

CHAPTER-V STAMP DUTY AND REGISTRATION FEES

5.1 Tax Administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Organisation) [DC (SDVO)] at the district level.

5.2 Results of Audit

Test check of records in the offices of Sub-Registrars, Deputy Collectors (Stamp Duty Valuation Organisation) and Additional Superintendent of Stamps, Gandhinagar in the State during the year 2015-16 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 113.93 crore in 165 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1.	Performance Audit of “IT Audit of gARVI- System of registration of documents”	1	-
2.	Follow-up Audit of “Performance Audit of Levy and Collection of Stamp Duty and Registration Fees”	1	81.32
3.	Misclassification of documents	36	5.03
4.	Undervaluation of property	48	15.82
5.	Short levy of stamp duty and registration fees	15	4.52
6.	Other irregularities	64	7.24
	Total	165	113.93

During the course of the year, the Department accepted under-assessment and other irregularities and recovered ₹ 43.87 lakh in 34 cases, which were pointed out in audit during 2015-16 and earlier years.

A performance audit of “IT Audit of gARVI- System of registration of documents” and a few illustrative audit observations involving ₹ 83.40 crore are mentioned in the succeeding paragraphs.

5.3 IT Audit of gARVI- System of registration of documents

5.3.1 Introduction

The levy and collection of stamp duty and registration fees on specified documents is regulated in Gujarat under the Indian Stamp Act 1899, Registration Act 1908, Gujarat Stamp Act 1958, Gujarat Stamp Rules 1978 and the Gujarat Stamp (Determination of Market Value of Property) Rules (MVR) 1984. The Inspector General of Registration (IGR) under the Revenue Department (the Department), Government of Gujarat (GoG) is responsible for the overall control and administration of matters relating to stamp duty and registration fees.

The Department had implemented (August 2003) Registration of Documents (*ReD*) system which was designed by the National Informatics Centre (NIC) of India for registration of documents. In this system, database was stored in local servers. After implementation of the *eJamin*¹ project by the Revenue Department in 2010, the Department switched over to *gARVI* system (from October 2010 in a phased manner). *gARVI* system has been developed with the objective of computerisation of the entire process of registration at Sub-Registrar Offices (SROs). *gARVI* aimed at improving the services for the general public by speeding up the process of registration so that the registered document could be returned to the executants on the very same day.

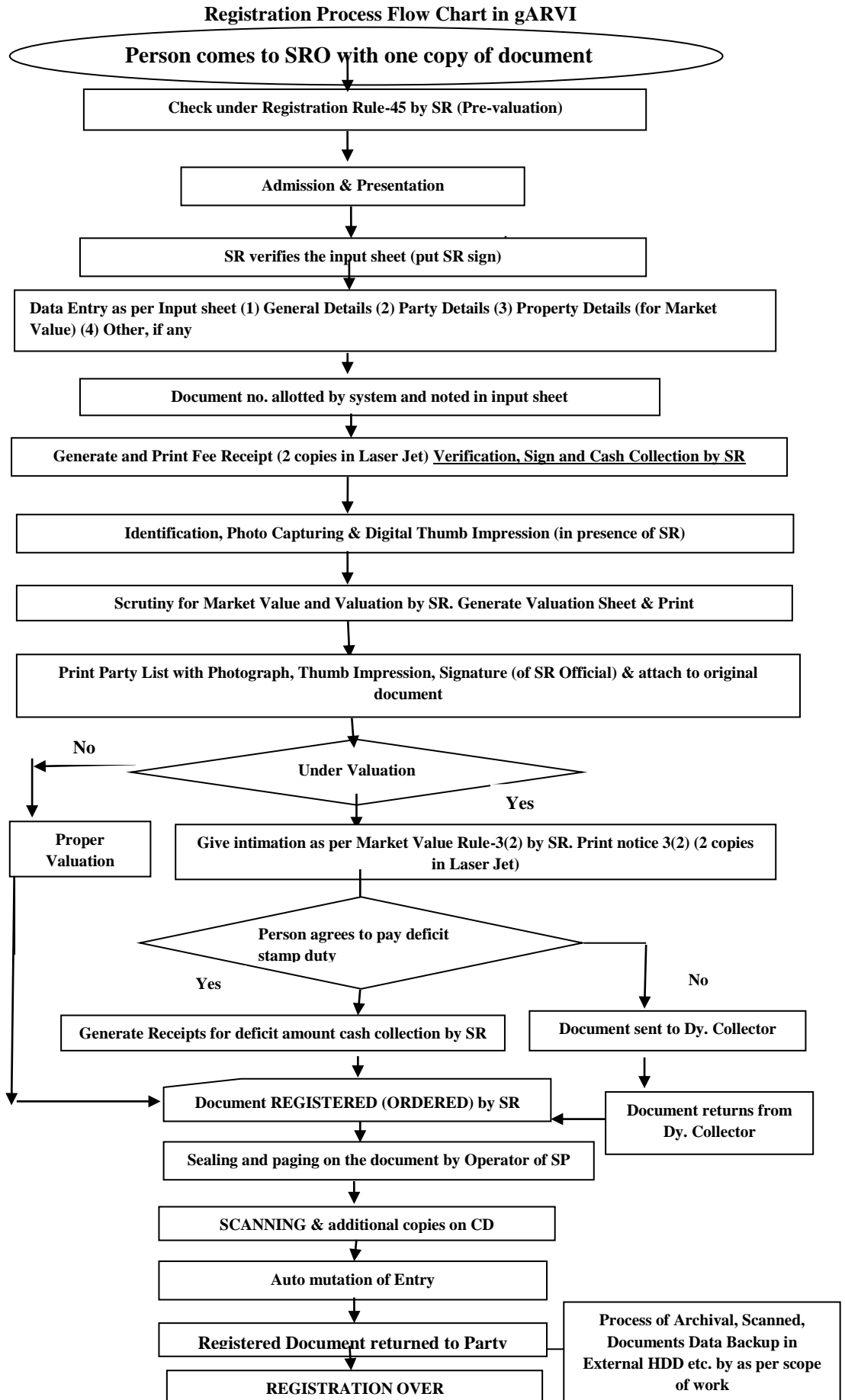
The processes are as described below:

- Calculation of market value of property
- Calculation of stamp duty and registration fees
- Capturing photo and thumb impression of the parties involved
- Scanning the documents for storage
- Generation of various reports for use by the management, and
- Auto-mutation in land records in case of transfer of agricultural land

The chart on the next page shows various automated processes in *gARVI* system. As against the *ReD* system where data was stored locally in servers in SROs, *gARVI* is a web-based application wherein master data is maintained in a central server at the State Data Centre (SDC). The main data server performs various tasks, such as, data analysis, storage, data manipulation, archiving and other tasks using a client-server architecture. The registration of documents was done at 287 SROs in the State. All SROs, IGR office and the State Data Centre are connected through Gujarat State Wide Area Network (GSWAN)².

¹ Integrated land records (*e-Jamin*) management system under which all the land records and registration records were converted to centralized format and brought to central servers at State Data Center (SDC).

² It is an end-to-end internet protocol based network designed for the service convergence (voice, video and data) on a single backbone and is maintained by the Gujarat Informatics Limited (a Government of Gujarat undertaking).



gARVI system has also been integrated with “Land Records Management System” for effecting automatic mutations in record of rights (i.e. land records) in case of transfer of agricultural land.

The Department invited (September 2012) tenders and appointed five service providers for the establishment and running of Electronic Registration Centres at all SROs grouped in six zones³. The service providers were responsible for providing, installing and maintaining hardware, system software, data entry, scanning of documents and maintaining data backup as well as the required manpower. The service provider also had to take daily backup of scanned documents in the external hard drive.

5.3.2 Audit Objectives

We conducted the IT audit with a view to ascertain whether:

- the computerisation was in line with the intended objectives of the Department and the system covered all the intended functions;
- the information in the database was reliable;
- adequate controls were in place to ensure the efficiency and accuracy of data processing, its output and also for the safety of data in the system; and
- the Department monitored the compliance of the terms of service by the service providers in running the Electronic Registration Centres efficiently at each SRO and also taking backup of the data uploaded in the central server of the State Data Centre.

