

REGISTRATION OF CHARGES

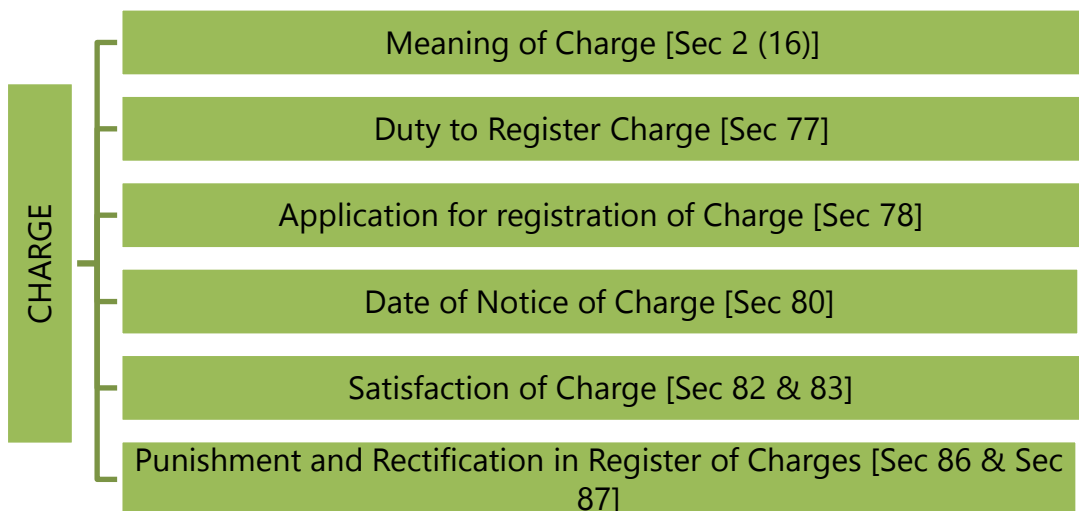


LEARNING OUTCOMES

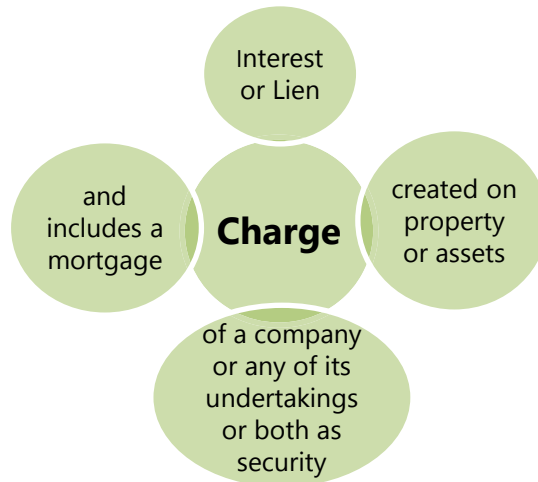
At the end of this chapter, you will be able to:

- ❑ Understand the meaning of Charge, Notice of Charge
- ❑ Know the steps to be followed for satisfaction of charge
- ❑ Know the penal provisions in case of default

CHAPTER OVERVIEW



1. INTRODUCTION



According to section 2(16) of the Companies Act, 2013 “charge” has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Thus, charge is:

- ◆ an interest or lien
- ◆ created on the property or assets of a company or any of its undertakings or both as security and
- ◆ includes a mortgage.

Whenever a company obtains term loans or working capital loans from financial institutions or banks by offering its property or assets, etc. as security it is required to create a charge on such property or assets in favour of the lender. In other words, creation of charge is necessary in case of secured borrowings availed by a company. Even where secured debentures are issued, a charge on any specific movable or immovable property needs to be created in favour of debenture trustee.

Once the charge is registered with the Registrar of Companies, it becomes an information available in the public domain which can be used by a lender to his advantage. After the registration, apparently the company is precluded from offering the same assets again to borrow funds fraudulently from a different lender.

The law with respect to the registration of charges has been dealt in sections 77 to 87 of the Companies Act, 2013.

Types of Charge

A charge may be either fixed or floating.

