

A BOOK ON DRAFTING OF COMMERCIAL CONTRACTS **AND AGREEMENTS**



BY

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PREFACE

From the moment we wake up to the moment we go to sleep our life is governed by the set of expectations we have as a result of the explicit and implicit agreements between us and others.

In fact, agreement can be defined as a meeting of minds with the understanding and acceptance of reciprocal legal rights and duties as to particular actions or obligations, which the parties intend to exchange or a mutual assent to do or refrain from doing something.

It is important to understand that if we enter into agreements with commercial organizations we will have important obligations to fulfil in return for any rewards that we might receive. So before any commercial agreement is finally signed all parties should invest considerable time and effort in the process which can take many months.

This book's extensive coverage of most of the types of business agreements that we are likely to encounter in the commercial sphere enables the readers to understand the mode of drafting agreements and contracts in a simple and understandable manner.

We shall appreciate further questions from our readers and all concerned on various issues so that they can be included in our future edition or replied through email rajkumarfca@gmail.com. We will appreciate if our readers can give suggestions and criticism and call our attention to errors which might have inadvertently crept in.

Index

1. INTRODUCTION

- 1.1. What is a document?
- 1.2. What is an agreement?
- 1.3. Validity of agreement
- 1.4. What is drafting?
- 1.5. Points to be kept in mind while drafting agreements

2. ABOUT CONTRACTS

- 2.1. What is a Contract?
- 2.2. Difference between agreement and contract
- 2.3. Overview of Indian Contract Act, 1872
- 2.4. Core processes of a Contract
- 2.5. Important clauses in a commercial contract

3. TYPES OF AGREEMENTS / CONTRACTS

4. FORMATION OF AN ENTITY

- 4.1. Memorandum of Association & Articles of Association
- 4.2. Partnership Deed
- 4.3. LLP Incorporation Document and LLP Agreement
- 4.4. Trust Deed
- 4.5. Conversion of Partnership into Limited Company
- 4.6. Association of persons agreement

4.7. Section 25 company – Memorandum and Articles of Association

4.8. Society

5. BUSINESS AGREEMENTS

5.1. Agency Agreement

5.2. Advertising Agreement

5.3. Annual Maintenance contract

5.4. Asset Purchase Agreement

5.5. Bonds

5.6. Consultancy Agreement

5.7. Dealership / Distribution agreement

5.8. Franchise Agreement

5.9. Hire Purchase Agreement

5.10. Memorandum of Understanding

5.11. Stock Purchase Agreement

5.12. Assignments

5.13. Agreement between Producer and Distributor

5.14. Retainership Agreement

5.15. Indemnity

6. CORPORATE AGREEMENTS

6.1. Shareholders' Agreement

6.2. Agreement for underwriting shares of a company

- 6.3. Agreement To Underwrite Debenture Stock
- 6.4. Listing Agreement
- 6.5. Share Purchase Agreement

7. PARTNERSHIP AGREEMENTS

- 7.1. Agreement modifying the partnership deed
- 7.2. Agreement introducing new partner
- 7.3. Deed of dissolution
- 7.4. Deed of Retirement

8. ALTERNATIVE DISPUTE RESOLUTION

- 8.1. Agreement of reference to sole arbitrator
- 8.2. Agreement of reference to common arbitrator
- 8.3. Model Arbitration Clauses in an Agreement
- 8.4. Model Conciliation clauses
- 8.5. Model Mediation clauses
- 8.6. Mediation Agreement

9. FOREIGN COLLABORATION AGREEMENTS

- 9.1. Technical Collaboration Agreement
- 9.2. Collaboration Agreement to establish a factory

10. MERGER AND ACQUISITION AGREEMENTS

11. JOINT VENTURE AGREEMENTS

- 11.1. Amalgamation

12. PROPERTY RELATED AGREEMENTS

12.1. Sale

- 12.1.1. Agreement for sale of House
- 12.1.2. Agreement for sale of Apartment in Co-operative Society
- 12.1.3. Agreement for Business Centre
- 12.1.4. Co-ownership Agreement
- 12.1.5. Deed of Transfer in a Co-operative Society
- 12.1.6. General Sale Deed
- 12.1.7. Sale Deed by a Guardian of a Minor
- 12.1.8. Sale Deed of Agricultural Land
- 12.1.9. Deed of Sale by Mortgagee
- 12.1.10. Sale Deed of Joint Family Property
- 12.1.11. Sale by Official Liquidator of the Company

12.2. Lease

- 12.2.1. General Lease Deed
- 12.2.2. Commercial Lease Agreement
- 12.2.3. Sub-Lease Deed
- 12.2.4. Lease Deed for Office premises to be taken by a bank
- 12.2.5. Lease of furnished house for residential purpose
- 12.2.6. Deed of Surrender of Lease

12.3. Leave and Licence

12.4. Mortgage

12.4.1. Simple Mortgage Deed

12.4.2. Deed of Mortgage by Conditional Sale

12.5. Development Agreement

12.5.1. Development Agreement between Owner
and Developer

12.5.2. Agreement for transfer of development
rights

12.6. Builder / Construction Agreement

12.7. Broker Agreement

12.7.1. Agreement between Broker and a
prospective Purchaser

12.7.2. Agreement for appointment of a broker for
selling a house

12.7.3. Agreement between builder and broker for
selling the flats to be
constructed

12.8. Partition

12.9. Gift

12.9.1. Deed of gift of movable property

12.9.2. Deed of gift of immovable property

12.9.3. Deed of gift of land for building a temple

12.9.4. Deed of gift of property for hospital

12.10. Relinquishment/release

12.11. Exchange

12.12. Cancellation

13. POWER OF ATTORNEY

13.1. General Power of Attorney

13.2. Special Power of Attorney

13.3. Power of Attorney by a partnership firm in favour of firm's manager

13.4. Power Of Attorney By A Company To Its Branch Manager

13.5. Power of Attorney for a court case

13.6. Power Of Attorney By Company To Its Agent

13.7. Power of Attorney for Development of Property

13.8. Revocation of Power Of Attorney

13.9. Replacement of Attorney

14. INTELLECTUAL PROPERTY AGREEMENTS

14.1. Agreement for Sale of Technical Know-How

14.2. Deed of Assignment of Copyright

14.3. Agreement to sell Patent Rights

14.4. Agreement for Mortgage of Patent

14.5. Deed of Assignment of Patents

- 14.6. Agreement between Author and Publisher
- 14.7. Agreement between Author and New Publisher
- 14.8. Agreement for use of Trade Mark
- 14.9. Agreement between Trade Mark Owner and a Manufacturer
- 14.10. Assignment of Trade Mark
- 14.11. Registered User Agreement