5.3.3 Scope of audit

We evaluated the IT application controls and the effectiveness of *gARVI* system in achieving the intended organisational objectives of the Department especially in switching over from the *ReD* system to *gARVI*. We also evaluated the system of registration of documents and monitoring the activities of the service providers for supply/installation/maintenance of the computer hardware/software for running the computerized system.

We had requested the Department to provide backup data from 2010 to 2015 for all SROs. However, the Department provided backup data for the period from 2013 to 2015 pertaining to 14 offices only. Accordingly, data pertaining to these 14⁴ SROs was taken up for analysis.

³ Zone-1: Jamnagar, Kutch and Rajkot; Zone-2: Amreli, Bhavnagar, Junagadh and Porbandar; Zone-3: Ahmedabad, Gandhinagar and Surendranagar; Zone-4: Banaskantha, Mehsana, Patan and Sabarkantha; Zone-5: Anand, Dahod, Kheda(Nadiad), Pachmahal and Vadodara; Zone-6: Bharuch, Dang, Narmada, Navsari, Tapi, Valsad and Surat

⁴ Ahmedabad-3 (Memnagar), Ahmedabad-13 (City), Ahmedabad-14 (Dascroi), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Junagadh, Mehsana, Surat-3 (Navagam), Rajkot-2 (Kotharia) and Vadodara-4 (Gorva)

5.3.4 Audit methodology

An entry conference was held with the officers of the Department and NIC on 6 June 2016 to explain the objectives and methodology to be adopted in the IT audit. The audit methodology consisted of checking the data available from *gARVI* system for data completeness, regularity and consistency by using Computer Aided Audit Tools (CAATs) such as Interactive Data Extraction and Analysis (IDEA). Audit applied both substantive and compliance tests to evaluate the extent of reliability of various controls in *gARVI* System.

The Draft Audit Report was forwarded to the Department and to the Government in August 2016. An Exit Conference was held on 10 October 2016, wherein major findings of the IT Audit were discussed with the Department. The replies received from the Department (August 2016) and during the Exit Conference have been appropriately commented upon in the relevant paragraphs of the report.

Audit findings

The audit findings have been organized under four headings viz., System Development, Input Controls and Data Validation, Processing Controls and Monitoring and Disaster Recovery Plan.

5.3.5 System Development

5.3.5.1 Ownership of source code, modules and data

There was no evidence available to verify whether the *gARVI* system was properly authorised, tested, accepted and documented. Changes/amendments to the system done post implementation were also not documented.

The Department stated (June and September 2016) that a need-based programme to fulfil the requirements of the office of IGR, NIC (which is a Government Agency) makes changes as directed by the Department as and when required. Hence, no such records were maintained. Further, the Department stated that the software application *gARVI* was developed in-house by NIC. Hence, the source code belonged to NIC, whereas the data belonged to the Department.

However, the fact remains that in the absence of proper documentation the Department had no means to monitor or control the system when required and was totally dependent upon NIC, Gandhinagar even after five years of implementation of *gARVI*.

5.3.5.2 Change-over plan

Before October 2010, all data backups including scanned copies of instruments were stored at local data servers at each SRO. After implementation of *gARVI* system, data backups were stored online in the Central Data Server. However, scanned copies of instruments were uploaded in the Central Data Server from 2015 only. Uploading of scanned copies of

the instruments registered during 2010 to 2014 was still pending even after completion of five years of switching over to a centralized database.

The Department stated (September 2016) that storage of scanned copies of documents registered since the year 2010 would require huge space in the State Data Centre. The Department was making efforts to get the required storage space.

5.3.5.3 Access to Deputy Collectors

Section 32A of the Gujarat Stamp Act, 1958 stipulated that if the officer registering the instrument had reasons to believe that the consideration set forth in the instrument presented for registration was not as per the market value of the property, he shall, before registering the document, refer the same to the Deputy Collector (Stamp Duty Valuation Organisation) (DC SDVO) for determination of the market value of the property. Section 33 of the Gujarat Stamp Act stipulated that every public officer including Sub Registrars before whom any instrument, chargeable with duty, was produced or came in the performance of his functions, shall if it appeared to him that such instrument is not duly stamped, impound the same.

Accordingly, SRs referred such instrument to the DC (SDVO) for determination of proper stamp duty/ proper classification of instrument.

Access to *gARVI* system had not been provided to the DC(SDVO) who had to solely rely upon the hard copies of documents forwarded by SROs for giving opinion/determining true market value/deciding proper classification of the instruments. Further, the additional/reduced stamp duty levied by DC (SDVO) was not reflected in the *gARVI* system. Illustrative cases are tabled below:

Sl. No.	Name of SR offices	Document number /Article and year	Deficit duty paid as per the system (amount in ₹)	Deficit duty paid as per DC(SDVO) orders but not reflected in system (amount in ₹)
1	Ahmedabad -14 (Dascroi)	228/20/2015	7,94,394	1,89,714
2	Ahmedabad-14 (Dascroi)	1530/20/2015	17,79,097	10,59,374
3	Ahmedabad-3 (Memnagar)	1845/20/2014	4,60,823	9,405
4	Ahmedabad-3 (Memnagar)	7487/20/2015	8,19,087	1,97,784

Thus, complete automation of all the processes was not achieved.

The Department accepted the audit observation and stated (September 2016) that the work of providing user-ids and passwords to the Deputy Collectors was under progress.

The Department may integrate the process of valuation by DC (SDVO) in the *gARVI* system at the earliest.

5.3.5.4 Furnishing of data for the Income Tax Department

Section 285BA of the Income Tax Act, 1961 stipulated that the details of instruments of transfer of immovable properties with consideration of ₹ 30 lakh and above were required to be furnished to the Income Tax (IT) Department in the form of Annual Information Return (AIR).

Under “Reports” module in “gARVI” system, details of registered documents of immovable properties, where consideration was more than ₹ 30 lakh, was required to be sent to the IT Department annually. However, the report could capture the amount between ₹ 0 and ₹ 99,99,99,999 only and not beyond that. Therefore, the possibility of non-transfer of some data to Income Tax Department could not be ruled out where the consideration was above ₹ 99,99,99,999.

We observed that SROs sent these details individually in Compressed Disks (CDs) even though the system had a centralised server facility. Further, there was no option in the system to generate reports regarding status of submission of AIR by the respective SRs to the IT Department. Thus, IGR/Inspectors of Registration (IRs) could not monitor the SRO-wise status of submission of such annual return to the IT Department.

The Department stated (September 2016) that the software had now been modified to capture the details of registered documents of immovable properties where consideration was more than ₹ 30 lakh. The Department also stated that SROs were required to prepare separate AIRs because they had been allotted separate TANs. Thus, consolidated AIR generated from the system would not serve the purpose.

The Department may incorporate an option in the system to enable monitoring of submission of such annual return by the SRs to the IT Department at the IGR level.

5.3.5.5 No provision for entry of documents containing distinct matters

Under Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act. For example, when an instrument of mortgage was executed by a borrower to obtain loan from any financial institution/bank and both movable properties and immovable properties were offered as security, aggregate stamp duty of deed of hypothecation under Article 6(1) (b) and under mortgage deed Article 36 (b) was leviable.

We observed that the gARVI system did not have provision for registration of documents comprising distinct matters covered under more than one article of Schedule I to the Gujarat Stamp Act and levy of separate stamp duty as provided under Section 5 of the Gujarat Stamp Act. In the absence of such provision, Department had to calculate and levy deficit duty manually in such cases.

The Department stated (September 2016) that necessary provisions in the software would be made.

5.3.5.6 Levy of penalty

Rule 28 of the Gujarat Registration Rules, 1970 stipulated that fine was required to be levied, if there was delay of more than four months in presentation of the document for registration after the date of its execution.

We observed that no such provision was made in the gARVI system. Consequently the levy and collection of the fine was done manually.

The Department stated (September 2016) that auto-calculation of fine by the system would not serve the purpose because Registration/ Adjudication Authorities had been vested with discretionary powers to decide the quantum of fine based on the merits of each individual case under Section 25 and 34 of the Registration Act .

The Department may modify the software to include a provision whereby fine modified under Section 25 and 34 could be entered by the registering authority. The database would then contain the actual fine imposed and the fine reduced by using discretionary powers for better transparency.

5.3.6 Input Controls and Data Validation

The objective of input control was to ensure that (i) the data received for processing is genuine, complete, accurate and properly authorised and (ii) data is entered accurately and without duplication. Data validation is a process of checking transaction data for any errors or omissions and ensuring the completeness and correctness of data. We observed various deficiencies in validation controls and data entry in “gARVI” system which may compromise the correctness and reliability of the data being fed into the system.

