The Registration Act, 1908

Q.1. What is Registration?

Registration means recording of the contents of a document with a Registering Officer and preservation of copies of the original document.

Q.2. Why documents are registered?

The documents are registered for the purpose of conservation of evidence, assurance of title, publicity of documents and prevention of fraud. Also, registration helps an intending purchaser to know if the title deeds of a particular property have been deposited with any person or a financial institution for the purpose of obtaining an advance against the security of that property.

Q.3. Which documents require to be compulsorily registered?

Section 17 of the Registration Act, 1908 lays down different categories of documents for which registration is compulsory. The documents relating to the following transactions of immovable properties are required to be compulsorily registered:

a) Instruments of gift of immovable property.

b) Lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent.

c) Instruments which create or extinguish any right or title to or in an immovable property of a value of more than one hundred rupees.

Under section 2(6) of the Registration Act, 1908 the term "Immovable property" includes: "Land, buildings, hereditary allowances, rights to ways, lights, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops nor grass."

Q.4. Whose document has to be registered?

Section 28 of the Registration Act, 1908 states that all documents of which registration is compulsory if it relates to an immovable property as well as a few documents of which registration is optional should normally be presented for registration in the office of Sub-Registrar within whose sub-district the whole or some portion of the property to which the document relates is situated.

Q.5. Is it possible to register a document at a person's private residence?

Under Sections 31 of the Act, a provision has been made authorising the Registering Officer, on special cause being shown (for instance if the person is physically handicapped) to attend at the residence of any person desiring to present a document for registration and accept for registration such a document or a "Will", provided Registering Officer is satisfied about the special cause shown is sufficient.

Q.6. What procedure is followed at the time of lodging a document for registration?

For registration of any instrument, the original document which should be typed/printed on one side only along with two photocopies of the original have to be submitted to the Registering Officer. The copies are required to be photocopied only on one side of the paper and there has to be a butter paper between the two photocopies papers. This is done so as to prevent the typed matter from getting spoilt.

The registration procedure also requires the presence of two witnesses and the payment of the appropriate registration fees. On completion of the procedure, a receipt bearing a distinct serial number is issued. The following requirements are completing the registration are usually stated on the receipt:

a) Market Value of the property;

b) Income-Tax clearance, i.e. NOC. under Section 269 YL(3) issued by the Appropriate Authority constituted under Chapter XX-C of the Income Tax Act, 1961 if the same is applicable;

c) Certificate under section 230-A of the Income Tax Act, 1961 granted to the Transferor by the assessing officer of the Transferor;

d) Urban Land Ceiling declarations of the transferor/s and the transferee/s.

Q.7. Who can present the document for registration?

Section 32 of the Registration Act, 1908 deals with the provisions relating to the presenting of documents for registration by a person. Subject to certain exceptions, every document which is to be registered under the provisions of the Act should be presented at the proper registration office by: (a) the concerned person himself/ herself, or (b) the representative or the agent of such a person duly authorised in manner as is stated in Section 33 of the Registration Act,1908.

Q.8. What should be the language of the document?

The language of a document presented for registration should be in a language commonly used in the district existing in the State. 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.

Q.9. Is a description of an immovable property, which is the subject matter of the document to be registered necessary to be set out in the Schedule attached to the agreement?

Is it necessary to annex maps or plans of the immovable property?

Section 21 of the Act deals with the provisions relating to the description of an immovable property along with maps or plans. 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. The city Survey Number, with Hissa Number if any, should also be mentioned. 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.

Q.10. What are those documents, of which registration is optional?

Section 18 of the Act lays down the instruments of which registration is optional. Some of these instruments are listed as under:-

a) Instruments (other than instruments of gifts and wills) relating to the transfer of an immovable property, the value of which is less than one hundred rupees.

b) Instruments acknowledging the receipt or payment of any consideration.

c) Lease of an immovable property for a term not exceeding one year.

d) Instruments transferring any decree or order of a court where the subject matter of such decree or order is an immovable property, the value of which is less that one hundred rupees.

e) Wills.

Q.11. What are the consequences of non-registration of a document which are compulsorily registrable?

registration is compulsory under Section 17 of Registration Act, has not been registered, it cannot be produced as an evidence in a court of law.

Q.12. What is the time frame prescribed for registration of a document?