15. CYBER LAW

- 15.1. Software Services Agreement
- 15.2. Internet services agreement
- 15.3. Privacy Policy and User Agreement
- 15.4. Software Escrow Agreement
- 15.5. Website Development Agreement
- 15.6. Agreement for transfer of right/title/interest in website
- 15.7. Internet Gateway Merchant Legal Agreement

16. BANKING / FINANCIAL AGREEMENT

- 16.1. Loan cum Hypothecation Agreement for purchase of vehicle
- 16.2. Hypothecation Deed for purchase of machinery
- 16.3. Bank Guarantee
- 16.4. Promissory Note
- 16.5. Personal Guarantee
- 16.6. Loan agreement with bank

- 16.7. Composition Deed with Creditors

17. LABOUR / EMPLOYMENT AGREEMENT

- 17.1. Employment agreement
- 17.2. Non-disclosure Agreement
- 17.3. Compensation Agreement
- 17.4. Collective Bargaining Agreement
- 17.5. Wage Agreement
- 17.6. Agreement between employer and employee going abroad
- 17.7. Agreement to refer disputes to arbitration
- 17.8. Contract Labour Agreement
- 17.9. Agreement for appointment of Managing Director
- 17.10. On the Job Training Agreement

18. WILLS

19. OTHER AGREEMENTS

- 19.1. Adoption Deed
- 19.2. Surrogacy Agreement
- 19.3. Agreement for maintenance between husband and wife
- 19.4. Family settlement between the heirs of a deceased

20. INDIAN CONTRACT ACT, 1872

21. TRANSFER OF PROPERTY ACT, 1882

1. INTRODUCTION

Negotiations are the starting point of any commercial relationship. There after commercial agreements are drafted to record the negotiations between parties in writing. Commercial agreements are those agreements that involve with the commercial aspects of a product or service. It defines the obligations of each party to the Agreement and the benefits they will get in return from the Agreement. The terms of a commercial agreement are usually quite formal and vary for each organisation and transaction.

Generally a commercial agreement will contain the following features –

- Identity of the parties;
- Term of the agreement;
- Commercial benefits;
- Obligations of the parties to the agreement;
- Purpose of the agreement;
- Termination details etc.
- Signature of the parties to prove consent to the agreement.

1.1. What is a document?

Ordinarily the word "document" denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a "document".

Three Acts refer to the word "Document" in very similar terms:

1. Section 3 of the Indian Evidence Act, 1872 states that a "Document" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than

one of those means, intended to be used or which may be used, for the purpose of recording that matter.

A writing is a document;

Words printed, lithographed or photographed are document;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.

2. Section 3(18) of the General Clauses Act, 1897, states that a "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter.

3. Section 29 of the Indian Penal Code, 1860, "The word 'Document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used as evidence of that matter".

Thus the word "Document" has been used in a wide sense and it includes instruments, deeds, agreements etc. Documents will also include Electronic records.

1.2. What is an agreement?

According to Sec.2(e) of Indian Contract Act, 1872, every promise and every set of promises, forming the consideration for each other, is an agreement. It is clear from the definition that promise is an agreement. According to Section 2(b) of Indian Contract Act, 1872, when a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. From this it is clear that an agreement is an accepted proposal. The process of definition shows that a contract is an agreement, an agreement is a promise and a promise is an accepted proposal. An agreement therefore comes into existence only when one party makes a proposal or offer to the other and that other signifies his assent

thereto. In short every agreement is the result of a proposal from one side and its acceptability by the other.

1.3. Validity of agreement

According to Section 20 of the Indian Contract Act, 1872, an agreement caused by mistake of facts are void i.e. if the mistake of fact is with regard to the subject matter.

According to Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

According to Section 24 of the Indian Contract Act, 1872, an agreement is void if any part of a single consideration for one or more objects, or any one or any part of any one of several consideration of a single object, is unlawful.

According to Section 27 of the Indian Contract Act, 1872, an agreement in restraint of trade or business or lawful profession is void. But a buyer can put a condition on the seller of goodwill not to carry on the same business provided the conditions are reasonable.

According to Section 28 of the Indian Contract Act, 1872, an agreement in restraint of legal proceedings is void.

According to Section 29 of the Indian Contract Act, 1872, an agreement, the meaning of which is not certain or capable of being made certain are void.

1.4. What is drafting?

Drafting may be defined as the synthesis of law and fact in a language form. Perfection cannot be achieved in drafting unless the nexus between law, facts and language is fully understood. In fact drafting can be described as the practice, technique or skill involved in preparing legal documents that set forth the rights of the parties.

A legal document is basically an enumeration of the transaction and all terms and conditions agreed to between the parties involved.

The following ten easy and important steps can be followed for drafting a document:

- i. Ascertain a proper title of the document, which aptly describes the nature of transaction in brief.
- ii. Ascertain the parties to the transaction/agreement or the persons executing the document representing the parties. The particulars of identity like father's/husband's name, residential/official address, age, date of incorporation in case of company etc. should also be mentioned.
- iii. Note down the transaction/agreement and the consideration involved.
- iv. State the mode and manner of payment of consideration.
- v. Note down the various terms and conditions of the agreement. These terms actually state the rights and liabilities of each party under the agreement. These terms should be drafted in very clear and precise language. The words used should be unambiguous so that only one meaning/interpretation is possible. It should be ensured that no condition is left out.
- vi. At the end, the document should bear signatures and stamp/seal where necessary of the executing parties. The date and place of execution should also be mentioned.
- vii. Some documents also require to be witnessed by some independent person who is not party to the document.
- viii. Where a document is required to be executed on stamp paper, then the stamp paper should be of prescribed value as applicable in the concerned state.
- ix. If a document is required to be registered, it should be presented for registration before the appropriate authority, within a reasonable time after execution.
- x. Necessary number of copies of the document should also be prepared on stamp paper of appropriate value, if so required.