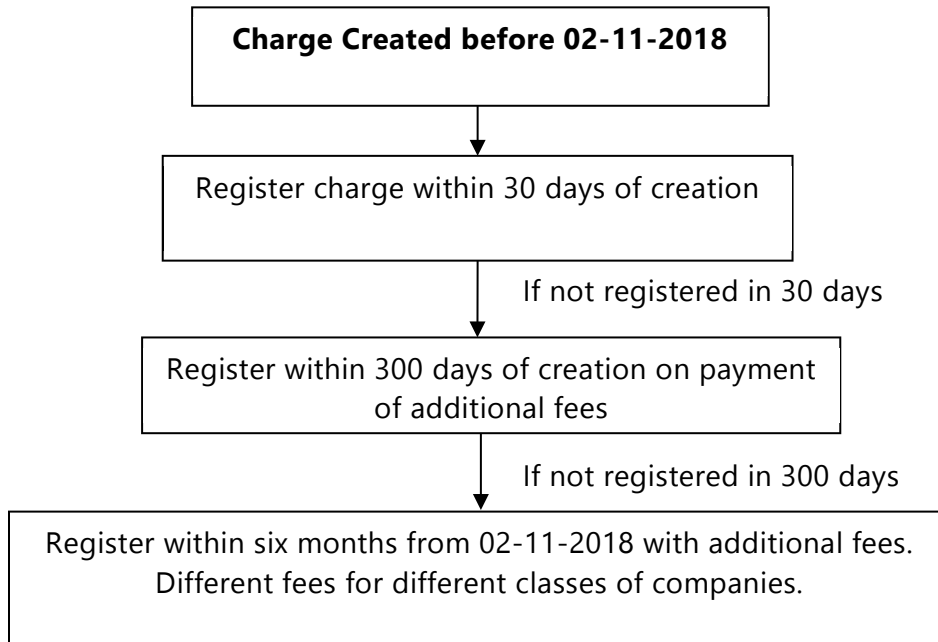
Fixed Charge: A 'fixed charge' is a charge which attaches specific assets of the borrowing company. These assets are of permanent nature like land and building, office premises, machinery installed by the company, etc. and are identified at the time of creation of charge. When a charge is created on such assets, the charge remains 'fixed' and the borrowing company is not permitted to sell such assets though it may use them. A fixed charge is created by way of mortgage or deposit of title deeds. Assets under fixed charge can be sold only with the permission of the charge-holder. A fixed charge is vacated when the money borrowed against the assets subject to fixed charge is repaid in full.

Floating Charge: A 'floating charge' is created on assets which are of fluctuating nature like raw material, stock-in-trade, debtors, etc. A floating charge is created by way of hypothecation or lien. The assets under floating charge keep on changing because the borrowing company is permitted to use them for producing final goods for sale e.g. in case of a company which manufactures leather goods, the raw material in the form of leather, which is subject matter of floating charge, shall be used to manufacture leather goods without seeking any permission from the lender. The raw material (i.e. leather) which was attached at the time of creation of 'floating charge' may not be the same after some time though floating charge continues and keeps on attaching the raw material which is currently in possession of the company. Thus, the company is free to deal with the assets which are under floating charge according to its own choice. In a way, it can be said that a floating charge is a present security which covers in its fold all such assets which are mentioned in the hypothecation deed for inclusion in the floating charge.

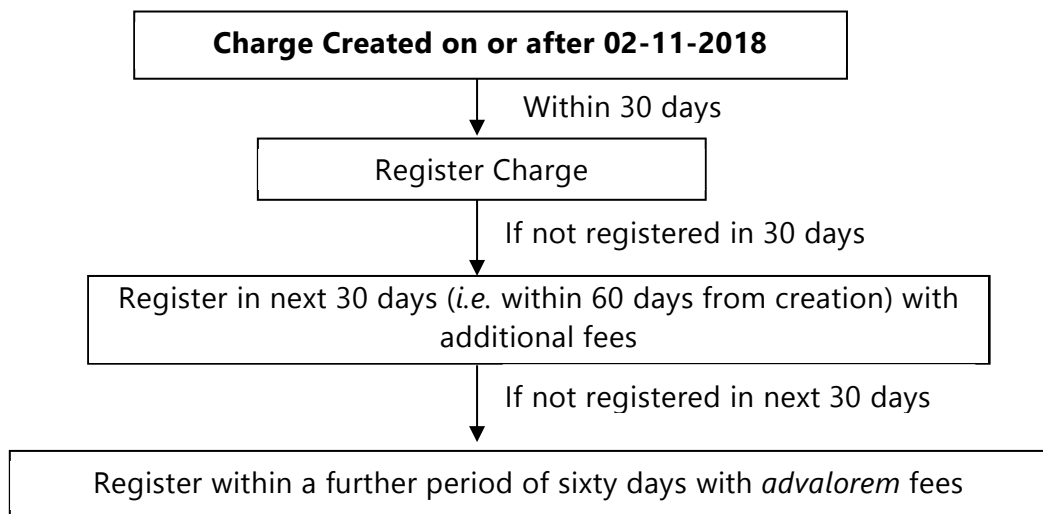
A floating charge remains dormant until it becomes fixed or crystallises. On crystallisation, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid. Crystallisation of floating charge may occur when the terms and conditions of floating charge are violated or the company ceases to continue its business or the company goes into liquidation or the creditors enforce the security covered by the floating charge, etc.