5.3.6.1 Invalid Permanent Account Number (PAN)

Mention of PAN was mandatory in transactions above ₹ 5 lakh/₹ 10 lakh for both buyers and sellers of property. Permanent Account Number (PAN) is a 10 digit alpha-numeric number. First five digits contain alphabets only, next four digits numbers only and last character contains alphabet only. However, we observed that:

- The system accepted PANs in invalid formats. In 14 SROs⁵, out of 2,83,667 transactions involving buyers/ sellers where PANs were entered, 993 PANs were found to be invalid.

⁵ Ahmedabad-3 (Memnagar), Ahmedabad-13 (City), Ahmedabad -14 (Dascroi), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Junagadh, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)

- In 18,904 cases, the system accepted property transactions by buyers and sellers above ₹ 30 lakh without capturing PANs as required in the Annual Information Return (AIR) to be furnished to the IT Department.

Lack of such data validation checks in the software resulted in incorrect data being fed in the system.

The Department stated (September 2016) that necessary controls in the software had been put in place.

5.3.6.2 Controls to validate dates

Documents were required to be presented before the SR for registration. After verification of the transactions details of the document and market value and ensuring payment of applicable stamp duty and registration fees, SR would proceed with the registration of the document and put his dated signature.

- In 12 cases registered during the period 2013-2015 pertaining to six SROs⁶, date of presentation of document was shown to be a date later than the date of signature of the SR (i.e. date of order).
- In 17 cases registered during the period 2013-2015 pertaining to four SROs⁷, date of execution by the executants was shown to be a date later than the date of presentation.

Thus, no checks to validate dates were present in the system.

The Department stated (September 2016) that necessary controls in the software had been put in place to validate dates.

5.3.6.3 Validation checks against duplicate registration

We found that a sale deed of a plot of land with a particular survey number could be registered innumerable times in the system. There was no in-built warning system developed to caution against such duplicate registration. Thus, there was risk of fraudulent multiple sales of the same property by a seller to different buyers.

The Department stated (September 2016) that necessary validation checks in the software would be put in place against duplicate registration.

5.3.6.4 Validation checks for transfer of Government properties

Section 22-A of the Registration Act, 1908 stipulates that the registering officer shall refuse to register any instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease, belonging to the State Government, or the local authority or any religious institution.

⁶ Ahmedabad-13 (City), Ahmedabad -14 (Dascroi), Bhavnagar-2 (Chitra), Gandhinagar, Rajkot-2 (Kotharia) and Vadodara-4 (Gorva)

⁷ Gandhinagar, Jamnagar-2, Mehsana and Surat-3 (Navagam)

We observed that master database of such restricted properties was neither created nor consolidated by NIC/IGR. In the absence of such a master database in the application system, alerts for transfer of such properties could not be generated from the system.

The Department stated (September 2016) that the system had provision to enter restricted property data in the database on the basis of written instructions of the competent authority. However, the same data would be updated in the system, if provided by the concerned authorities.

There is a need to obtain such database from the concerned department and fed into the system.

5.3.6.5 Incorrect data entry

Data Entry Operators (DEOs) of the service provider were responsible for entry of data in the system. However, the Department did not have an adequate mechanism to check/validate the data entered by the DEOs.

During data analysis of SRO-3, Surat (Navagam), it was observed that towards deposit of title deed (under Article 6) registered to secure a loan of ₹ 29.28 crore, as against the maximum duty leviable of ₹ 11.20 lakh, duty levied was entered as ₹ 112 lakh.

Even though the stamp duty of ₹ 112 lakh was not actually paid, excess duty entered got reflected in the reports generated by the *gARVI* system.

Further, in SRO-14, Ahmedabad (Daskroi), it was seen that in a document registered under Conveyance, the market value of the property was erroneously entered as ₹ 31,613.63 crore as against the consideration amount of ₹ 1.63 crore. Thus, the stamp duty leviable was worked out even higher than the actual the consideration on which stamp duty was actually payable. Hence, stamp duty was calculated as ₹ 1,549.06 crore by the system as against the correct amount of duty paid of ₹ 5.47 lakh.

During Exit Conference (October 2016), the Department accepted the fact that there was absence of cross-checking of data entered by SRs. The Department stated that designated officials would be entrusted with the work of checking data entry by selecting sample size for the purpose.

The data may be cross verified by the Department. When errors are found, data may be corrected not only in manual records, but also in the database to maintain data integrity.

5.3.6.6 Correctness of duty on mortgage deeds

Under Section 3 of the Gujarat Stamp Act 1958, every instrument mentioned in Schedule I shall be chargeable with duty at the prescribed rates. Further, additional duty at the rate of 40 *per cent* of the stamp duty paid was also leviable under Section 3(A).

As per Article 36B, in case of a mortgage deed, where possession of the property or any part of the property comprised in such deed was not given or not agreed to be given and as per Article 6 (1)(a), in case of an agreement relating to deposit of title deeds where loan or debt was repayable on demand or after three months from the date of the instrument, stamp duty was leviable as follows:

Loan Amount	With effect from 1.4.2006 to 14.5.2013 as per Amendment Act Gujarat 14 of 2006		With effect from 15.5.2013 as per Gujarat Act 15 of 2013	
	Rate of Duty	Maximum limit	Rate of Duty	Maximum limit
(i) Where loan amount does not exceed ₹ 10 crore	Twenty-five paise for every hundred rupees or part thereof	₹ one lakh	Twenty-five paise for every hundred rupees or part thereof	No maximum limit
(ii) Where loan amount exceed ₹ 10 crore	Fifty paise for every hundred rupees or part thereof	₹ three lakh	Fifty paise for every hundred rupees or part thereof.	Maximum ₹ eight lakh

During data analysis pertaining to 67,323 instruments of mortgage/ agreements relating to deposit of title deeds/ debentures trust deed, we noticed in 890 documents that as per data entries stamp duty leviable was of ₹ 6.98 crore. However, actual stamp duty paid was of ₹ 2.56 crore only. Thus, there was difference of ₹ 4.43 crore in the duty leviable as per system and duty actually paid.

We observed during test check that this difference was mainly on account of understatement/ overstatement of loan amounts due to mistakes in data entry. Further, we observed that there was no validation control to restrict the applicable duty, entered manually by the registering authority, to the maximum duty leviable. Details are as follows:

(₹ in crore)

No of SR offices	Total No. of documents of mortgage/ deposit of title deed	No. of documents where irregularity noticed	Stamp duty leviable as per entries	Stamp duty levied by system	Difference in duty (₹ in crore)	Criteria
12 ⁸	7,646	239	0.37	0.22	0.15	Upto ₹ 10 crore as on 14.05.13
12 ⁹	59,118	600	1.59	0.64	0.95	Upto ₹ 10 crore from 15.05.13
5 ¹⁰	105	7	0.29	0.10	0.19	More than ₹ 10 crore

⁸ Ahmedabad-3 (Memnagar), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Junagadh, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)

⁹ Ahmedabad-3 (Memnagar), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Junagadh, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)

¹⁰ Ahmedabad-3 (Memnagar), Anand, Bharuch, Gandhinagar and Mehsana

						as on 14.05.13
11 ¹¹	454	44	4.73	1.59	3.14	More than ₹ 10 crore from 15.05.13
Total	67,323	890	6.98	2.55	4.43	

The Department stated (September 2016) that detailed reply would be furnished after verification of facts.

5.3.6.7 Exemption of Registration Fees on instruments relating to transfer of immovable properties executed in favour of women

Under Section 78(2) of the Registration Act, 1908, registration fee shall be levied on conveyance, exchange of property, power of attorney (sale of immovable property), release for consideration, Instrument of Settlement (any case other than Religious or Charitable purpose), transfer of lease, any certified copy of decree of or order of court at *ad valorem* scale on the amount or value of consideration. Under Section 78(3) of the Registration Act, 1908, registration fee shall be levied on Gift at *ad valorem* scale on the amount or value of property. Under Section 78(4)(a), the rate of registration fees shall be one rupee for every rupees one hundred or part thereof on the amount or value of consideration. Further, as per Note 19 under Section 78(4), no fee shall be payable in respect of the instrument relating to transfer of immovable property executed in favour of any woman or women whereby the said woman or as the case may be, women only become the owner of the said property.