1.5. Points to be kept in mind while drafting agreements

- Prepare an outline.
- Establish a single principle of division and use that principle to divide the subject matter into major topics.
- Arrange the items in a logic sequence.
- Give appropriate headings.
- Remember the audience in mind when drafting a document.
- The text should be in clear writing.
- Use concrete words and be concise.
- Avoid gender-specific words as far as possible.
- Write in short sentences.
- Use proper punctuations.
- Avoid drafting in the passive voice and use active voice as it is more direct and vigorous than the passive voice.
- As far as possible put statements in a positive form and make definite assertions.
- Avoid unnecessary, hesitating and non-committal language.
- Express co-ordinate ideas in similar form.
- Keep related words together as the position of words in a sentence is the principal means of showing their relationship.
- In summaries, keep to one tense, especially the present tense.
- The emphatic words of a sentence should be placed at the end

2. ABOUT CONTRACTS

2.1. What is a contract?

A contract is an agreement between two or more persons, creating an obligation upon them to fulfill or not to fulfill some duties laid down specifically in the agreement. This agreement creates a legal relationship of rights and duties on the parties and if these obligations in the agreement are not fulfilled then stringent action could be taken by the courts on the party. The Indian Contract Act, 1872 codifies the way we enter into a contract, execute a contract, implement provisions of a contract and effects of breach of a contract. Basically, a person is free to contract on any term he chooses. The Contract Act consists of limiting factors subject to which contract may be entered into, executed and breach enforced. It only provides a framework of rules and regulations which govern formation and performance of contract. The rights and duties of parties and terms of agreement are decided by the contracting parties themselves. The court of law acts to enforce agreement, in case of non-performance.

Contracts can be written, oral, or implied also. However, it is always preferable to enter into written contracts as it is always difficult to prove the terms of an oral or implied contract than those of a written one. Some of the benefits of having a written contract are:

- The process of writing down the contract's terms and signing the contract forces both parties to think about and be precise about the obligations they are undertaking. With an oral contract, it is too easy for both parties to say "yes" and then have second thoughts.
- With an oral contract, the parties may have different recollections of what they agreed on (just as two witnesses to a car accident will disagree over what happened). A written agreement eliminates disputes over who promised what.
- Some types of contracts must be in writing to be enforced. The Indian Copyright Act, 1957 requires a copyright assignment or exclusive license to be in writing.

- If you have to go to court to enforce a contract or get damages, a written contract will mean less dispute about the contract's terms as the burden of proof lies with you.

2.2. Difference between agreement and contract

A contract is an agreement enforceable by law whereas every promise and every set of promise forming the consideration for each other is an agreement. All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

- The elements of an agreement are offer and acceptance whereas the elements of a contract are agreement and its enforceability.
- An agreement may or may not create legal obligations but creation of a legal obligation is a must in contracts.
- An agreement may not be binding and hence, may not be enforceable whereas a contract is binding on both the parties and hence, enforceable.
- An agreement may not result in a contract but a contract should constitute an agreement.

Although the above mentioned differences exist between agreement and contract, the term is generally interchangeably used.

2.3. Overview of Indian Contract Act, 1872

The Indian Contract Act, 1872 deals with the law relating to the general principles of contract.

Contract is defined under Section 2(h) of the Contract Act as “an agreement enforceable by law”.

Hence there are two important elements for a contract –

- An agreement
- The agreement must be enforceable by law

According to Section 2(e) an agreement is defined as “every promise and every set of promises forming the consideration for each other”.

A promise is defined as an accepted proposal as Section 2(b) says “a proposal when accepted becomes a promise.” Therefore it can be said that an agreement is an accepted proposal.

Essentials of a valid contract

1. The agreement should be between two parties. An agreement is the result of a proposal or offer by one party followed by its acceptance by the other.
2. The agreement should be between the parties who are competent to contract.
3. There should be a lawful consideration and lawful object in respect of that agreement.
4. There should be free consent of the parties, when they enter into the agreement.
5. The agreement must not be one, which has been declared to be void.

Proposal of offer

When one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. The willingness to do or abstain from doing something, i.e. the proposal or offer must be made with a view to obtain the assent of the other party thereto. In order that an offer, after acceptance, can result in a valid contract it is necessary that the offer should be made with an intention to create legal relationship. Promise in the case of social engagements is generally without an intention to create legal relationship; such an agreement cannot be considered to be a contract.

Communication of offer

An offer when accepted results in a contract. An offer can be accepted only after the same has come to the knowledge of the offeree. It means that the offer has to be communicated to the offeree in order that the offeree can accept it. According to section 4, “the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.”

If an offer has not yet been communicated, even if somebody acts according to the terms of the offer, he cannot be deemed to be the acceptor of the offer. Acting in ignorance of an offer does not amount to the acceptance of the same.

When the offer is made to a specific or an ascertained person it is known as a specific offer, but when the same is not made to any particular person but to the public at large it is known as general offer.

Revocation of offer

It is only after the acceptance of an offer that there arises a contract and then both the parties become bound by their respective promises. Before the offer has been accepted it can be revoked. After the offer has been accepted it ripens into a contract and then it cannot be revoked. According to Section 5, "A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards."

Acceptance

A proposal when accepted, results in an agreement. It is only after the acceptance of the proposal that a contract between the two parties can arise. According to Section 2(b), "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise." The person making the proposal does not become bound thereby until acceptance. As soon as his proposal is accepted that is known as promise whereby both the parties become bound.

Consideration

According to section 2(d) of the Indian Contract Act, "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee." Consideration is something a person gets in return. It is one of the important elements of a valid contract. An agreement is legally capable to be enforced only when each of the parties to it gives something and gets something. The consideration should not be unlawful, illegal, immoral or opposed to public policy.

Capacity to contract

Every person who enters into a contract must be competent. In other words, the person should be of the age of majority, should have a sound mind, and must not be disqualified from any law to which they subject. Minors, lunatics, unsound and intoxicated persons are incompetent to enter into a contract.

Discharge of Contract

A Contract may be discharged in any of the following ways

1. Discharge by Performance
2. Discharge by Mutual Consent or Agreement
 1. Novation - When a new contract is substituted for an existing contract
 2. Alteration
 3. Rescission
 4. Remission - Accepting the lesser sum of amount than what was contracted for
3. Discharge by subsequent illegality or impossibility
 1. Destruction of Subject-matter
 2. Failure of ultimate purpose
 3. Death or personal incapacity of Promisor
 4. Change of Law
4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract
 1. Anticipatory breach
 2. Actual breach

Remedies for breach of contract

When a contract is breached, the injured party is entitled to one or more of the following remedies.