2. DUTY TO REGISTER CHARGES, ETC. [SECTION 77]

(1)



(2)



Section 77 of the Companies Act, 2013 contains provisions regarding registration of charges with the Registrar of Companies.

A. Registration of Charges

Registration by the company creating a charge: It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. The subject-matter of the charge *i.e.* the property or assets or any of company's undertakings, whether tangible or non-tangible, may be situated within India or outside India. But in each case when charge is created it must be registered by the company.

In case a charge is created by deposit of title deeds (normally banks agree for this mode of charge instead of proper mortgage), it should also be registered by the borrowing company.¹

Registration by the charge-holder: Section 78 (explained later) provides that in case the company creating a charge fails to register the charge within the prescribed period of 30 days, the person in whose favour the charge is created can get the charge registered.

Registration by the purchaser: Section 79 (explained later) covers another case of registration of charge where a company purchased some property in whose case a charge was already registered. In this case also, the company purchasing the property shall get the charge registered in its name in place of seller in the records of Registrar.

B. How to Register Charge²

For the purpose of registration of charge by the company, the particulars of charge in the prescribed form³ together with a copy of the instrument, if any, creating the charge duly signed by the company and the charge holder, shall be filed with the Registrar within 30 days of creation of charge along with the prescribed fee.

C. Verification of Instrument of Charge⁴

A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows:

¹ As per Section 58 (f) of the Transfer of Property Act, 1882.

² As per Section 77 (1) and Rule 3 (1) of the Companies (Registration of Charges) Rules, 2014.

³ As per Rule 3, Form CHG-1 or Form CHG-9 (in case of debentures) is to be filled.

⁴ As per Rule 3 (4).

(a) *in case of property situated outside India*: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either-

- ◆ under the seal, if any, of the company, or
- ◆ under the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or
- ◆ under the hand of some person other than the company who is interested in the mortgage or charge;

(b) *in case of property situated in India (whether wholly or partly)*: where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Thus, in case the instrument or deed relates solely to a property situated outside India, the copy may also be additionally verified by a certificate issued under the hand of some person other than the company who is interested in the mortgage or charge. This type of verification is not possible when the instrument or deed relates to the property situated in India, whether wholly or partly.

D. Extension of Time Limit

The original period within which a charge needs to be registered is 30 days from the date of creation of charge. The Companies (Amendment) Second Ordinance, 2019 (w.r.e.f. 02-11-2018) has amended the provisions relating to extension of time limit as under:

(i) *Charges created before 02-11-2018 (i.e. before the commencement of the Companies (Amendment) Second Ordinance, 2019)*⁵: In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.

Further, if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

⁵ As per Clause (a) of First Proviso and also Clause (a) of Second Proviso to Section 77 (1).

(ii) *Charges created on or after 02-11-2018 (i.e. on or after the commencement of the Companies (Amendment) Second Ordinance, 2019)*⁶: In such cases (i.e. charge was created on or after 02-11-2018 but the registration of charge not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of **60 days of such creation** (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

According to another relaxation, if the registration is not made within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of **sixty days** after payment of prescribed *advalorem* fees⁷.

Procedure for Extension of Time Limit⁸: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form⁹. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or *advalorem fee*, as applicable, must also be paid.

E. Issue of Certificate of Registration¹⁰

If a charge is registered with the Registrar, a certificate of registration of such charge shall be issued in Form CHG-2 to the company and, as the case may be, to the person in whose favour the charge is created.

