

THE BURMA STAMP ACT

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SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

THE BURMA STAMP ACT.
[INDIA ACT II, 1899.] (1st July, 1899.)

1. On and after the 1st April, 1941, Schedule I of India Act II of 1899, as in force in Burma on the 1st September, 1935, shall have effect as Schedule I of this Act.
2. In this Act, unless there is something repugnant in the subject or context,--
 - (1) "banker" includes a bank and any person acting as a banker;
 - (2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, and includes also a hundi, and any other document entitling or purporting to entitle any person whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money ;
 - (3) "bill of exchange payable on demand" includes --
 - (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;
 - (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods ; and
 - (c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ;
 - (4) "bill of lading" includes a "through bill of lading", but does not "Bill of include a mate's receipt ;
 - (5) "bond" includes
 - (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
 - (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
 - (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another ;
 - (6) "chargeable" means, as applied to an instrument executed or first executed after [the coming into operation of the Constitution] ¹ chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in the Union of Burma when such instrument was executed or, where several persons executed the instrument at different times, first executed ;
 - (7) "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand ;
 - (8) * * * *
 - (9) "Collector" includes a Deputy Commissioner and any officer whom the President of the Union may, by notification, appoint in this behalf;
 - (10) "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred *inter vivos* and which not otherwise specifically provided for by Schedule I ;

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

- (11) "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than proper amount and that such stamp has been affixed or used accordance with the law for the time being in force in the Union of Burma ;
- (12) "executed" and "execution", used with reference to instruments mean "signed" and "signature" ;
- (13) "impressed stamp" includes
 - (a) labels affixed and impressed by the proper officer, and
 - (b) stamps embossed or engraved on stamped paper ;
- (14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded ;
- (15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any civil Court and an award by an arbitrator directing a partition ;
- (16) "lease" means a lease of immoveable property, and includes also
 - (a) * * * *
 - (b) an undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immoveable property ;
 - (c) any instrument by which tolls of any description are let ;
 - (d) any writing on an application for a lease intended to signify that the application is granted ;
- (16A) "marketable security" means a security of such a description as to be capable of being sold in any stock market in India or Pakistan, in the Union of Burma, or in the United Kingdom ;
- (17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates to, or in favour of, another, a right over or in respect of specified property ;
- (18) "paper" includes vellum, parchment or any other material on which an instrument may be written ;
- (19) "policy of insurance"
 - (a) includes any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event ;
 - (b) a life-policy and any policy insuring any person against accident or sickness, and any other personal insurance
- (20) "policy of sea-insurance " or " sea-policy "
 - (a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel ; and
 - (b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but

also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance ;

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance;

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it ;

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act ;

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;

(23) "receipt" includes any note, memorandum or writing --

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person;

(24) "settlement" means any non-testamentary disposition in writing of moveable or immoveable property made

(a) *in consideration of marriage,*

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition ; and

(25) " soldier " includes any person below the rank of non-commissioned officer who is enrolled under * * * * ¹ the Burma Army Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor respectively, that is to say

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in the Union of Burma on or after the first day of July 1899 ² ;

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(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of the Union of Burma on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in the Union of Burma ; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the Union of Burma on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the Union of Burma and is received in the Union of Burma

Provided that no duty shall be chargeable in respect of

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument ;

(2) 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 * * * *¹ the Registration of Ships Act, as amended by subsequent Acts.

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument :

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I shall, where the duties chargeable thereunder are different be chargeable only several with the highest of such duties :

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894) shall be valid unless the same is expressed in a sea-policy.

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¹Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

²Date of commencement of India Act II, 1899.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or underwriters, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loans Act, or of any other law for the time being in force, by the issue of bonds, debentures or securities other securities, shall, in respect of such loan, be chargeable with a duty of loans^o under one per centum on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1), exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty, shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

9. The President of the Union may, by rule ' or order published in the Gazette, --

- (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the Union of Burma, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

B.—Of Stamps and the mode of using them.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps

- (a) according to the provisions herein contained; or
- (b) when no such provision is applicable thereto--as the President of the Union may by rule direct.

(2) The rules 2 made under sub-section (1) may, among other matters, regulate,

- (a) in the case of each kind of instrument—the description which may be used ;
- (b) in the case of instruments stamped with number of stamps which may be used;
- (c) in the case of bills of exchange or promissory notes written Oriental language--the size of the paper on which they written.

11. The following instruments may be stamped with adhesive stamps, namely :--
- (a) instruments chargeable with the duty of one anna or half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
 - (b) bills of exchange and promissory notes drawn or made out of the Union of Burma ;
 - (c) entry as an advocate on the roll of the High Court ;
 - (d) notarial acts ; and
 - (e) transfers by endorsement of shares in any incorporated company or other body corporate.
12. (1)(a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ;
- (b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.
- (2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned. be deemed to be unstamped.
- (3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.
13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.
14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written : Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.
15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

¹For such rules, see Burma Gazette, 1940, Part I, page 203.

²For such rules, see Burma Gazette, 1940, Part I, page 200.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as the President of the Union may by rule prescribe.

C.—Of the Time of stamping Instruments.

17. All instruments chargeable with duty and executed by any person in the Union of Burma shall be stamped before or at the time of execution.

18. (1) Every instrument chargeable with duty executed only out of the Union of Burma, and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in the Union of Burma.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the President of the Union may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. The first holder in the Union of Burma of any bill of exchange payable otherwise than on demand or promissory note drawn or made out of the Union of Burma shall, before he presents the same for acceptance or payment or endorses, transfers or otherwise negotiates the same in the Union of Burma, affix thereto the proper stamp and cancel the same :

Provided that,

- (a) if, at the time any such bill of exchange or note comes into the hands of any holder thereof in the Union of Burma, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled ;
- (b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

20. (1) Where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of the Union of Burma, such duty shall be calculated on the value of such money in the currency of the Union of Burma according to the current rate of exchange on the day of the date of the instrument.

(2) The President of the Union may, from time to time, by notification, in the Gazette, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of the Union of Burma for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

21. Where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall 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.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

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

23A. (1) Where an instrument (not being a promissory note or bill of exchange) --
(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or
(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (c) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation.--In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes li Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

25. 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, shall, for the purposes of this Act, 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.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty, —

- (a) when the lease has been granted by or on behalf of * * * * ¹ the Government of the Union of Burma, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to * * * * ¹ the Government of the Union of Burma under the lease, or
- (b) 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 :

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or section 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (1) Where 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 shall 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 shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) 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 shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

¹Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) 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 shall 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 residue (if any) of such property to the original purchaser shall 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 :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) 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 shall 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.

E.—Duty by whom payable,

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,---

(a) in the case of any instrument described in any of the following Articles of Schedule I, namely ; --

- | | | |
|-----|---------|---|
| 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),--

by the person drawing, making or executing such instrument ;

(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance;

(bb) in the case of a policy of fire-insurance--by the person issuing the policy;

(c) in the case of a conveyance (including a re-conveyance of mortgaged property)—by the grantee ; in the case of a lease or agreement to lease--by the lessee or intended lessee;