1. Rescission of the contract - When one party to the contract breaches the contract, the other party need not perform his part of the obligations. The aggrieved party may rescind the contract. In such cases, the injured / aggrieved party can either rescind the contract or file a suit for damages. In general, rescission of the contract is accompanied by a suit for damages. Section 73 of Indian Contract Act, 1872 deals with Compensation for loss or damage caused by breach of contract.
2. Suit for damages - The aggrieved party of the contract is entitled for monetary compensation when the contract is breached. The objective of Suit for damages is to put the aggrieved / injured party in a position in which he would have been had there been performance and not breach. The aggrieved / injured party must be able to prove the actual loss or no damages will be awarded. Damages can be of four kinds namely - Ordinary or General Damages, Special Damages, Exemplary or Punitive Damages and Nominal Damages.
3. Suit upon quantum merit - The term "Quantum Merit" is derived from Latin which means "what one has earned". The injured party can file a suit upon quantum merit and may claim payment in proportion to work done or goods supplied.
4. Suit for specific performance of the contract - The suit for Specific Performance is regulated by the Specific Relief Act, 1963. Specific Performance means the actual carrying out of the contract as agreed. The Court may grant for specific performance where it is just and equitable to do. Specific Performance may be granted under the following grounds.
 - a. Lack of standard for ascertaining the damages;
 - b. Where compensation is not adequate relief;
 - c. Substantial work done by the plaintiff.

The Court cannot grant the remedy of specific performance in the following situations.

- a. Where monetary compensation is an adequate relief;
- b. Where the Court cannot supervise the actual execution of the work;
- c. Where the Contract is for personal services;
- d. Where the Contract is not enforceable by either party against the other.

5. Suit for injunction - Injunction is an order of the Court restraining a person from doing a particular act. Where the defendant does something which he is promised not to do, then the injured party will get a right to file a suit for injunction.

2.4. Core Processes of a Contract

The most important thing to be remembered is that each contract is unique. A contract is of no benefit if it does not mutually satisfy and meet the goals and objectives of both parties entering into an agreement. Each contract should follow the following processes in order to be successful.

The first step towards completion of a valid contract is negotiations between the parties, followed by drafting of the document. Stamping and registration of the document will conclude the process of drafting a contract.

A. Negotiations

Negotiations are the starting point of any commercial relationship. There after commercial agreements are drafted to record the negotiations between parties in writing.

Negotiation is the principal way that people redefine an old relationship that is not working to their satisfaction or establish a new relationship where none existed before. It is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective advantage, to craft outcomes to satisfy various interests of two people/parties involved in negotiation process.

The aim of contract negotiation is firstly to achieve certainty, to record what is being supplied, when, in what quantities and to what standard, and what are the consequences of delay or failure to meet the agreed requirements. Many a dispute is caused by the failure of the parties to define at the beginning of their relationship, exactly what is going to happen. This is especially important in the case of complex projects, where project plans and methodologies will normally be prepared as part of the contractual documentation.

The importance of the pre-contract stage is often underestimated but it is vital to invest time and effort at this point not only for the clarification of the respective roles and responsibilities but also to facilitate the drafting process and minimise the risk of future misunderstandings.

How to negotiate a successful contract?

1) Research all pertinent information – Understand everything about the company and the people with whom negotiations will be done. Similarly, in case of business negotiations, one should ensure that other departments involved in the upcoming negotiations are also in alignment with the expectations and obligations.

2) Contract Negotiation Preparation – This is the most crucial phase. Before entering the negotiation, one must clearly define the goals and objectives and their relative importance to each other.

3) Define your Position–Your position will form the backbone of the proposal or offer you are prepared to make to your negotiating counterpart. A backup position should be formulated prior to you making your proposal, in the event that your counterpart does not deem the initial offer acceptable. Leave yourself room to manoeuvre, to allow yourself and your counterpart flexibility in the contractual negotiation process. Also, ask yourself what your backup position would be, should the negotiation fall apart. What options are available and what is the best possible alternative for you, in case you are unable to reach an agreement?

4) Evaluate the Other Side – Sit back and think about what your prospective contractual partner's position will be in relation to their expectations, as well as your own. You must also consider what would be of relative importance to them and try to estimate their goals and objectives. Consider what objections or issues they might raise and how you might counter them in a mutually productive manner.

5) Introductory Meeting – Before you make an offer or proposal, be sure that you are both in agreement about the objectives and goals of the contractual agreement you are about to negotiate.

6) Listen – A successfully negotiated contract is not a one-way street, and it is important that you take the time to listen to what your prospective contractual partner has to say. This is not the

time to talk, but to listen, and by doing so you will learn what is important to your counterpart. Reaching an agreement will become easier if you pitch your position in a manner that gives your counterpart more opportunity to say “Yes”.

7) Concessions – Don’t rush to accept or make concessions. Take your time, and if necessary, put the request for a concession on the back burner. Most importantly, avoid making a concession without ensuring you will receive something of equal or greater value in return. Preparation is important for maneuverability in a negotiation, as it enables you to cover various scenarios that may occur.

8) Don’t Be Afraid to Say No – A bad agreement can be worse than no agreement at all. If what your prospective partner proposes does not satisfy your own goals and objectives, you must be prepared to say “No”.

9) Confirm Your Prospective Agreement – Once you have made a tentative agreement on the contractual obligations of both parties, you should verify the terms of the pending negotiated contract both verbally and in writing.

10) Expect the Unexpected – Unfortunately, a common negotiation ploy that many negotiators face in contract negotiations is a final demand or additional concession request by the other party – usually, just when you thought the deal was sealed. Again, don’t be afraid to say no, as this is not what you had initially agreed upon. Conversely, this could also be an opportunity to convince them to offer you an additional valuable concession – but only if it is warranted.

B. Drafting

It is practically inevitable that documents of the same nature, issued from the same office, or even from distinct offices, will bear a close resemblance to one another. Those charged with the execution and expedition of such documents come naturally to employ the same formula in similar cases; moreover, the use of such formula permits the drafting of important documents to be entrusted to minor officials, since all they have to do is to insert in the allotted space the particular information previously supplied them. Finally, in this way every document is clothed with all possible efficiency, since each of its clauses, and almost every word, has a meaning

clearly and definitely intended. Uncertainties and difficulties of interpretation are thus avoided, and not infrequently lawsuits. This legal formalism is usually known as the "style" or habitual diction of chanceries and the documents that issue there from. It represents long efforts to bring into the document all necessary and useful elements in their most appropriate order, and to use technical expressions suited to the case, some of them more or less essential, others merely as a matter of tradition.