In case of documents of transfer of immovable properties in favour of woman/women, the system calculated registration fee as 'zero' as per the provisions of the Registration Act.

In 52,973 documents test checked by audit where 'zero' registration fee was levied, we found that in 51,229 documents buyers' gender was shown as 'male'. This indicated that necessary input controls were not present in the system.

We observed that during entry of the details of parties in the system, even when 'Male' or 'Office' was entered in the gender field, the system allowed the registration at 'zero' registration fee. Thus, no inbuilt mechanism was available in the system to ensure that when executants (buyers) were specified as 'women' and registration fee leviable was shown as 'zero', the system should not proceed with the registration process if buyers' gender was specified as 'man' or 'office'.

The Department stated (September 2016) that necessary controls in the software had been put in place.

¹¹ Ahmedabad-3 (Memnagar), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)

5.3.6.8 Field left blank in case of registration of gift deeds

Under Article 28 on documents of gift, stamp duty was leviable on market value of the property at the rate of 4.9 per cent.

We noticed in eight offices¹² that out of 2,267 cases, in respect of 124 documents, data regarding the market value was not entered in the system. The registration fees and stamp duty were however, levied manually.

In the absence of such market value, the correctness of stamp duty/registration fees levied could not be ascertained from the system.

Department stated (September 2016) that registration fees and stamp duty were calculated by SROs based on market value.

A provision may be made in the system to calculate the registration fee and stamp duty based on the market value to avoid errors due to data entries.

5.3.7 Processing Controls

5.3.7.1 Facility to lock e-stamp certificates through integration with the website of SHCIL

Section 2(k) of the Gujarat Stamp Act stipulates that “impressed stamp” includes the certificate issued under e-stamping system. E-stamping was a secured electronic mode of paying for non-judicial stamps. The e-stamp certificate was designed with advanced security features which included Unique Identification Number (UIN), Optical Watermark, 2D Barcode and Microprint. In case a client did not want to use it, he could get a refund as per rules by the Collector / any other designated officer authorised by the Superintendent of Stamps and IGR.

Stock Holding Corporation of India Limited (SHCIL), being the Central Record Keeping Agency, was responsible for the overall application and maintenance of e-stamping in the State.

We observed that with the help of high resolution scanner and printer, the e-stamp certificates could be copied for use on multiple occasions. As a control measure against possible re-use of e-stamp certificate, the online system of e-stamping provided for locking of certificates by the SROs in the website of SHCIL by entering the corresponding document number in the website of SHCIL whenever the e-stamp certificate along with the instrument was presented before them for registration. Locking of certificate was also required to be checked at the time of processing of refund claims in order to ensure that it has not been used earlier.

A mention had been made in Para No. 5.6.26.2.1 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year

¹² Ahmedabad-3 (Memnagar), Bharuch, Gandhinagar, Himatnagar, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)

ended 31 March 2011, wherein non-observance of the procedure of locking e-stamping certificate by most of the SROs by entering Unique Identification Number (UIN) and the necessity of mandatory entry of UIN in the ReD system was brought to the notice of the Department. The Department had stated that all SROs had been instructed to lock the e-stamping certificates to avoid their multiple uses.

Examination of e-stamping system in “gARVI” revealed that there were instances where SROs did not lock the e-stamping certificates by entering UIN by accessing the website of SHCIL. Further, there was no field in gARVI system to enter UIN and automatic locking of the e-certificates. Thus, the possibility of fraud by using e-stamps on more than one occasion could not be ruled out.

During Exit Conference (October 2016), the Department agreed to integrate the gARVI system with the website “e-stamps” of the Stock Holding Corporation of India Ltd. to have a greater transparency in accounting of e-stamps and preventing possible instances of multiple uses of same e-stamp certificates, as early as possible. They also stated that the locking of e-stamp certificates would be made mandatory from November 2016 onwards.

The e-stamp certificates were printed with QR codes¹³ and details of e-stamps could be read from the QR code using a scanner. Department may utilise this feature to verify the correctness of the e-stamp instead of manually entering the registration number, date and time of the document containing the e-stamp. Automatic locking of e-stamp certificate should be implemented during the registration process.

5.3.7.2 Calculation of stamp duty on instruments of transfer of immovable properties

Under Article 17, 20, 26, 28, 45f, 49 and 57 of schedule I to the Gujarat Stamp Act 1958, stamp duty was leviable on certificates of sale, conveyance, exchange of property, gift, power of attorney (sale of immovable property), release for consideration and transfer of lease at the rate of 4.9 *per cent* on the market value or consideration, whichever was higher.

During the data analysis of 2,06,765 documents registered under the above articles, we noticed that in 4,275 documents, stamp duty was not levied at the prescribed rate of 4.9 *per cent as shown in the system*. Stamp duty involved in these transactions was ₹ 72.24 crore. The details are as follows:

¹³ A machine-readable code consisting of an array of black and white squares

Article No.	Description of the instrument	No. of SR offices	Total Documents	No. of documents in which difference in duty noticed	Difference in duty involved (₹ in crore)
17	Certificate of Sale	04 ¹⁴	209	148	0.03
20	Conveyance	14 ¹⁵	2,02,796	4,015	71.34
26	Exchange of Property	09 ¹⁶	101	22	0.26
45f	Power of Attorney (Sale of Immovable property)	03 ¹⁷	352	06	0.05
49	Release	11 ¹⁸	3,282	83	0.50
57	Transfer of lease	01 ¹⁹	25	01	0.06
	Total		2,06,765	4,275	72.24

During cross verification of 24 documents in audit, it was noticed that the reasons for short levy shown in the system were due to errors in data entry, reduction of duty by DC (SDVO) in exercise of powers vested in him under Section 32 A, adjustment of duty already used in Agreement for Sale (Agreement)/ Power of Attorney (PoA) executed previously on the same properties, etc. which were not reflected in the system.

The Department may include a provision in the system for cross references of document numbers of Agreement/ PoA in case of adjustment of duty already paid on Agreement/ PoA previously executed.

5.3.7.3 Incorrect generation of pending documents list

After completion of the process of registration, the SROs make an order in token of authorisation and the system would record the date of such authorisation. In other cases, SROs kept such documents as ‘pending’.

We noticed from the “pending documents for registration” list generated by the system that even though date of order was available in the database, 13 documents were still shown as pending.

The Department agreed (September 2016) to make necessary changes in the software.

¹⁴ Ahmedabad-13 (City), Ahmedabad-14 (Dascroi), Bhavnagar-2 (Chitra) and Gandhinagar
¹⁵ Ahmedabad-3 (Memnagar), Ahmedabad-13 (City), Ahmedabad-14 (Dascroi), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Himatnagar, Jamnagar-2, Junagadh, Mehsana, Rajkot-2 (Kotharia), Surat-3 (Navagam) and Vadodara-4 (Gorva)
¹⁶ Ahmedabad-3 (Memnagar), Ahmedabad-13 (City), Ahmedabad-14 (Dascroi), Anand, Jamnagar-2, Junagadh, Mehsana, Surat-3 (Navagam) and Vadodara-4 (Gorva)
¹⁷ Ahmedabad-13 (City), Ahmedabad-14 (Dascroi) and Gandhinagar
¹⁸ Ahmedabad-3 (Memnagar), Ahmedabad-13 (City), Anand, Bharuch, Bhavnagar-2 (Chitra), Gandhinagar, Jamnagar-2, Junagadh, Mehsana, Surat-3 (Navagam) and Vadodara-4 (Gorva)
¹⁹ Junagadh

5.3.8 Disaster recovery plan

5.3.8.1 Database backup policy

No disaster recovery plan had been developed by the Department. Back-up data was stored at the Central Data Server, Gandhinagar. Further, the Department stated that data of scanned documents was stored in 3 CDs and was kept at SROs, Inspector of Registration (IR) at District levels and IGR office.

We observed that these backup CDs were kept in CD covers and were stored in cupboards instead of keeping them in weather/fire-proof and safer areas. There was no record available in IGR office indicating that the backup of scanned documents had ever been tested.

Department stated (September 2016) that they would ensure testing of data stored in CDs.

Department may store the data in Hard Disk at the IGR office level and the same may be kept in weather/ fire proof and safer areas.