The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of creation of charge have been complied with.

⁶ As per Clause (b) of First Proviso and also Clause (b) of Second Proviso to Section 77 (1).

⁷ *Advalorem* fees is charged according to the value of transaction.

⁸ As per Rule 4.

⁹ As per Rule 4 (2) Form CHG-1 or CHG-9 (in case of debentures) is to be used.

¹⁰ As per Section 77 (2) and Rule 6 (1).

F. Subsequent Registration not to prejudice Rights of Charge-holder¹¹

It is provided that any subsequent registration of a charge (*i.e.* registered within the extended period instead of original thirty days) shall not prejudice any right acquired in respect of any property before the charge is actually registered by the company.

In other words, rights of the lender or charge-holder shall not get affected and shall remain as they were before the actual registration (*i.e.* rights acquired from the date of creation of charge) even if the charge is actually registered within the extended period.

G. Section 77 not to apply to Certain Charges¹²

The application of Section 77 shall not be made to certain charges which are prescribed in consultation with the Reserve Bank of India.

H. Unregistered Charge not to be taken into account by the Liquidator/Creditor¹³

If a registrable charge though created but was not registered by a company and no certificate of registration of such charge was issued by the Registrar, it shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor.

However, not registering the charge shall not impact/negate any contract or obligation for the repayment of the money secured by the charge. Further, it may be noted that failure to register charge shall not absolve a company from its liability in respect of any offence under this Chapter.

 **3. APPLICATION FOR REGISTRATION OF CHARGE BY CHARGE-HOLDER [SECTION 78]**

Section 78 of the Companies Act, 2013, empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

Accordingly, if a charge is created but the company primarily responsible for registering the charge fails to do so within the prescribed period of 30 days [as

¹¹ As per Third Proviso to Section 77 (1).

¹² As per Fourth Proviso to Section 77 (1). [inserted by the Companies (Amendment) Act, 2017, w.e.f. 07-05-2018.]

¹³ As per Section 77 (3) and (4).

provided in section 77 (1)], the person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner.

On receipt of application from the charge-holder, the Registrar shall give a notice to the company and if no objection is received, allow such registration within a period of 14 days after giving notice to the company on payment of the prescribed fees.

However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.

Recovery of fees: In case registration is effected on application made by the holder of charge, such person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.



4. SECTION 77 TO APPLY IN CERTAIN MATTERS [SECTION 79]

Section 79 of the Act covers two situations. One relates to acquisition of any property already subject to charge by a company. Other relates to modification in the terms and conditions or modification in the extent of any charge already registered. In both the cases another registration (in place of existing one) becomes necessary and the provisions contained in section 77 relating to registration of charge shall equally apply.

A. Company acquiring any Property subject to Charge [Section 79 (a)]

In case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with Section 77. In other words, the earlier charge should get vacated and, in its place, new charge should get registered by the company which has acquired it.

B. Modification of Charge when there is Change in Terms and Conditions, etc. [Section 79 (b)]

Section 79 (b) requires any modification in charge (i.e. change in terms and conditions or change in extent of any charge, etc.) to be registered by the company in accordance with Section 77.

'Modification' includes variation in any of the terms and conditions of the agreement including change in rate of interest which may be by mutual agreement or by operation of law. Variation in extent or operation of any charge is also a kind of modification. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

Some **other examples** of 'modification' are as under:

1. where the charge is modified by varying any terms and conditions of the existing charge through an agreement;
2. where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
3. where the modification is by ceding a *pari passu* charge;
4. where there is change in rate of interest (other than bank rate);
5. where there is change in repayment schedule of loan; (not applicable in case of working loans which are repayable on demand); and
6. where there is partial release of the charge on a particular asset or property.

C. Issue of Certificate of Modification

As per *Rule 6*, where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in Form CHG-3.

The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of modification of charge have been complied with.

5. DEEMED NOTICE OF CHARGE [SECTION 80]

Section 80 of the Companies Act, 2013 deals with the deemed notice of charge from the date of its registration. Accordingly, where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

This provision has cautionary effect. Thus, every person needs to be cautious or careful when he desires to acquire any asset or property of a company and must enquire whether such asset or property is subject to any charge by going through

the record of charges maintained at the office of Registrar of Companies before entering into the transaction. He shall be deemed to have notice of charge from the date of its registration. In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot succeed against the company for incurring loss, for it shall be deemed that he had notice of charge.