How to draft a document?

A legal document is basically an enumeration of the transaction and all terms and conditions agreed to between the parties involved.

The following ten easy and important steps can be followed for drafting a document:

- xi. Ascertain a proper title of the document, which aptly describes the nature of transaction in brief.
- xii. Ascertain the parties to the transaction/agreement or the persons executing the document representing the parties. The particulars of identity like father's/husband's name, residential/official address, age, date of incorporation in case of company etc. should also be mentioned.
- xiii. Note down the transaction/agreement and the consideration involved.
- xiv. State the mode and manner of payment of consideration.
- xv. Note down the various terms and conditions of the agreement. These terms actually state the rights and liabilities of each party under the agreement. These terms should be drafted in very clear and precise language. The words used should be unambiguous so that only one meaning/interpretation is possible. It should be ensured that no condition is left out.
- xvi. At the end, the document should bear signatures and stamp/seal where necessary of the executing parties. The date and place of execution should also be mentioned.
- xvii. Some documents also require to be witnessed by some independent person who is not party to the document.

- xviii. Where a document is required to be executed on stamp paper, then the stamp paper should be of prescribed value as applicable in the concerned state.
- xix. If a document is required to be registered, it should be presented for registration before the appropriate authority, within a reasonable time after execution.
- xx. Necessary number of copies of the document should also be prepared on stamp paper of appropriate value, if so required.

C. Stamping

After negotiations and drafting a document, comes the process of stamping. Stamping is the process of taxing a document. The tax that is paid on the document is known as Stamp Duty. It is a revenue earner for the government. Stamp Duty varies from instrument to instrument. Stamp Duty is payable on instruments and not on transactions. Stamp Duty will be charged on the basis of the contents of the instrument only. Stamp Duty is computed on market value or consideration amount of the property, whichever is higher. Consideration amount is the total value of funds involved in any purchase/ sale transaction entered between two or more parties. An essential requisite for the levy of stamp duty by the State is the existence of an instrument evidencing a transaction by the citizens.

Stamp Duty is payable on any instrument falling within the definition of clause (14) of section 2 of the Indian Stamp Act, 1899. It is levied on documents or instruments of transactions. However, the subject matter of the transaction must be situated in India.

The stamp duty rates prescribed by the parliament in respect of bill of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts will prevail all over India. The State Governments have powers to fix stamp duties on all other documents. Rates prescribed by a State Government will prevail in that State only and not in other States.

States such as Maharashtra, Karnataka and Kerala have their State Stamp Act, while many States follow the 1899 legislation.

Instruments chargeable to stamp duty

Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule. The list includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc. Thus, if an instrument is not listed in the schedule, no stamp duty is payable. 'Instrument' does not include ordinary letters. Similarly, an unsigned draft of an agreement is not an 'instrument'.

Instruments where stamp duty is not payable

- Documents, executed on behalf of the Government;
- Testamentary documents;
- Documents, required to be made for judicial or non-judicial proceedings;
- Any instrument for the 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, 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 (10 of 1841), as amended by subsequent Acts;
- Any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.
- Securities dealt in depository are not liable to stamp duty and corporatization and demutualization schemes and related instruments are not liable to duty.

Time of stamping the instrument executed in India

Instruments executed in India must be stamped before or at the time of execution. Execution means signature and an instrument liable to stamp duty becomes chargeable as soon as it is signed by the executant.

Time of stamping instruments other than bills and notes executed out of India

Instrument executed out of India can be stamped within three months after it is first received in India. However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India. The obligation to stamp arises only when the first holder presents it for acceptance or payment or endorses, transfers or otherwise negotiates the note.

Valuation for stamp duty

If an instrument is chargeable with *ad valorem* duty¹ in respect of any money expressed in any foreign currency, then the duty should be calculated on the value of such money in rupees according to the current rate of exchange on the day of the date of the instrument.

If an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty should be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

If or average price, as the case may require, and is stamped in accordance with such statement, it should, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Where interest is expressly made payable by the terms of an instrument, such instrument should not be charged with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments connected with mortgages of marketable securities should be charged as agreements chargeable with duty under Article No.5(c) of Schedule I. A release or discharge of any such instrument should also be charged only with the same duty.

In cases where property is transferred in consideration of any debt or future payment, then the consideration of such debt, money or stock will be treated as if the transfer is chargeable with ad

¹ An *Ad Valorem* duty is one in the form of a percentage on the value of the property, unlike a specific duty that is a fixed sum imposed on each article of a class.

valorem duty. In case of sale of property subject to a mortgage or other encumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, will be deemed to be part of the consideration for the sale. Where property, subject to a mortgage is transferred to the mortgagee, he will be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

When a purchaser purchases a property for a certain amount subject to the payment of another debt, actual or contingent, he is virtually purchasing the property for the said amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold. Otherwise there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty. A contingent liability to the payment of any debt means such outstanding debt or possible adverse verdict which has to be complied with but which is not ascertained on the relevant date.

Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be will be deemed to be (a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount; (b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and (c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

Where the value of the subject matter cannot or could not be determined, then nothing more than the highest amount of value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution will be claimable. In case of lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, then the estimation for the purpose of stamp duty will be at the rate, when the lease has been granted by or on behalf of the Government, at such amount or value as the Collector would have estimated;

or when the lease has been granted by any other person, at twenty-thousand rupees a year, and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease.

The consideration, if any and all the facts and circumstances affecting the chargeability of the instrument with duty should be clearly and fully mentioned in the instrument.

When any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration should be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance will be chargeable with *ad valorem* duty in respect of such distinct consideration.

Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part will be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

If a person contracts for the purchase of the property but before it is duly conveyed to him, contracts to sell it to another person and in consequence the property is immediately conveyed further to sub-purchaser, the duty is payable on the consideration paid by the sub-purchaser. This is meant to obviate payment of double duty.

Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser will be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the balance property to the original purchaser will be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers, but the duty on such last-mentioned conveyance should in no case be less than one rupee.

Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller will be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

Liability to pay stamp duty

In the absence of any agreement between the parties as to the payment of duty, the expense of providing the proper stamp should be borne by the executant of the document.