Under Section 23 of the Act, subject to certain exceptions, any document other than a will has to be presented for registration Within Four Months from the date of its execution. The term “ execution” means signing of the agreement. Under the present rules and regulations, all agreements in respect of a transfer of a premise or an immovable property have to be duly stamped, under the provisions of the Bombay Stamp Act, 1958 before the document is presented for registration.

Q.13. What is the remedy, if document is not registered within a prescribed period of four months?

As per the provisions of Section 25 of the Indian Registration Act, 1908 if a document is not presented for registration within the prescribed time period of four months, and if in such a case the delay in presentation of the document does not exceed a subsequent period of four months, then the parties to the agreement can apply to the Registrar, who may direct that on payment of a fine not exceeding ten times the proper registration fees, such a document should be admitted for registration.

Q.14. Can a document relating to an immovable property in India be executed out of India ? If so, can it then be registered in India?

Yes, a document relating to an immovable property can be executed out of India and later it can be presented for registration in India. As per Section 26 of The Registration Act, 1908 if a document purporting to have been executed by all or any of the parties out of India is presented for registration within the prescribed time, the Registering Officer may, on payment of proper registration fee, accept such document for registration if he is satisfied that:

a) the instrument was executed out of India.

b) the instrument has been presented for registration within four months after its arrival in India.

Q.15. Does a Deed of Rectification rectifying the mistakes in the names of the parties, the figures, the description etc. in the duly registered main document require registration ?

If the main document/agreement is registered, then in that event it is always necessary to register the Deed of Rectification too.

Q.16. Is the Registering Officer empowered to make any enquiry about any person purporting to have executed the document?

The Registering Officer is empowered under Section 34(3) of The Registration Act, to enquire whether or not such a document was executed by the person by whom it purports to have been executed.

In order to satisfy himself, the Registering Officer may ask the person appearing before him to prove his identity. In the case of any person appearing as a representative or agent, the Registrar may ask for relevant documents which show that the has the right to appear on behalf of his Principal. After carrying out such an enquiry, the Registering Officer is entitled to refuse the registration of a document if he is not satisfied with his findings.

Q.17. What is the recourse available to a person wishing to register a document which has been refused by the Registrar?

Where the refusal order/direction of the Registrar/Sub-Registrar is on the ground other than that of denial of execution, the appeal lies to the Registrar under Section 72 of the Act. On such a refusal to admit a document for registration, any person wishing to register the same should, within 30 days from the date of refusal, appeal to the Registrar to whom such Sub-Registrar is subordinate, in order to establish his right to have the document registered.

In such an event, under Section 74 of the Act, the Registrar may enquire whether the document has been executed and whether the requirements of the law currently in force have been complied with on the part of the applicant or the person presenting the document for registration, as the case may be, so as to admit the document for registration.

For the purpose of an enquiry, as per Section 74(4) of the Act, the Registrar is empowered to issue summons to enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court. As per Section 75(1) of the Act, if the Registrar finds that the document has been executed and that the said requirement had been complied with he can order for registration of the document. As per Section 77 of the Act, when the Registrar refuses to order the document to be registered, any person claiming under such a document or his representative, assignee or agent may within 30 days after making the order of refusal institute a suit in the proper Civil Court for a decree directing the document to be registered.

Q.18.What is the procedure on admitting a document to registration?

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 shall thereupon be copied into the margin of the Register book. The copy of maps on plans of any, shall 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.

Q. 19. What is a Power of Attorney?

A Power of Attorney is a document which empowers a specific person to act on behalf of the person who is executing the same. It also includes any document by which a person is authorised to appear and act on behalf of a person who is executing the power of attorney. A power of attorney may also be given by a person to another to appear before any Court, Tribunal or Authority or before a Co-operative Society or any Body or Association.

Q. 20. In what circumstances income tax clearance certificate of the seller required while registering the document?

Income Tax Clearance Certificate of the seller is required if the apparent consideration exceeds Rs. Five Lacs.