For example, Vishnu Marketing Limited obtained a term loan of ₹ fifty lacs from Beta Commercial Bank Limited by creating a charge on one of its office buildings and the charge was duly registered. Later on, if the building is sold to Neeraj, he is deemed to have notice of such charge. In other words, it is presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan. He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.



6. COMPANY TO REPORT SATISFACTION OF CHARGE [SECTION 82]

1. Intimation regarding Satisfaction of Charge

Section 82 of the Act of 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form¹⁴. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.¹⁵

¹⁴ As per Rule 8, Form CHG-4 is to be used.

¹⁵ (1) In case of a *specified IFSC public company*, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed (*vide Notification No. GSR 8 (E), dated 04-01-2017*).

(2) In case of a *specified IFSC private company*, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed (*vide Notification No. GSR 9 (E), dated 04-01-2017*).

Extended period of intimation: Proviso to Section 82 (1)¹⁶ extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of **three hundred days** of such payment or satisfaction on payment of prescribed additional fees¹⁷.

2. Notice to the Holder of Charge by the Registrar¹⁸

On receipt of intimation, the Registrar shall cause a notice to be sent to the holder of the charge calling upon him to show cause within such time as specified in the notice but not exceeding 14 days, as to why payment or satisfaction in full should not be recorded.

If no cause is shown by the charge-holder, the Registrar shall order entering of a memorandum of satisfaction in the register of charges kept by him and accordingly, he shall inform the company of having done so.

However, no notice is required to be sent, in case the intimation to the Registrar in this regard is in the specified form¹⁹ and signed by the holder of charge.

If any cause is shown by the charge-holder, the Registrar shall record a note to that effect in the register of charges and inform the company.

3. No Effect of Section 82 on the Powers of the Registrar

According to sub-section (4), Section 82 shall not be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company *i.e.* even if no intimation is received by him from the company.

4. Issue of Certificate

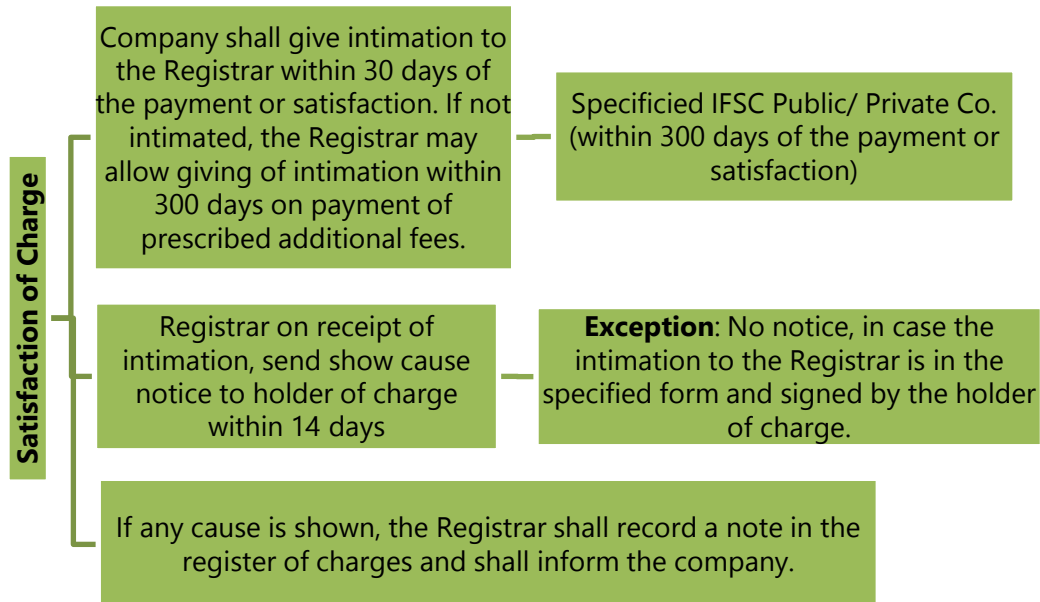
As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

¹⁶ Proviso inserted *vide* the Companies (Amendment) Act, 2017.

¹⁷ Rule 8 (1) has been substituted *vide* the Companies (Registration of Charges), Amendment Rules, 2018 (w.e.f. 05-07-2018) to provide for giving of intimation within three hundred days instead of thirty days.