For the following instruments mentioned in Schedule I-A, the person drawing, making or executing such instrument should bear the expense of providing proper stamps –

- No.2 (Administration Bond),
- No.6 (Agreement relating to Deposit of Title Deeds, Pawn or Pledge),
- No. 13 (Bill of exchange),
- No. 15 (Bond),
- No. 16 (Bottomry Bond),
- No, 26 (Customs Bond),
- No. 27 (Debenture),
- No. 32 (Further charge),
- No. 34 (Indemnity. bond),
- No. 40 (Mortgage-deed),
- No. 49 (Promissory-note),
- No. 55 (Release),
- No. 56 (Respondentia Bond),

- No. 57 (Security-bond or Mortgage-deed),
- No. 58 (Settlement),
- No" 62 (a) (Transfer of shares in an incorporated company or other body corporate).
- No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8) .
- No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance)

The exceptions to the above mentioned provision are –

- in the case of policy of insurance other than fire-insurance - by the person effecting the insurance;
- in the case of a policy of fire-insurance - by the person issuing the policy
- in the case of a conveyance (including a re-conveyance of mortgage property) by the grantee; in the case of a lease or agreement to lease – by the lessee or intended lessee;
- in the case of a counterpart of a lease - by the lessor;
- in the case of an instrument of exchange - by the parties in equal share;
- in the case of a certificate of sale - by the purchaser of the property to which such certificate relates; and,
- 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.

Impounding of instruments not duly stamped

Courts and public officers have the obligation to examine every document produced or coming before them to ascertain, in case such document attracts stamp duty, whether it has been duly stamped. They have the power to impound the same if it appears that such instrument is not duly

stamped. The power of the impounding officer can be exercised only in relation to the original instrument. An instrument in order to be impoundable under this section must be one which is chargeable with duty under the Stamp Act and not under any other Act.

The State Government has been given powers to declare what offices shall be deemed to be public offices and which officers shall be deemed to be persons-in-charge of public offices.

A Magistrate or Judge of a criminal court is not bound to, but may, in his discretion, impound a document produced before him, if it appears to be insufficiently stamped.

Instrument cannot be accepted as evidence if not duly stamped

An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an arbitrator or any other authority authorized to receive evidence. However, the document can be accepted as evidence in criminal court.

The instrument can be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion; (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it.

Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped.

Section 35 prohibits the admission in evidence of any unstamped document but the provisos set forth the conditions on which a defective document may be admitted and further enjoins that no document can be admitted till after payment of duty and penalty.

An unstamped or deficiently stamped document is not void and it is effective from the date of its execution though it is incapable of being made use of as evidence until it is properly stamped. An instrument which is stamped with an adhesive stamp is not properly cancelled, cannot be

admitted in evidence.

An instrument which is chargeable with stamp duty but bears not stamp is like an invalid instrument and secondary evidence of its contents is not receivable, but the instrument may be received in evidence for a collateral purpose or in criminal cases.

Penalty prescribed under the Indian Stamp Act, 1899

- Any person who draws, makes, issues, endorses or transfers or signs as a witness or presents for acceptance or payment or any manner of negotiation, any bill of exchange or promissory note without being duly stamped; or executes or signs any instrument chargeable with duty without the same being duly stamped; or votes or attempts to vote under any proxy not duly stamped, will be punishable for every such offence, with fine that may extend to five hundred rupees.
- If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, will be punishable with fine which may extend to five hundred rupees.
- Any person who, with intent to defraud the Government,—
 - (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or
 - (b) being employed or concerned in or about the preparation of any instruments, neglects or omits fully and truly to set forth therein all such facts and circumstances; or
 - (c) does any other act calculated to deprive the Government of any duty or penalty under this Act;shall be punishable with fine which may extend to five thousand rupees.
- Any person who receives or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such

insurance or makes, executes or delivers out any policy which is not duly stamped or pays or allows in account, or agrees to pay or allow in account any money upon, or in respect of, any such policy, will be punishable with fine which may extend to two hundred rupees.

- Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, will be punishable with fine which may extend to one thousand rupees.
- Any person who with intent to defraud the government of duty draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made or knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment or accepts, pays or receives, payment of, such bill or note; or in any manner negotiates the same or with similar intent not specifically provided under the Act will be punishable with fine which may extend to one thousand rupees.

Cognizance of offence

No prosecution in respect of any offence punishable under the Stamp Act should be instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially, authorizes in that behalf. The Chief Controlling Revenue-authority or any officer generally or specially authorized by it in this behalf may stay any such prosecution or compound any such offence.

No Magistrate other than a Presidency Magistrate or a Magistrate, whose powers are not less than those of a Magistrate of the second class, shall try any offence under the Indian Stamp Act.

Every such offence committed in respect of any instrument may be tried in any district or presidency town on which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

D. Registration

The next process after stamping an instrument is registration. Registration refers to the recording of the contents of a document with a Registering officer appointed by the Government. The main purpose of registration is to ensure information about all deals are recorded and maintained apart from giving the document its authenticity. It gives information to the people regarding legal rights and obligations arising or affecting a particular property. The registered documents may afterwards be of legal importance, and also aid in preventing fraud.

The process of registering a document is done under the provisions of the Registration Act, 1908.

The main objects of the law of registration are -

- to provide a conclusive proof of genuineness of documents;
- to afford publicity of transaction in respect of properties;
- to prevent fraud;
- to afford facility for ascertaining whether a property has already been dealt with; and
- to afford security of the title deeds and facility of proving titles in case the original deeds are lost or destroyed.

Registration of documents

All documents relating to sale, conveyance, exchange, gift, settlement partition, mortgage, lease, decrees and release of immovable property of the value of one hundred rupees or more are compulsorily registerable documents under Section 17 of the Registration Act, 1908. The remaining categories of documents mentioned in Section 18 of the Act are optionally registerable documents.

No non-testamentary document relating to immovable property should be accepted for registration unless it contains a description of such property sufficient to identify the same. It is always necessary, with a view to identify the property involved in a document, that the description of the property is mentioned in a separate schedule, preferable with maps or plans, so as to enable the Registering Authority to make notes in the books to be preserved. The

description should mention the area of the property, the number of the property, the boundaries of the property, the streets on which it is situated, along with the name of the village, Taluka, district. It is the discretion of the registering officer to refuse to accept a document if the description of the immovable property is not sufficient to identify the property correctly.

