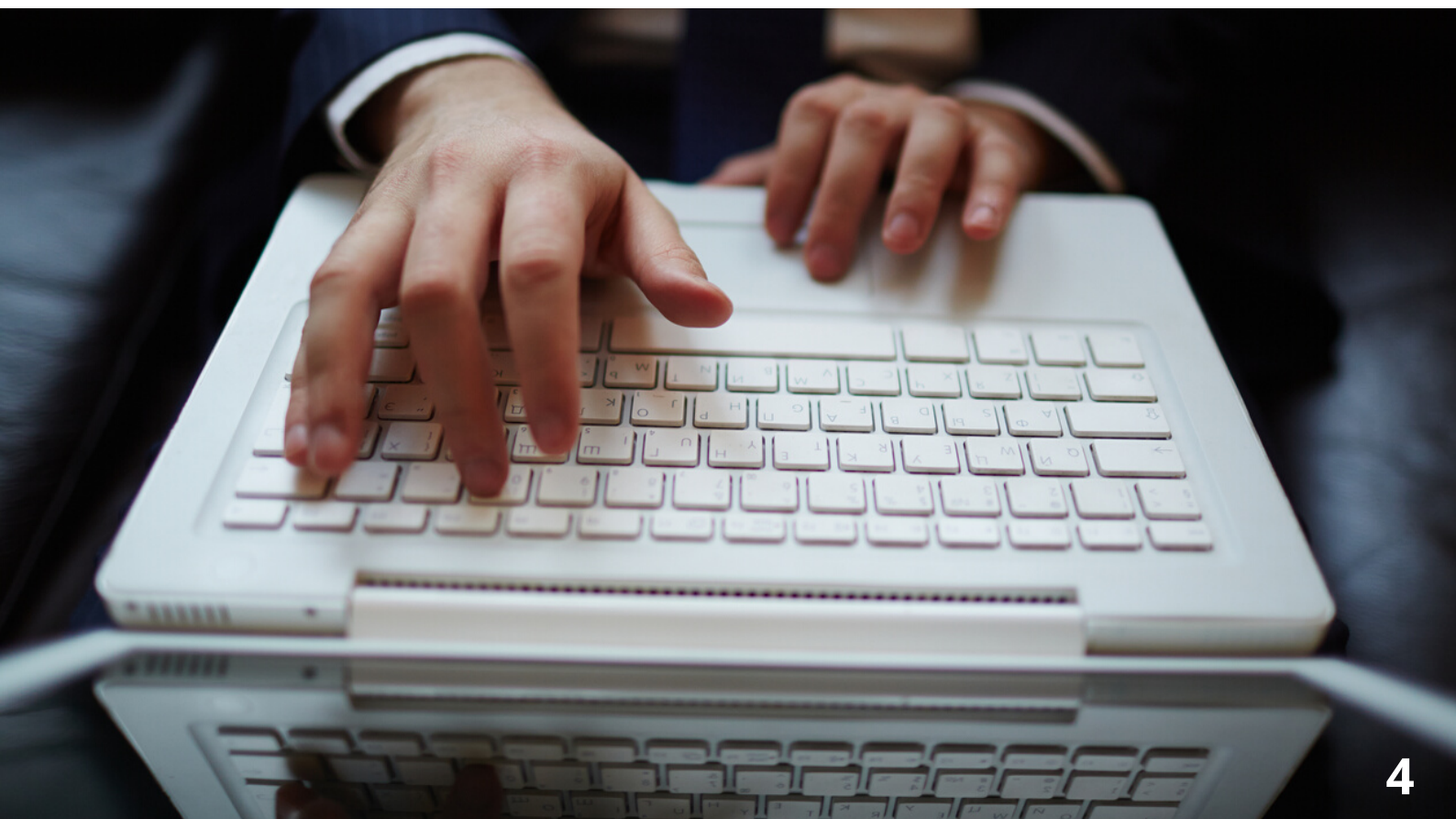


It is evident that even during the situation of complete lockdown, **no commercial transactions are on hold, starting from rent agreements, to service agreements and ranging to agreements between corporate entities et al.**

However, though we have evolved as a technology friendly nation yet physical signing of Agreements are preferred by the individuals and the corporates for better assurances and negotiations, wherever required.

Nonetheless, **Social Distancing** has emerged as the need of the hour, execution of Agreements is a big question mark. Considering the nature of the spread of COVID-19, any exchange of physical documents seems even difficult.

A Solution to this can be **E-Contracts.**



As per **Section 10A of the Information Technology Act, 2000**; e-contracts have been given recognition to the enforceability of any contract, expressed and agreed, through electronic means or records.

The Section is reproduced for your reference herein below:

“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.”

However, the Act does not include Contracts for the sale or conveyance of immovable property or any interest in such property as mentioned under the First Schedule of the Act.

Therefore, the Act provides **legal recognition to the Electronic records which are rendered and are available in Electronic Form and can be accessible for future reference.**



The halt in the economy can help give a push to E-Contracts making the negotiations and executions faster and easier and further promote business relationships.

While referring to any agreement or a contract, it is important to comply with the provisions of the **Indian Contract Act, 1872("the Act")** while entering into an e-contract through e-mail or any other internet medium.

While concluding the negotiation of the contract, execution of the agreement comes into picture through electronic signature as inserted vide the **Information Technology (Amendment) Act, 2008.**

Further, the evidentiary value of these contracts are governed under the **Indian Evidence Act, 1872.**



In the case of *Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd., India* (2010) 3 SCC 1 the Supreme Court of India while dealing with a contract executed over e-mail, the Court held that,

“...Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialled.”

Therefore, it is important to note that, the Indian Contract Act, 1872 does not prohibit or question the validity of electronically concluded agreements.



Having referred the precedent and the requirement of stamping for making a contract enforceable in law, it is equally important to understand the pillars of contract through the provisions of Section 4 and 7 of the Indian Contract Act,1872(the Act).

An acceptance to an offer conveyed by a party, satisfies the requirements of Section 4 of the Act.

Section 4 reads as under:

"Communication when complete-The communication of an acceptance is complete as against the acceptor, when it comes to the knowledge of the proposer.

The completing limb is provided by Section 7 of the Act which stipulates that an acceptance must be absolute and unconditional. In other words, it is that an irrevocable contract is concluded.



The Union Finance Minister during the enactment of the Finance Act, 2019 has amended the **Indian Stamp Act, 1899** in order to prevent tax evasion. The said amendments were to come into force **w.e.f. 1st April, 2020**.

As a result of the outbreak of COVID – 19, the Revenue Department vide **Notification No. F. No. S.33013/3/2019 ST-I, DOR dated 30th March, 2020** notified the applicability of the Amendments to be extended and coming into force from 1st July, 2020.

In addition to the above, while discussing stamping of Agreements which are to be extended or freshly entered into, **there exists online stamp duty payment portals that have come to the rescue through several Banks.**



This is when the State of Maharashtra introduced the **Electronic Secure Bank and Treasury Receipt (e-SBTR) system** which provided for e-stamping facilities by authorized banks thereby, reducing the administrative costs also.

On the other hand, the **State of Gujarat and Delhi NCR** have adopted **Stock Holding Corporation of India Limited (SHCIL)** which is an agency started by the Central Government for E-stamping.

However, it is always advisable to take an informed decision on your future contracts so as to avoid unforeseen liabilities in the future.



ABOUT US

AMLEGALS is a multi-specialised law firm. We would love to hear your views, queries, feedback and comments on covid19@amlegals.com or rohit.lalwani@amlegals.com.

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