¹⁸ As per Section 82 (2).

¹⁹ As per Rule 8, Form CHG-4 is required to be filled for this purpose.



7. POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]

Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- ◆ the debt has been satisfied in whole or in part; or
- ◆ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

8. INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER [SECTION 84]

Section 84 of the Act of 2013 is about the appointment of a receiver or manager and of giving intimation thereof to the company and the Registrar.

Accordingly,

- ◆ if any person obtains an order for the appointment of a receiver or a person to manage the property which is subject to a charge, or
- ◆ if any person appoints such receiver or person under any power contained in any instrument,

he shall give notice of such appointment to the company and the Registrar along with a copy of the order or instrument within 30 days from the passing of the order or making of the appointment.

In turn, the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

On ceasing to hold such appointment²⁰, the person appointed as above shall give a notice to that effect to the company and the Registrar. In turn, the Registrar shall register such notice.

9. PUNISHMENT FOR CONTRAVENTION [SECTION 86]

(i) According to section 86 (1) of the Act of 2013, if a company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charges, the punishment shall be as under:

²⁰ As per Rule 9, the notice of appointment or cessation shall be filed with the Registrar in Form No. CHG-6.

- ◆ **the company** shall be punishable with minimum fine of ₹ one lakh and maximum fine of ₹ ten lakhs; and
- ◆ **every defaulting officer** of the company shall be punishable with imprisonment maximum up to six months or with minimum fine of ₹ twenty-five thousand and maximum of ₹ one lakh, or with both.

(ii) With the insertion of sub-section (2)²¹, section 447 relating to 'punishment for fraud' also becomes applicable in certain cases. Accordingly, if any person wilfully furnishes:

- ◆ any false or incorrect information; or
- ◆ knowingly suppresses any material information;

which is required to be registered under section 77, he shall be liable for action under section 447.



10. RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES [SECTION 87]

Rectification in Register of Charges

Section 87²² of the Act of 2013 and Rule 12²³ empowers the Central Government²⁴ to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
- (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (*Company to report satisfaction of charge*) or Section 83 (*Power of Registrar to make entries of satisfaction and release*).

²¹ Sub-section (2) of section 86 inserted vide the Companies (Amendment) Second Ordinance, 2019 w.e.f. 02-11-2018.

²² As substituted by the Companies (Amendment) Second Ordinance, 2019 w.r.e.f. 02-11-2018.

²³ As substituted by the Companies (Registration of Charges) Amendment Rules, 2019 w.e.f. 30-04-2019

²⁴ *Vide* Notification No. S.O. 4090 (E), dated 19-12-2016, powers of the Central Government with respect to Section 87 stand delegated to the Regional Directors.

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

"According to Rule 12 of *the Companies (Registration of Charges) Rules, 2014*:

The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-

- (a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,
- (b) direct extension of time for satisfaction of charge, if such filing is not made within a period of three hundred days from the date of such payment or satisfaction."

SUMMARY

- ◆ "Charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.
- ◆ A charge created by a company is required to be registered with Registrar within 30 days of its creation.
- ◆ In case a charge was created **before 02-11-2018** but was not registered within 30 days, the Registrar may, on an application by the company, allow registration of charge within 300 days of such creation. In case registration is not made within the extended period, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. Different fees may be prescribed for different classes of companies.
- ◆ In case a charge was created **on or after 02-11-2018** but was not registered within 30 days, the Registrar may, on an application by the company, allow registration of charge within **60 days** of such creation on payment of prescribed additional fees. If the registration is not made within the extended

period, the Registrar may, on an application, allow such registration to be made within a further period of **sixty days** after payment of prescribed *advalorem* fees.