5.3.9 Monitoring

We found that the Department was completely dependent on NIC for all activities relating to the operation of *gARVI*. The Department did not have adequate qualified officials to monitor the implementation of *gARVI* system.

The Department stated (September 2016) that they would recruit in-house IT officials as per the availability of the budget provision.

5.3.10 Incomplete Database

The major sources of stamp duty are (a) stamp duty collected in cases of allotment/ lease of Government land, (b) stamp duty collected at the time of registration of documents, (c) stamp duty collected in cases of unregistered documents, (d) stamp duty collected in cases of purchases/ sales of shares, stocks, etc. Thus, the system captures database of stamp duty collected by the Department in only those cases where the instrument has been registered. Thus, we could not ascertain from the *gARVI* system whether the stamp duty captured by the system was as per the total stamp duty collection reflected in Government accounts.

The major source of registration fees is the fees collected at SROs during registration of documents. The system is expected to capture the database of registration fees realized by the Department. The following table shows the registration fees realized as per the Finance Accounts of the State and as per the reports generated by the *gARVI* system:

(₹ in crore)

Sl. No.	Year	Registration Fees realized as per the Finance Accounts	Registration Fees realized as per the reports generated by the system	Percentage of variation
1	2012-13	524.71	497.79	5.13
2	2013-14	594.66	568.89	4.33
3	2014-15	704.29	682.73	3.06

Thus, there has been variation in the figures of registration fees realized as per the Finance Accounts of the State and as per the reports generated by the gARVI system. Though the variation ranged between 3 and 5 *per cent* and was not significant, this indicates that there were discrepancies in the database of registration fees captured by the system.

5.3.11 Conclusion

The gARVI system has been developed with the objective of computerization of entire process of registration to make it simple and transparent. During IT audit, we observed that:

- There was absence of proper documentation and ownership of source code.
- User requirement specifications were not assessed. As a result, manual intervention continued in the process of registration of the documents such as non provision of access to gARVI system to the Deputy Collectors (SDVO) for determination of market value of properties, levy of penalty in case of delay in presentation of documents for registration, etc.
- There were inadequate input controls and validation checks in the system which compromised the correctness and reliability of data being fed in the system.
- gARVI was not integrated with the website of SHCIL to facilitate locking of E-Stamps as a result of which the possibility of fraud by using e-stamps on more than one occasion cannot be ruled out.

5.3.12 Recommendations

The Department may take necessary actions to:

- integrate the process of valuation by DC(SDVO);
- evolve a system for automatic locking of e-certificates during registration process;
- minimize manual interventions in the system; and
- strengthen input controls and validation checks to make the database complete, accurate and reliable.

5.4 Follow-up Audit of the Performance Audit of “Levy and collection of stamp duty and registration fees”

5.4.1 Introduction

Receipts from stamp duty in the State are regulated under the Indian Stamp Act, 1899 (IS Act)²⁰ and the Gujarat Stamp Act, 1958 (GS Act)²¹ and Rules made thereunder. The registration of documents and related matters are regulated under the provisions of the Registration Act, 1908.

The audit findings of Performance Audit (PA) of ‘Levy and collection of stamp duty and registration fees’ were included in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2011 (Revenue Receipts) Government of Gujarat (GoG). The Report was placed in the State Legislature on 30 March 2012. The PA findings highlight system and compliance deficiencies in the functioning of Stamp duty and Registration offices under the control of Revenue Department of GoG. In the PA, Audit had made eleven recommendations²². Out of these, cases relating to two recommendations²³ have lost their relevance with the passage of time, cases relating to one recommendation pertaining to levy of stamp duty on delivery orders of imported goods were pending in Supreme Court and two recommendations relating to the co-ordination between various departments have been discussed in the previous audit reports from time to time. Thus, out of all 11 recommendations, five recommendations have not been included in the scope of Audit for this Audit Report.

5.4.2 Scope and objectives of Follow-up audit

The Follow-up audit of the above PA was taken up (August 2015 and December 2015) to assess the extent of implementation by the Department of the six specific audit recommendations. Relevant records/ information/ data made available by the Department were examined in audit to ascertain whether corrective measures were taken by the Department on the recommendations proposed by audit. The results thereof are discussed under the audit findings:

5.4.3 Status of actions on the audit recommendations

The six recommendations, gist of their paragraphs mentioned in the PA and the response of the Department are discussed in the following paragraphs:

²⁰ prescribes the rate of stamp duty in respect of bills of exchange, cheques, promissory notes, bill of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts specified in Entry No.91 of List I (Union List) in the Seventh Schedule to the Constitution.

²¹ prescribes rate of stamp duty for documents/instruments (under Entry 63 of List II) other than those specified in Entry 91 of Union list.

²² Two general recommendations and nine specific recommendations

²³ Paragraphs relating to Amnesty scheme of 2006 & 2007 and execution of conveyance deed in development agreement

5.4.3.1 Recommendations that were accepted by the Government/Department are mentioned in the following table:

Sl. No.	Paragraph number	Gist of paragraph	Recommendation
1.	5.6.13.1 and 5.6.13.2	Department did not have any mechanism to ascertain whether Companies incorporated in the State and issued shares have paid the requisite stamp duty on issue and allotment of shares.	The Government may consider setting up a system of co-ordination with Registrar of Companies (ROC) to collect data regarding registered companies raising fund and allotting and issuing shares so as to levy and collect proper stamp duty.
2.	5.6.13.3	Omission to include premium price in the value of shares for the purpose of calculation of stamp duty on Certificate or other document under Article 18 of Schedule I of GS Act resulted in short levy of Stamp Duty.	The Department may consider inserting an explanation in the Act in line with Maharashtra to the effect that stamp duty may be charged on the aggregate value i.e., face value plus premium of shares.
3.	5.6.14	Department neither has the machinery nor effective co-ordination with stock exchanges to collect data relating to volume of trading carried out and contract notes issued by each member/brokers/agents based in the State to levy and collect stamp duty from them.	The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to their principals in the State so as to plug leakage of revenue.
4.	5.6.16	No system was in place to collect information regarding the search, seizures or raid conducted by Income Tax Department in cases wherein undisclosed income on account of sale of immovable properties was involved which attracted higher stamp duty and registration fees.	The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.
5.	5.6.23	Cases wherein orders/notices issued by Additional Superintendent of Stamps under Section 32 of GS Act for payment of deficit duty are not charged interest for delayed payment of duty under Section 46 of the GS Act.	The Department may consider either to get the rules amended or the orders of Addl. SS may be issued through concerned DCs, in order to invoke provisions of Section 32 of the Act.

5.4.3.2 Recommendations for which no response was received from the Department

Sl. No.	Paragraph number	Gist of paragraph	Recommendation
1.	5.6.7.1	No time limit has been prescribed by the Department for finalisation of valuation cases by DCs.	The Government may consider inserting a provision in the Act/Rules to make the decision of the Collector time bound.

5.4.4 Audit findings in respect of accepted recommendations

The Follow up audit findings in respect of accepted recommendations are discussed below:

5.4.4.1 Lack of co-ordination with Registrar of Companies

As per Article 31 & 18 of Schedule I of GS Act, 1958, stamp duty is leviable at the rate of 0.1 *per cent* from 1st April 2006 on the value of shares, scrips or stocks allotted or issued to the general public, promoters, institutional buyers etc., by any company or a proposed company incorporated in the State of Gujarat. Section 9(b) of the Gujarat Stamp Act, 1958, empowered the State Government to provide for the composition or consolidation of duties in the case of issues of bonds or marketable securities other than debentures by any incorporated company or other body corporate.

We had recommended in paragraphs 5.6.13.1 and 5.6.13.2 of the Report that the Department may co-ordinate with the Registrar of Companies (RoC), Gujarat to collect data of the registered companies raising capital either through Initial Public Offer²⁴(IPO)) or through issues of shares (paragraph) so as to ensure proper levy and collection of consolidated stamp duty on the value of shares issued/ allotted by the companies. The recommendation was accepted by the Department.

During the follow-up audit, we observed that the Ministry of Corporate Affairs (MCA) had implemented (September 2009) an e-governance system called MCA 21 through which companies/firms registering with RoC can pay stamp duty under Article 7, 8, 12 and 35 of GS Act while filing Article of Association (AoA) for incorporating a company, Memorandum of Association (MoA) and Alteration of AoA/ MoA. As such, the consolidated stamp duty payable on issue of shares, scrips or stocks under Article 18 of the GS Act was not part of MCA 21 and is required to be paid in the office of the Addl. Superintendent of Stamps (Addl. SS) before issuance of shares/stocks etc.