Q. 21. What other documents are required while registering a document?

The parties should as far as possible:-

a) Obtain an Income Tax Clearance Certificate of the seller for all properties above Rs. Five Lacs and the NOC from the Appropriate Authority if applicable (if the consideration exceeds Rs. Seventy Five Lacs for the city of Mumbai then the permission from the Appropriate Authority will be required).

b) Get the documents adjudicated from the Collector of the Stamps and duly certified that the proper stamp duty has been paid.

c) Comply with the formalities of Urban Land Ceiling and Registration Act, 1975 (if applicable) if the area exceeds 500 sq.mts.

If the above formalities are not complied then the original agreement will not be received by the parties after registration.

Q. 22. Where the registration of document is done?

As per Section 28 and 29 of the Registration Act the document should be presented for registration at the office of the Sub-Registrar of Assurances within whose sub district the whole or some portion of the property to which such document relates is situated or in the office of the Sub-Registrar situated at Mumbai, Delhi, Madras or Calcutta.

Q. 23. Under what circumstances the registration of document is refused?

The normal grounds for non-registration of document/s are:-

a) Document is opposed to public policy.

b) Parties have not complied with the formalities as laid by the Registration Act and by any reasons by which registering authority is not satisfied.

c) The Survey No. Of the property is not mentioned in the document/s.

d) The language in which the document is executed is not in the language that is normally prevalent in the area where the office of the registering authority is situated.

Q. 24. How is the title of the property verified?

Normally the person purchasing the property has to ensure that the seller has a good and marketable title. In order to find out if the title of the seller is clear and marketable, one has to take search of the property. The search of the property has to be taken at the offices of the relevant Sub-Registrars, normally 30 years search has to be taken. The purchaser can also ask copies of the documents lodged with the office of the Sub-Registrar to the seller. The objections pertaining to the title of the property can be easily verified after taking the search, for example: if the party has mortgaged and registered the documents with the Sub Registrar of Assurances then it can be known only after taking the search of the property. After satisfying the title of the property the party should proceed with the transaction.

XBRL - AN OVERVIEW

XBRL is a new emerging concept in India which becomes mandatory for the Indian Coporates. XBRL is set to become the standard way of recording, storing and transmitting business financial information. The Ministry of Corporate Affairs (MCA) vide its General Circular No. 37/2011 dated 07.06.2011 has mandated the following class of companies to file Balance Sheet and Profit and Loss Account along with Director's and Auditor's Report in XBRL form only from the financial year 2010-11:

- All listed companies in India and their Indian subsidiaries,
- All companies with paid up capital of Rs. 5 Crores and above
- All companies with turnover of Rs. 100 Crores and above.

However Banking Companies, Insurance Companies, Power Companies and Non Banking Financial Companies (NBFCs) are exempted from XBRL filing for this financial year due to under the different regulatory control and the separate taxonomies are under development for these companies according to their regulatory requirements.

INTRODUCTION

XBRL stands for eXtensible Business Reporting Language. XBRL is a language for the electronic communication of business and financial data which is revolutionising business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. All types of entities can experience cost benefits and process efficiencies with the useofXBRL. Extensibility being one of the underlying principles of XBRL, it can be easily adapted to a wide variety of different requirements.

XBRL is an open, royalty-free software specification developed through a process of collaboration between accountants and technologists from all over the world. Together, they formed XBRL International which is now made up of over 650 members, which include global companies, accounting, technology, government and financial services bodies.

India is now an established jurisdiction of XBRL International. A separate company, under section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL India are:

- To promote and encourage the adoption of XBRL in India as the standard for electronic business reporting in India
- To facilitate education and marketing of XBRL
- To develop and manage XBRL taxonomies
- To keep the developed XBRL taxonomies updated with regard to international developments
- To represent Indian interests within XBRL International
- To contribute to the international development of XBRL

(For more information on XBRL India visit the website i.e. http://www.xbrl.org/in)

BENEFITS OF XBRL

XBRL provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

XBRL increases the usability of financial statement information. The need to re-enter financial data for analytical and other purposes can be eliminated. By presenting its statements in XBRL, a company can benefit investors and other stakeholders and thereby enhance its profile. It will also meet the requirements of regulators, lenders and others consumers of financial information, who are increasingly demanding reporting in XBRL. This will improve business relations and lead to a range of benefits. With full adoption of XBRL, companies can automate data collection. For example, data from different company divisions with different accounting systems can be assembled quickly, cheaply and efficiently. Once data is gathered in XBRL, different types of reports using varying subsets of the data can be produced with minimum effort. A company's finance division, for example, could quickly and reliably generate internal management reports, financial statements for publication, tax and other regulatory filings, as well as credit reports for lenders. In XBRL not only is the data handling automated by removing time-consuming & error-prone processes, but the data can also be checked by software for accuracy.