Compulsory / optional registration

Situations / documents wherein registration is compulsory / optional under Sec.17 and Sec.18 of the Registration Act, 1908:

Sl.No.	Situation / documents	Registration requirement
1.	Gift of immovable property	Compulsory
2.	Transfer of right, title or interest, whether vested or contingent, of an immovable property, wherein the value exceeds Rs.100/-.	Compulsory
3.	Receipt or payment of any consideration on account of creation, declaration assignments, limitation or extinction of any such right, title or interest.	Compulsory
4.	Lease of immovable property for any term exceeding one year or reserving a yearly rent.	Compulsory
5.	Transfer or assignment of decree / order of a Court or any award if it creates, assigns, limit or extinguishes in present or future, any right, title or interest in an immovable property, wherein the value exceed Rs.100/- .	Compulsory

6.	Composition Deed	Not applicable
7.	Any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property.	Not applicable
8.	Any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders or such debentures.	Not applicable
9.	Any endorsement upon or transfer of any debenture issued by any such company.	Not applicable
10.	Any document that does not create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property, but merely creates right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.	Not applicable

11.	Any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding.	Not applicable
12.	Any grant of immovable property by the Government	Not applicable
13.	Any Instrument of partition made by a Revenue office	Not applicable
14.	Any order made under the Charitable Endowments Act 1890 vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property.	Not applicable
15.	Any endowment on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage.	Not applicable
16.	Any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.	Not applicable
17.	Authority to adopt a son and not conferred by a Will.	Compulsory
18.	Instruments which create, assign, declare or limit any title or interest, wherein the value	Optional

	of the immovable property is less than Rs.100/-.	
19.	Lease of immovable property not exceeding one year.	Optional
20.	Transfer or assignment of decree / order of a Court or any award if it creates, assigns, limit or extinguishes in present or future, any right, title or interest in an immovable property, wherein the value does not exceed Rs.100/-.	Optional
21.	Wills	Optional

Registration of non- testamentary instruments

A testamentary document is a Last Will and Testament or some other document that meets the statutory requirements of a will. Therefore, non-testamentary documents would be documents that are not related to a Last Will and Testament. Section 17(1)(b) requires 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 to be compulsorily registrable.

Language of Document

Under section 19 of the Act, the Registering Officer is empowered to refuse to register a document if it is presented for registration in a language which is not commonly used in the district unless the document is accompanied by a true translation into a language commonly used in the district and also by a true copy. Therefore, the language of a document presented for registration should be in a language commonly used in the district existing in the State. However, for state of Maharashtra, where registration is done by photogravure process, this section would have no application.

Time for presenting documents for registration

- Every document other than a Will should be presented for registration within 4 months from the date of execution.
- In case a document requiring registration has been accepted for registration by a Registrar or sub Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document again for registration.
- 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.
- In cases where delay of presentation of document is unavoidable, the Registrar may accept the document for registration on payment of fine not exceeding ten times the amount of registration fee.
- Wills can be presented or deposited at any time.
- A document relating to an immovable property can be executed out of India and later it can be presented for registration in India.

Place of Registration

Every document relating to immovable property should be presented for registration in the office of a Sub-Registrar within whose sub-district, the whole or some portion of the property is situated. Other documents can be registered in the office of Sub-Registrar where all persons executing the document desire it to be registered.

A copy of a 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 under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

A Registrar can accept a document which is registerable with sub-registrar who is subordinate to him in certain cases. The document should be presented for registration at the office of Registrar/Sub-Registrar. However, in a special case, the officer may attend the residence of any person to accept a document or will, for example, in case the person is physically handicapped or bed-ridden and is not in a position to travel.

Presenting documents for registration

All documents for registration should be presented at the appropriate registration office by the person executing the document or by the representative or assign of such person or by the agent of the person, representative or assign who is duly authorised by a Power of Attorney.

The person presenting any document at the proper registration office under section 32 should affix his passport size photograph and finger-prints to the document and where such document relates to the transfer of ownership of immovable property, the passport size photograph and the finger-prints of each buyer and seller of such property should also be affixed to the document.

According to Sec.33 of the Registration Act, 1908, only the following powers-of-attorney will be recognised –

- a. if the principal at the time of executing the power-of-attorney resides in any part of India in which the Act is in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- b. if the principal at the time aforesaid (resides in any part of India in which this Act is not in force), a power –of-attorney executed before and authenticated by any magistrate;
- c. if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, (Indian) consul or Vice-Consul, or representative of the Central government.

Provided that the following persons will not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney namely:-

- i. persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

- ii. persons who are in jail under civil or criminal process; and
- iii. persons exempt by law from personal appearance in court.

However, to obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Procedure for Admission and Denial of execution of document

If all the persons executing the document appear personally before the officer and/or are personally known to him or if he is otherwise satisfied that they are the persons they represent themselves to be and if they all admit the execution of the document, the Registering Officer should register the document as required under Section 58 of the said Act. He should endorse the following particulars, namely:

- a) The signature and admission of every person admitting the execution of the document in person or by his representative, assign or agent;
- b) The signature and admission of every person examined in reference to such a document;
- c) Any payment of money or delivery of goods made in the presence of the Registering Officer in reference to the execution of the document and any admission or receipt of consideration made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the Registering Officer nevertheless is empowered to register such a document but he should endorse a note of such a refusal and as required under Section 59 of the Act, as he should affix the date and his signature to all endorsements made under Sections 52 and 58 of the Act which is relating to the same document.

After completion of all formalities related to registration, the Registering Officer shall endorse on the document a certificate containing the word “Registered” together with the number and page of the book in which the document has been copied. Later, the endorsements and certificate

will thereupon be copied into the margin of the Register book. The copy of maps or plans if any will be filed in Book No.1. The registration of the document is then deemed to be completed and the document is returned to the person who presented the same for registration or to such other person if any, who has been nominated in writing in that behalf on the receipt mentioned in Section 52 of the Act. However, such original documents are returned by post or by hand delivery only after the proper procedure for the preservation of the original document has been completed by the Registration Authorities.

Effect of registration

Part X of the Registration Act, 1908 deals with the effects of registration. A registered document will operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. All non-testamentary documents duly registered under the Act, and relating to any property, whether movable or immovable, will take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force but a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, will take effect against any mortgage-deed subsequently executed and registered which relates to the same property. According to Section 49(c) of the Act, if a document, of which registration is compulsory under Section 17 of Registration Act, has not been registered, it cannot be produced as evidence in a court of law. However, an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963 or as evidence of any collateral transaction not required to be effected by registered instrument.

Documents generally required for registration

1. Duly stamped, signed and executed document.
2. Copy of the document in the registration copy form. This is not required if the registration office is computerised.
3. Two passport size photos of both parties.