- As per the information furnished to audit, the Department had made correspondence with the RoC to get the information of the companies/firms raising capital by way of IPO and also the information relating to the companies/firms amalgamated or merged by order of the High Court under Section 394 of the Companies Act, 1956 for the period starting from 2006-07 onwards. Further, the office had also requested to RoC in April 2016 to furnish the information regularly on monthly basis through the designated e-mail address of the Department. The RoC had furnished the details of name of the Companies and their address from the Prospectus filed in Form – GNL-2 for the period starting from 2012-13, which was being verified by the Department for further action. We noticed that the information called for and furnished by the RoC was only related to the IPO and

²⁴ Initial Public Offer is the first time when stock of a private company is offered to the public.

amalgamation/merger of companies/firms but did not include the details of all the companies/firms registered in the State.

- In order to ascertain the correct levy and collection of stamp duty on the value of shares issued by the Companies, we verified the records available with the Department relating to the consolidated stamp duty paid by the Companies on the value of shares, scrips or stocks issued during the period from 2012-13 to 2014-15. The consolidated stamp duty levied and collected by the Department is given below:

Year	Number of Companies	Number of shares issued	Stamp duty paid (₹ in crore)
2012-13	218	370,93,52,573	6.80
2013-14	319	681,82,13,995	10.32
2014-15	378	934,99,41,238	13.20
Total	915	1987,75,07,806	30.32

We collected information from the RoC regarding the actual number of Companies registered in the State and issued shares during the above period and cross verified the information provided by RoC with that of the Department's record. We found that 14,140 companies were registered during the period from 2012-13 to 2014-15 and have issued 5,271.56 crore shares valuing ₹ 1,11,644.80 crore on which stamp duty of ₹ 111.64 crore was chargeable. However, as per the Department's records only 915 companies have paid the consolidated stamp duty of ₹ 30.32 crore during this period in the office of the Addl. SS on the issue of 1,987.75 crore shares.

The Department had not ascertained whether the remaining 13,225 companies had paid stamp duty of ₹ 81.32 crore on the issue and allotment of shares during the period from 2012-13 to 2014-15.

Further, the Department did not initiate any process to explore the possibility of information sharing or levy of stamp duty on issuance of shares through the MCA 21 system in co-ordination with MCA/ RoC.

Hence, the fact remains that mechanism developed in co-ordination with MCA/ RoC for collection of information and levy of consolidated stamp duty on issue of shares was not fool proof and may result in leakage of revenue. Thus, it still needed strengthening.

5.4.4.2 Inclusion of premium price in the value of shares

We had mentioned in paragraph 5.6.13.3 of the PA that there was no clarity in the Act so as to ensure levy of stamp duty on the face value as well as the premium value of shares allotted and certificate issued by the Companies to its shareholders. The omission to include the amount of premium in the value of shares allotted by the Companies for the purpose of calculation of stamp duty led to short levy of stamp duty. We had recommended that the Department may consider inserting an explanation in the Act in line with Maharashtra to the effect that stamp duty may be charged on the aggregate value i.e., face value plus premium of shares. The Government, on the basis of our recommendation, inserted the explanation under Article 18 of Schedule I in the GS Act 1958 (*w.e.f.* 15.05.2013) for charging stamp duty on the aggregate

value including the value of premium of shares issued/ allotted by the Companies.

In audit, we verified the records of office of the Superintendent of Stamps, Gandhinagar for the period 2013-14 and 2014-15 finalised after the insertion of the explanation and found in the 18 test checked cases that premium had been included in the value of shares issued/ allotted for the purpose of levy of stamp duty.

5.4.4.3 Levy and collection of stamp duty on the records of transaction of purchase and sale of shares, stocks etc.

According to Article 5(c), Article 39(f) and Article 48A (b) and (c) of Schedule I of Gujarat Stamp Act, 1958, stamp duty is chargeable on each note of memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of any share, scrip, stock bond, debenture stock or other marketable security of a like nature exceeding in value ₹ 20 except Government securities.

We had observed vide paragraph 5.6.14 of the PA that the Department neither had the machinery nor effective co-ordination with Stock Exchanges to collect data regularly relating to the volume of trading carried out and contract notes issued by each member/ broker/ agent (firm) based in the State of Gujarat to levy and collect proper stamp duty from them. There was no data regarding total stamp duty chargeable, levied and outstanding on above type of instruments executed in the State. Further, no mechanism was put in place by the Department to check the correctness of the segment wise turnover figures furnished by the firms in their return by way of verification of annual accounts of the respective firms or by way of cross check with the data collected from stock exchanges for the purpose of levy of stamp duty.

We had recommended in the PA that the Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue. The Department accepted the recommendation and had entrusted the work of collection of stamp duty on the records of transactions of purchase and sale of shares, stocks, etc., by the share/commodity brokers trading in the exchanges (BSE, NSE and Commodity Exchanges) through an agreement to BOI Shareholding Limited, Mumbai (the Agency) on 14 May 2016.

As per the agreement, the Agency has to collect stamp duty on the segment wise transactions executed by brokers either for their clients or in his own name or in the name of his own firm at their registered office or branch office of Gujarat after verifying the turnover data submitted by brokers with the data of the stock exchange. The Agency shall remit the amount of stamp duty collect in the State Government's prescribed account within the decided time frame. The scrutiny of records of collection of stamp duty at the office of the Superintendent of Stamps, Gandhinagar in respect of the above for the period from May 2014 to March 2015 revealed the following weaknesses in monitoring and implementation of the system:

- i. The records did not contain the monthly data/ detailed statement showing the segment wise turnover of all the members/brokers and the percentage at which the stamp duty was collected in case of delivery, non-delivery and forward contracts. Hence, audit could not ascertain whether the stamp duty collected by the Agency from the members was in accordance with the rate of stamp duty applicable in the State.
- ii. The Agency had along with the payment of stamp duty for each month, attached a list of members/ brokers who had not paid stamp duty on the trading of shares and stocks. We verified the Agency's statement with that of cheque register and the file containing notices issued for recovery of outstanding stamp duty to see whether stamp duty in respect of the members/brokers who had not paid stamp duty to the Agency, had been paid in the office at Gandhinagar. It was noticed that the Department had issued notices to the brokers in May 2015 based on the Agency's 'statement of unpaid stamp duty' for the month of February 2015. However, no exercise was done by the office with reference to Agency's statements for the period from May 2014 to January 2015 for issuance of notices. Thus, notices were not issued to the 82 defaulting members with reference to the statements furnished by the Agency for the months of May 2014 to January 2015, for which no reason was on the records furnished to audit.

After this was pointed out, the Addl. SS stated (October 2015) that till May 2014, the brokers were paying stamp duty in advance which was adjusted against their subsequent months payable stamp duty. After exhausting the advance paid, the brokers have started paying duty with the Agency. Further, as on September 2015, the brokers who have not paid stamp duty with the Agency had come down to less than ten in number.

However, the Department did not produce any records to prove that the 82 brokers to whom notices were not issued had paid stamp duty in advance and no amount was recoverable from these brokers.

5.4.4.4 Inadequate co-ordination with Income Tax Department

We had observed in paragraph 5.6.16 of the Audit Report that no system was evolved to collect information on the search, seizures/ raid conducted by Income Tax (IT) Department in cases where undisclosed income on account of sale of immovable properties was involved which attracted higher stamp duty and registration fees. We recommended that Government may devise a system for co-ordination with IT Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fees is involved.

As per the information furnished to audit, the Additional Superintendent of Stamps had been attending (since 2011) the meetings of the Regional Economic Intelligence Committee (REIC), an apex forum overseeing Government agencies responsible for economic intelligence and combating economic offenses in the respective States of India.

A list of 33 cases was referred to the Department by the REIC for scrutiny. We noticed that though notices were issued to the concerned parties, the office could not finalise any of these cases due to lack of evidence/records pertaining to tax evasion. The office had corresponded for production of records but the IT Department had not furnished the relevant information. The REIC had also asked (August 2014) the Department to give details of the wanting documents so that they could take up the matter with the IT Department. However, the Department did not give any details to REIC regarding the wanting documents. Thus, due to inadequate efforts of the Department, the recovery of deficit stamp duty and registration fees could not be affected in these cases.