XBRL- HOW IT'S WORK

XBRL makes the data readable, with the help of two documents – Taxonomy and instance document.

Taxonomy contains description and classification of business & financial terms, while the instance document is made up of the actual facts and figures. Taxonomy and Instance document together make up the XBRL documents.

Taxonomies are based on the regulatory requirements and standards which are to be followed by the companies. Accordingly, depending on the requirements of every country, there can be country specific taxonomies. In India taxonomies are developed for Indian companies on the basis of following regulatory requirements:

- Schedule VI of Companies Act,
- Accounting Standards, issued by ICAI
- SEBI Listing requirements.

An XBRL instance document is a business report in an electronic format created according to the rules of XBRL. It contains facts that are defined by the elements in the taxonomy it refers to, together with their values and an explanation of the context in which they are placed. XBRL Instances contain the reported data with their values and "contexts". Instance document must be linked to at least one taxonomy, which defines the contexts, labels or references.

INTRODUCTION OF NEW FORMS FOR XBRL FILING

The existing Form 23AC and Form 23ACA can not to be used for filing balance sheet and profit and loss account in XBRL mode. Accordingly, the Ministry of Corporate Affairs vide its Notification dated 05th October, 2011 introduced the new forms 23AC-XBRL and 23ACA-XBRL (w.e.f. 6th October, 2011) for filing of documents in XBRL mode.

Further, the Central Government has also issued the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2011 w.e.f. 06th October, 2011.

STEPS FOR E-FILING OF XBRL DOCUMENTS ARE DETAILED BELOW:

(i) Creation of XBRL instance document:

First create the XBRL instance document by mapping each financial statement element to a corresponding element in the published taxonomy.

(ii) Validate the Instance document using XBRL validation tool A tool has been provided on the MCA XBRL portal for validating the generated XBRL instance document. Validating the instance document is a pre-requisite before filing the balance sheet and profit & loss account on MCA portal. The following validations shall be performed by the tool:

- the instance document is as per the latest and correct version of taxonomy prescribed by MCA
- All mandatory elements have been entered
- Other business rules as specified by MCA
- Other validations as per taxonomy

(iii) Pre-scrutiny of the instance document

Once the instance document is successfully validated from the tool, the next step is to pre-scrutinise the validated instance document with the help of the same tool. For pre-scrutinizing the instance document, a working internet connection shall be required. In the pre-scrutiny, the server side validations (i.e. validations which are to be validated from the MCA21 system) shall be performed.

(iv) Convert to pdf and verify the contents of the instance document.

(This step is essential to ensure that the textual information entered in the instance document is clearly viewable)

(v) Attach instance document to the Form 23AC-XBRL and Form 23ACA-XBRL. First fill up the Form 23AC-XBRL and Form 23ACA-XBRL.

Thereafter, attach the validated and pre-scrutinised instance document for Balance sheet to Form 23AC-XBRL. Similarly, the instance document for Profit and Loss account is to be attached to Form 23ACA-XBRL.Separate instance documents need to be attached w.r.t. standalone financial statements and consolidated financial statements.

(vi) Submitting the Form 23AC-XBRL and Form 23ACA-XBRL on the MCA portal

After the forms are filled, the following steps are required to be performed:

- Pre-scrutiny of the forms
- Signing the forms
- Upload the forms as per the normal e-filing process.

It should be ensured that the attached instance documents are validated and pre-scrutinised from the XBRL validation tool. The instance documents attached with Forms are not required to be digitally signed. Only the e-Forms 23AC-XBRL and 23ACAXBRL need to be digitally signed by the authorized signatories of the company. *The forms are also required to be certified by a practicing professional (i.e. a member of ICAI/ ICSI/ ICWAI).*

The XBRL instance documents submitted along with Form 23AC-XBRL and 23ACA-XBRL are in machine readable format. Therefore, for viewing the same in a human readable format, these shall be converted into human readable format by the MCA21 system. For viewing the same on MCA portal and for taking certified copies of the same, these converted documents will be available on MCA website.