4. Two witnesses with valid identification proof & photographs.
5. Original Stamp Duty receipt.
6. Copy of Power Of Attorney in required cases.
7. Proof of identification of each party and witnesses i.e. election Identity Card, Passport, identity Card issued by Govt. of India, Semi govt. and Autonomous bodies or identification by a Gazetted officer.
8. In case the property is/was under a lease from any government authority, then permission of lessor for registration of the document.
9. NOC from local authorities if the document for registration conveys land converted as house site without the approval layout.
10. Patta transfer application duly filled and signed.
11. No objection Certificate to the effect that the property is not under acquisition.
12. Copy of PAN Card
13. Form 60 Statement in case PAN Number not provided in the document, if the value of the property exceeds Rs.5/- lakhs.

Documents exempted from Registration

Certain documents executed by or in favour of the Government are exempted from registration by virtue of section 90 of the Registration Act 1908.

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision or settlement of land-revenue, and which form part of the records of such settlement; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of government in making or revising the survey of any land, and which form part of the record of such survey; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records; or
- (d) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land; or

(e) notice given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants, or of alienated land by holders of such land.

General procedure for registration

The procedure for registration varies slightly from state to state.

The general procedure undertaken by the Sub-Registrar is as follows:-

1. He verifies the document to ascertain whether it is legal to register it.
2. He examines the documents to see that they have been presented within the prescribed time period.
3. He further verifies that the full stamp duty is paid.
4. In his presence all parties executing the document admit that they have executed the document presented for registration. Parties who are present and admitting to execute the document are then personally identified by two independent witnesses. All parties and witnesses present, again sign in the presence of sub-registrar on an additional page attached to the document.
5. Parties to the document are photographed and their thumb impression is taken and such photograph and thumb impression is affixed on additional pages attached to the document.
6. He puts his official seal on each page and puts a unique numbering block on each page of the document including the additional pages. On the last page he signs the document as being registered.
7. After completing this procedure, he records the contents of the document, including the additional pages, either by photocopying the content or by scanning the content of the document. The photocopy or scanned image is permanently retained by him in his records so that in future whenever a copy of the document is required it can be obtained. Also that copy becomes a public document, which anybody can inspect by paying the requisite inspection fees.
8. After taking a copy of the document, as mentioned above, on the record and after completing the above formalities the original document is returned to the party presenting the document for registration. This completes the process.

2.5. Important clauses in a Commercial Contract

Commercial contracts form the backbone of many commercial transactions from vendor agreements to client engagement agreements. While no two businesses or industries are the same, all commercial contracts share certain fundamental structures and clauses that have become part of the body of “best practices”. There is both an art and science to drafting them and the following provisions are some of the most critical in forming a complete commercial contract.

- ✓ Names – The full legal names of the entities or signatories.
- ✓ Obligations – The obligations or actions required by each party must be crystal clear regarding the commencement of the agreement, delivery and payment terms, and must succinctly define what constitutes completion of the obligations.
- ✓ Force Majeure – A French phrase, which means *greater force*. It is a clause that alleviates a party from their contractual obligations as a result of forces or events beyond their control, and limits their liability. Some examples are riots, strikes, wars and floods. It is equally important to include clauses that concern inherently necessary actions performed by third parties before performance of contractual obligations. These are sometimes seen as *subject to* clauses, for example, Party A would only be able to satisfy its obligation *subject to* Party B delivering the parts, material, data, etc. by a certain date.
- ✓ Compensation for Non-Stipulated Failure to Satisfy – Should one party fail to satisfy their contractual obligations due to an unforeseen event, or for any reason which is not stipulated within the terms of the contract, damages will need to be paid to the party that has been wronged. The terms of these damages should be as sharply defined as possible in the contract negotiation.
- ✓ Legal Jurisdiction – Whether one is negotiating a contract within the same country or across international borders, the civil laws of the respective jurisdictions may be fundamentally different. A solid contract must specify which jurisdiction and location will litigate a contractual disagreement.

- ✓ Incorporate Arbitration Features – Legal costs can be horrendous, but by implementing an agreed upon arbitration process to handle disputes should they arise, both parties may achieve a less expensive and quicker means of settling potential disputes.

3. TYPES OF AGREEMENTS / CONTRACTS

A list of various agreements / contracts are enumerated hereunder –

I. Business Agreements

- 1) Acquisition Agreement
- 2) Agency Agreement
- 3) Advertising Agreements
- 4) Consultancy Agreement
- 5) Construction Agreement
- 6) Distribution Agreement
- 7) Franchisee Agreement
- 8) Foreign Collaboration Agreement
- 9) Hire Purchase Agreement
- 10) Investment Agreement
- 11) Joint Venture Agreement
- 12) Service Agreement
- 13) Shareholder Agreement
- 14) Stock Purchase Agreement
- 15) Sale Agreement
- 16) Technology Sharing Agreement
- 17) Agreement to act as technical or management adviser
- 18) Agreement to supply technical know-how
- 19) Technical collaboration agreement
- 20) Agreement between manufacturer and sole selling agents
- 21) Appointment of sole selling agents by a foreign company
- 22) Agreement for underwriting shares of a company
- 23) Agreement To Underwrite Debenture Stock
- 24) Agreement between a company and its manager

- 25) Agreement between a company and security service company for providing security services to the company's property
- 26) Brokerage agreement
- 27) Agreement Between A Firm And A Broker For Agency
- 28) Agreement Between Manufacturer And Commission Agent
- 29) Dealership Agreements
- 30) Deed of indemnity by the partner retaining assets and liabilities to a partner on the dissolution of the partnership firm
- 31) Indemnity For Loss Of Allotment Letter
- 32) Indemnity By Debtor To His Guarantor

II. Documents for Formation of an Entity

- 33) Memorandum of Association & Articles of Association
- 34) Partnership Deed
- 35) LLP Incorporation document and LLP Agreement
- 36) Trust Deed
- 37) Conversion of Partnership into Limited company
- 38) Association of Persons agreement
- 39) Section 25 company - Memorandum and Articles of Association
- 40) Memorandum of Association and Rules and Regulations of Society

III. Alternative Dispute Resolution

- 41) Agreement of reference to sole arbitrator
- 42) Agreement of reference to common arbitrator
- 43) Model Arbitration Clauses in an Agreement
- 44) Model Conciliation clauses
- 45) Model Mediation clauses
- 46) Mediation Agreement