5.4.4.5 Non-levy of interest on delayed payment of stamp duty

We had mentioned in paragraph 5.6.23 of the Audit Report those cases wherein orders/ notices issued by Additional Superintendent of Stamps (Addl. SS) under Section 32²⁵ of GS Act for payment of deficit duty were issued but interest for delayed payment of duty under Section 46 read with Rule 30A of Gujarat Stamp Rules was not charged. Due to this lacuna in the Act and Rules, the Government lost interest of ₹ 1.51 crore on delayed payment of stamp duty in five cases test-checked in audit. Accordingly, it was recommended that the Department may consider either to get the rules amended or the orders of Addl. SS may be issued through concerned Dy. Collectors in order to invoke Section 32 of the Act.

In reply to our recommendation the Department stated (February/August 2016) that presently wherever final orders are issued by Addl. SS for recovery of deficit stamp duty, a clause regarding chargeability of interest under Section 46 of the GS Act 1958 is included. Test check of final orders issued by Addl. SS in audit confirmed the action now being taken by Department as stated in their reply.

5.4.5 Audit finding on the recommendation for which no response was received

The Follow up of audit findings in respect of the recommendation for which no response was received is as follows:

Delayed finalisation of valuation cases

We had mentioned in paragraph 5.6.7.1 of the Audit Report that there was absence of timeframe for finalisation of valuation cases by Deputy Collector (DC), Stamp Duty Valuation Organisation under Section 32A of the GS Act.

Section 32A of the GS Act 1958 provides that if the officer registering the

²⁵ In case of valuation of immoveable property, under Section 32 of the GS Act, 1958 Act, the Dy. Collectors (Stamp Duty Valuation Organisation) is empowered to issue orders for recovery of simple interest at the rate of fifteen per cent per annum from persons, who do not pay the deficit duty, penalty or other sums payable within ninety days from the date of receipt of the order. However, similar power is not available with Addl. SS while demanding for recovery of deficit stamp duty on the valuation of instruments like shares, stocks etc.

instrument has reason to believe that the consideration set forth in the document presented for registration was not in accordance with the market value of the property, he shall before registering the document; refer the same to DC for determination of the market value of the property²⁶. Under Rule 4 of the Gujarat Stamp (Determination of Market Value of Property) Rules, 1984, the DC after examining the evidence shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him to the person liable to pay stamp duty in respect of such instrument. After considering the representation, if any, received from the person within 15 days from the date of the service of the notice, the DC shall finally pass an order determining the true market value and the proper duty payable on the instrument.

In the Audit Report, we had recommended that the Government may consider inserting a provision in the Act/Rules to make the decision of the DC time bound. However, no action has been taken on our recommendation.

During the audit, we have called for the information regarding notices issued, representations received, cases finalised and pending for finalisation under Section 32A by DCs during the period from 2010-11 to 2014-15. The Department did not furnish the information regarding the issuance of notices by DC and whether representations were received within 15 days of issuance of notices in all the cases. However, the Department furnished information regarding pendency of cases during the last five years which is given as follows:

Year	Opening balance	Number of documents received during the year	Number of documents finalised	Closing balance
2010-11	3,07,895	12,450	25,999	2,94,346
2011-12	2,94,346	20,180	19,934	2,94,592
2012-13	2,94,592	761	15,765	2,79,588
2013-14	2,79,588	908	27,216	2,53,280
2014-15	2,53,280	796	35,087	2,18,989

We found that the information furnished to audit did not include the number of cases pending with the DCs of three districts²⁷ as on March 2015 out of 35 districts in the State and as such did not represent the outstanding of the entire State.

Though, a system of monthly collection and consolidation of information regarding pendency of cases under Section 32A of GS Act was devised by the Department, but the information was not being received every month from all the DCs which results in availability of incomplete data. This also leads to improper monitoring of disposal of cases. Thus, the Department needs to improve the monitoring mechanism as well prescribe a timeframe for speedy disposal of cases and recovery of revenue in view of huge pendency of cases.

²⁶ As per the Gujarat Stamp (Determination of Market Value of Property) Rules, 1984

²⁷ Botad, Jamnagar and Navsari

The matter was reported to the Government in April 2016; their reply has not been received (September 2016).

5.4.6 Conclusion and recommendation

Follow up audit of the PA revealed certain areas of concern with regard to the implementation of recommendations of PA as given below:

- Of the five recommendations, the Government had taken appropriate action for charging stamp duty on the aggregate value (face value plus share premium) of shares and also for the recovery of interest on the deficit stamp duty paid respectively. Thus, two recommendations have been fully complied with.
- In respect of remaining three recommendations the structure/ process have been put in place for co-ordination with stock exchanges, with Income Tax authorities and with RoC for collection of information and levy of proper stamp duty but these require strengthening so that these are effective.

Government may ensure compilation of monthly data of segment wise turnover of members/brokers and the rate of stamp duty collected in case of delivery and forward contracts through the Agency appointed in this regard. Further, Government may take prompt action for the recovery of stamp duty from the defaulting members/brokers based on the report furnished by the Agency.

Government may obtain the wanting documents from the IT Department to determine the cases involving stamp duty evasion for taking appropriate action.

Government may devise a mechanism in co-ordination with Ministry of Corporate Affairs/ RoC for information sharing so that the chance for leakage of stamp duty on issuance of shares are minimised.

- *It is once again recommended that the Government may consider inserting a provision in the Act/ Rules to make the decision of the DC time bound.*

5.5 Short levy of stamp duty due to undervaluation of properties

Section 32 A of the Gujarat Stamp Act, 1958 provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the Deputy Collector (Stamp Duty Valuation Organisation) for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984 and the orders issued thereunder.

During test check of the documents registered with the four Sub Registrar offices²⁸ during the year 2011 to 2014, we noticed²⁹ that the market value of the properties was determined incorrectly in 19 documents, which resulted in short levy of stamp duty of ₹ 0.92 crore as explained below:

(₹ in lakh)			
Sl. No.	Name of office	Number of documents Period of Registration of documents	Short levy of stamp duty
1.	Sub Registrar, Bharuch and Mangrol	<u>12</u> February 2012 and February 2013	20.13
<p>Nature of Observation: As per recitals of the 12 conveyance deeds the Revenue Authorities had granted permission to non-agriculturists for purchase of new tenure agriculture lands admeasuring 3,53,738 sq. mtrs. for <i>bonafide</i> industrial use under Section 63/ 63AA of GTAL Act.</p> <p>However, while determining the market value of properties for levy of stamp duty, the Sub-Registrar adopted <i>jantri</i> rates of agricultural land instead of industrial land in five cases and adopted <i>jantri</i> rate of non-agricultural land for residential use instead of industrial use in the remaining seven cases. The stamp duty levied was ₹ 125.79 lakh instead of ₹ 145.92 lakh. This resulted in short levy of stamp duty.</p> <p>After this was pointed out in audit, the Department accepted (August 2016) and recovered ₹ 20.13 lakh in all the 12 cases.</p>			
2.	Sub Registrar, Mehsana	<u>1</u> March 2013	45.34
<p>Nature of Observation: Recitals of the conveyance deed revealed that though commercial showroom in Himalaya Mall had been conveyed, valuation had been done by adoption of composite rates for office at the rate of ₹ 12,000 per sq. mtr. instead of ₹ 25,000 per sq. mtr. for commercial purpose. The stamp duty levied was ₹ 110.25 lakh instead of ₹ 155.59 lakh. This resulted in short levy of stamp duty.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.</p>			
3.	Sub Registrar, Mehsana	<u>3</u> August 2012	5.40
<p>Nature of Observation: Cross verification of the records between the Sub- Registrar office and Mamlatdar office revealed that lands admeasuring 55,139 sq. mtr. were registered as non-irrigated agriculture land. However, the records of the Mamladar revealed that the lands were irrigated land. The rate of irrigated land as per <i>jantri</i> was ₹ 1,268 per sq. mtr. instead of ₹ 1,068 per sq. mtr. mentioned in the deeds. The stamp duty levied was ₹ 28.86 lakh instead of ₹ 34.26 lakh. This resulted in short levy of stamp duty.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notices in three cases.</p>			
4.	Sub Registrar, Gandhinagar	<u>2</u> January 2014	7.52
<p>Nature of Observation: In one case of power of attorney with possession, recitals revealed that though irrigated lands had been conveyed, it was treated as non-irrigated land. This</p>			