- ◆ If a company fails to register the charge, the charge-holder can make an application for registration of charge and can also recover the amount of any fees or additional fees paid by him from the company.
- ◆ Modification in the terms and conditions, etc. of charge also requires registration of charge afresh. On recording the particulars of modification of charge, the Registrar shall issue a certificate of modification of charge.
- ◆ Any person acquiring a property which is subject to charge shall be deemed to have notice of the charge from the date of such registration.
- ◆ The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges maintained by the Registrar.
- ◆ Every company is required to keep at its registered office a **register of charges** in the prescribed form and manner.
- ◆ The company shall give intimation to Registrar of payment or satisfaction in full of any charge within a period of 30 days from the date of such payment or satisfaction. If no intimation is given within 30 days, the Registrar may allow such intimation to be made within 300 days of such payment or satisfaction on payment of prescribed additional fees.
- ◆ On receipt of intimation, the registrar shall issue a notice to the holder of charge calling upon him to show cause within such time not exceeding 14 days as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, the Registrar shall order recording of memorandum of satisfaction.
- ◆ In case intimation of payment or satisfaction in full of charge is in prescribed form and signed by the holder of charge no notice as mentioned above shall be sent.
- ◆ In case, the company fails to send intimation of satisfaction of charge to the Registrar, the Registrar may enter in the register of charges memorandum of satisfaction on receipt of evidence to his satisfaction.
- ◆ Where Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

- ◆ If a company contravenes any provision relating to the registration of charges or modification or satisfaction of charges, the company and every defaulting officer is punishable.
- ◆ The Central Government is empowered to order rectification of Register of Charges in certain cases of default.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. The instrument creating a charge or modification thereon shall be preserved for a period of ____ years from the date of satisfaction of charge by the company.
 - (a) 5
 - (b) 7
 - (c) 8
 - (d) 15
2. On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling upon him to show cause within such time not exceeding ____ days as to why payment or satisfaction in full should not be recorded as intimated to the Registrar:
 - (a) 14
 - (b) 21
 - (c) 30
 - (d) 300
3. The Register of Charges and instrument of charges maintained by the company shall be open for inspection during _____.
 - (a) working hours
 - (b) business hours
 - (c) at all times
 - (d) 9 A.M. to 5 P.M.
4. Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:

- (a) end of 30 days
 - (b) date of application for charge
 - (c) date acquiring the property
 - (d) date of such registration
5. An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:
- (a) Debt
 - (b) Charge
 - (c) Liability
 - (d) Hypothecation
6. If a charge is created on or after 02-11-2018 but the registration is not made within the original period of 30 days and also not made within next 30 days after the expiry of original 30 days, then the Registrar is empowered to allow such registration to be made within a further period of _____
- (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days

Answer to MCQs

1. (c) 2. (a) 3. (b) 4. (d) 5. (b) 6. (c)

Question and Answer

Question 1

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

Answer

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

- (a) *in case property is situated outside India:* where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the

hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

- (b) *in case property is situated in India (whether wholly or partly):* where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Question 2

Briefly explain the provisions enforced by the Companies (Amendment) Second Ordinance, 2019 when a charge created before 02-11-2018 is not registered within the prescribed period of thirty days as provided in Section 77 (1).

Answer

As per Section 77 (1) of the Companies Act, 2013 every company creating a charge:

- a. within or outside India,
- b. on its property or assets or any of its undertakings,
- c. whether tangible or otherwise, and
- d. situated in or outside India,

is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 and it was not registered within the prescribed period of thirty of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.

According to clause (a) of the Second Proviso to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

Note: The Companies (Amendment) Second Ordinance, 2019 stand enforced w.r.e.f. 02-11-2018.

Question 3

Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

Answer

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under Chapter VI, a penalty shall be levied, ranging from ₹ 1 lakh to ₹ 10 lakhs.

Every defaulting officer is punishable with imprisonment maximum up to six months or with minimum of ₹ twenty-five thousand and maximum of ₹ one lakh, or with both.

Further, if any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

Question 4

Renuka Soaps and Detergents Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer

The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation.

[Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay *advalorem* fees. Since first sixty days from creation of charge were expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed *advalorem* fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

Question 5

Mr. Antriksh purchased a commercial property in Delhi belonging to NRT Limited after entering into an agreement with the company. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of NRT Limited is correct?

Answer

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have **notice of the charge** from the date of such registration.

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Antriksh, therefore, was ought to have been careful while purchasing property and

should have noticed beforehand that NRT Limited had already created a charge on the property.

In view of above, the contention of NRT Limited is correct.

Question 6

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in Register of Charges.

Answer

Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
- (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (*Company to report satisfaction of charge*) or Section 83 (*Power of Registrar to make entries of satisfaction and release*).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.

The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

Question 7

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

Answer

Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the

satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- ◆ the debt has been satisfied in whole or in part; or
- ◆ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.