²⁸ SR- Bharuch, Gandhinagar, Mangrol and Mehsana

²⁹ between April 2014 and July 2015

<p>was evident from the previous sale deed executed in respect of this piece of land, but valuation had been done by adoption of <i>jantri</i> rates of non-irrigated land.</p> <ul style="list-style-type: none"> In another case of conveyance deed, though the agricultural land had been converted into non-agricultural land by order of the competent authority, valuation had been done by adoption of <i>jantri</i> rates of agricultural land instead of <i>jantri</i> rates of non-agricultural land. The stamp duty levied was ₹ 21.40 lakh instead of ₹ 28.92 lakh. <p>This resulted in short levy of stamp duty.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notices in two cases.</p>			
5.	Sub Registrar, Gandhinagar	<u>1</u> August 2013	13.19
<p>Nature of Observation: In case of a conveyance deed, as per the map of TP-13 available with the Sub-Registrar office the survey numbers of the land conveyed fell under value zone TP/13/16 (with <i>jantri</i> rate of ₹ 3,430 per sq. mtr.), However, valuation had been done incorrectly by adopting <i>jantri</i> rates of another value zone R/13/9 i.e. ₹ 1,560 per sq. mtr. The stamp duty levied was ₹ 11.00 lakh instead of ₹ 24.19 lakh. This resulted in short levy of stamp duty.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued order in this case. Details of recovery are awaited (October 2016).</p>			
Total		19 cases	91.58

5.6 Short levy of stamp duty and registration fees on document falling under several categories

Under Section 6 of the Gujarat Stamp Act, 1958, 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 with the highest of such duties. As per Section 2(r), "Power of Attorney" includes any instrument empowering a person to act for and in the name of the person executing it. Rate of stamp duty in case of Power of Attorney is ₹ 100 under Article 45. As per Article 49(b) of Schedule I to the Act, in case of any instrument of release, whereby a person renounces a claim upon another person or against any specified property, stamp duty is leviable as on a conveyance under Article 20. The registration fee is leviable on the amount of consideration mentioned in the document.

Test check of the records of the Sub Registrar office, Ahmedabad-VI for the year 2013, we noticed (August 2014) from the recitals of a document that a power of attorney had been executed by six co-owners of a leasehold immovable property in favour of remaining one co-owner. The power of attorney executed was irrevocable and the six co-owners had released their respective shares in favour of one remaining co-owner. The power of attorney holder had been authorized to transfer the property in his favour. Thus, the instrument can be classified as power of attorney as well as release deed. The instrument had been registered as power of attorney. But, it was required to be registered as release deed because release deed attracts higher rate of stamp duty. However, the SR failed to take cognizance of the recitals of the document and did not levy the stamp duty and registration fees chargeable

under Article 49(b). This resulted in short levy of stamp duty and registration fees of ₹ 51.13 lakh.

After we pointed this out, the Sub-Registrar did not agree with the audit observation and stated that as the power of attorney had been executed by sons in favour of their father, stamp duty had been correctly levied as per Article 49(a). The reply is not tenable as Article 49 (a) relates to ancestral property. But, in this case, the recitals revealed that the leasehold property was purchased by co-owners in December 2011. As such, the document should have been classified under 49 (b).

After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.

5.7 Non levy of stamp duty and registration fees on documents comprising distinct matters

Under Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act. As per Article 45 (f) of the Gujarat Stamp Act, in case of Power of Attorney (PoA) given for consideration and authorizing the attorney to sale any immovable property, stamp duty is leviable as in the case of a conveyance under Article 20.

During test check of the records of the Sub Registrar office, Vadodara-IV for the year 2013, we noticed (April 2015) that a conveyance deed had been executed among purchaser, seller (land owner) and confirming party (developer). Recitals of the conveyance deed revealed that (i) The seller had earlier executed an agreement to sale as well as development agreement and a power of attorney in favour of the confirming party, but copies of the development agreement and power of attorney were not available on file; (ii) Cost of entire land had already been paid/ agreed to be paid to the land owner by the confirming party at the time of execution of agreement to sale; (iii) The land owner had agreed to execute an irrevocable power of attorney in favour of the developer after receipt of entire sale consideration of the land at the time of execution of the agreement to sale which indicates that the possession of the land had been handed over to the developer; (iv). In the present sale deed, full consideration had been paid to the confirming party by the purchaser; (v) Property was being sold by the land owner and confirming party; and (vi) Developer shall be entitled to use and develop the FSI.

Thus, the present document contained two distinct matters viz (i) deemed conveyance deed between seller and confirming party and (ii) conveyance deed executed in favour of purchaser. The Sub Registrar had not levied stamp duty and registration fees on deemed conveyance executed between seller and confirming party nor had referred the document to the Dy. Collector (SDVO). This resulted in non-levy of stamp duty and registration fee of ₹ 38.33 lakh.

After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.

5.8 Short levy of stamp duty and registration fees

Section 32 A of the Gujarat Stamp Act, 1958 provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the Deputy Collector (Stamp Duty Valuation Organisation) for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984 and the orders issued thereunder.

During test check of the documents registered with the three Sub Registrar offices³⁰ during the year 2010 to 2013, we noticed³¹ that there was short levy of stamp duty and registration fees of ₹ 27.17 lakh in three documents due to incorrect calculation of average annual rent (in case of lease deed)/ non consideration of market value of immovable property (in case of partnership deed/ dissolution of partnership) as explained as follows:

(₹ in lakh)

Sl. No.	Name of office	Number of documents Period of Registration of documents	Short levy of stamp duty and/ or registration fees
1.	Sub Registrar, Palsana	<u>1</u> September 2011	12.39
<p>Article 30 of Schedule I to the Gujarat Stamp Act provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease, premium paid or money advanced, etc. are considered. As per revised registration fee table, registration fee on lease deed is leviable on <i>ad valorem</i> scale at the rate of one rupee for every one hundred rupees or part thereof on the amount or value of the consideration.</p> <p>Nature of Observation: We observed in one lease deed that the average annual rent had been erroneously calculated for levy of stamp duty and registration fees. The stamp duty and registration fees levied were ₹ 49.09 lakh instead of ₹ 61.48 lakh. This resulted in short levy of stamp duty and registration fees.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.</p>			
2.	Sub Registrar, Vadodara-III (Akota)	<u>1</u> February 2012	9.74
<p>As per Article 44(3)(a) of Schedule I to the Gujarat Stamp Act, 1958 where any immovable property is taken as his share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance. As per Article 44(3)(b), stamp duty payable on dissolution of partnership is ₹ 100.</p> <p>Nature of Observation: Recitals of the dissolution of partnership deed revealed that previously at the time of formation of partnership firm, the partners had brought capital contributions in cash. Later, immovable property had been acquired in the name of partnership firm. Now, at the time of dissolution of partnership firm, one of the partners had taken the immovable property as his share or contribution. Therefore, stamp duty was</p>			

³⁰ SR-Gandhinagar, Palsana and Vadodara-III

³¹ between December 2013 and February 2015

<p>required to be levied as per Article 44(3)(a) and not as per Article 44(3)(b). The stamp duty and registration fees levied were ₹ 1.22 lakh instead of ₹ 10.96 lakh. This resulted in short levy of stamp duty and registration fees.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.</p>			
3.	Sub Registrar, Gandhinagar	1 April 2013	5.04
<p>As per revised registration fee table, registration fee on partnership deed is leviable on <i>ad valorem</i> scale at the rate of one rupee for every one hundred rupees or part thereof on the amount or value of property.</p> <p>Nature of Observation: Recitals of the partnership deed revealed that at the time of formation of partnership firm, one of the partners had brought cash as well as immovable property as his capital contribution in the firm and remaining partners had brought only cash contributions in the firm. At the time of levy of registration fees, the total capital amount brought by all the partners was considered and the value of immovable property contributed by one of the partners was not taken into account. The registration fees levied was ₹ 1,000 instead of ₹ 5.05 lakh. This resulted in short levy of registration fees.</p> <p>After this was pointed out in audit, the Department stated (August 2016) that they had issued notice in this case.</p>			
	Total	3 cases	27.17

