

# REGISTRATION OF CHARGES

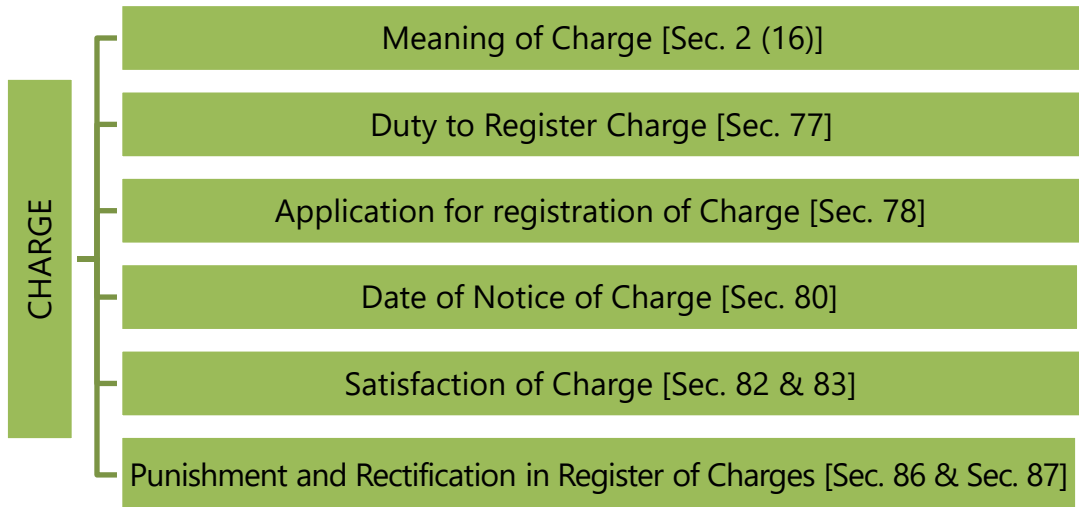


## LEARNING OUTCOMES

**At the end of this chapter, you will be able to know and understand:**

- the meaning of Charge
- the difference between a Floating Charge and a Fixed Charge
- the steps involved in Registration of Charges
- the consequences of non-registration of a charge the steps to be followed for registering satisfaction of charge
- the penal provisions in case of default

## CHAPTER OVERVIEW



### 1. INTRODUCTION

The law with respect to the registration of charges has been dealt in Chapter VI of the Companies Act, 2013 consisting of sections 77 to 87 as well as the *Companies (Registration of Charges) Rules, 2014*.

#### Definition of Charge

Section 2(16) of the Companies Act, 2013 defines “charge” 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.

**CHARGE IS AN INTEREST OR LIEN**

**IT IS CREATED ON THE PROPERTY OR ASSETS OF A COMPANY OR ANY OF ITS UNDERTAKINGS OR BOTH**

**IT IS CREATED AS SECURITY FOR REPAYMENT OF A LOAN**

**CHARGE INCLUDES MORTGAGE**

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard.

### **Registration of Charge to act as Constructive Notice (Section 80)**

All charges registered with the registrar are public documents. This means that any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA Portal and find out if there is any charge created on that asset.

Please remember that any document filed with the registrar for registration acts as Constructive Notice. Constructive means "deemed". Notice means "knowledge". So Constructive notice means deemed knowledge. This means even though the third party has not referred to the public document he would still be considered or deemed to have seen it. This is because a deeming provision creates a legal fiction.

This principle is contained in section 80 which states that "where any charge 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.

Thus, every person proposing to deal with a company should verify whether the asset has any charge by going through the record of charges maintained at the office of registrar of companies before entering into the transaction.

In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot claim the loss from the company for it shall be deemed that he had notice of charge.

You will appreciate that compulsory registration of charges also acts as a method of preventing a company from offering the same assets as security to borrow funds fraudulently from a different lender.

**Example 1:** Vishnu Marketing Limited obtained a term loan of rupees 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.

## Types of Charge

A charge may be either fixed or floating.

### **Fixed Charge:**

A 'FIXED CHARGE' is a charge on Specific assets of the borrowing company. These assets are of permanent nature like land and building, office premises, machinery installed by the company and the like. Further, these assets are identified at the time of creation of charge. A fixed charge is usually created by way of mortgage or deposit of title deeds.

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.

Assets under fixed charge can be sold only with the permission or consent 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 or a class of assets which are of fluctuating nature or changing in nature like raw material, stock-in-trade, debtors, and the like. The assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale.

**Example 2:** A retail showroom will contain numerous articles kept for sale. The owner of the showroom might have borrowed against the security of all those goods in the showroom. But he may still sell or otherwise deal with them in the ordinary course of business. The buyer will get it free of the charge.

**Example 3:** In case of a company which manufactures leather goods, the raw material in the form of leather, which is subject matter of floating charge, may be used to manufacture leather goods without seeking any permission from the lender.

Thus, unlike a fixed charge, the assets offered as security by the company can be dealt with by the company in the ordinary course of business. The buyer of the asset will get it free of charge.

When the creditor enforces the security or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date and which may come into existence thereafter.

This is called **crystallization of a 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.

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

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 the company's undertakings, may be situated within India or outside India.

The property or asset charged may be a tangible asset such as land and building. It may be otherwise, *i.e.* it may be a financial asset like a share or debenture which may be pledged. It may also be an intangible asset such as patent, copyright or trademark.

**Note:** The word otherwise when used in a section would have the effect of widening the scope and operation of the provision.

A charge is created by deposit of title deeds (normally banks agree for this mode of charge instead of proper mortgage) is also registrable by the borrowing company.<sup>1</sup>

**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.

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

**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 Charge<sup>2</sup>**

The particulars of the charge in the prescribed form<sup>3</sup> 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 Charge<sup>4</sup>**

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

(a) **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) **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.

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

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

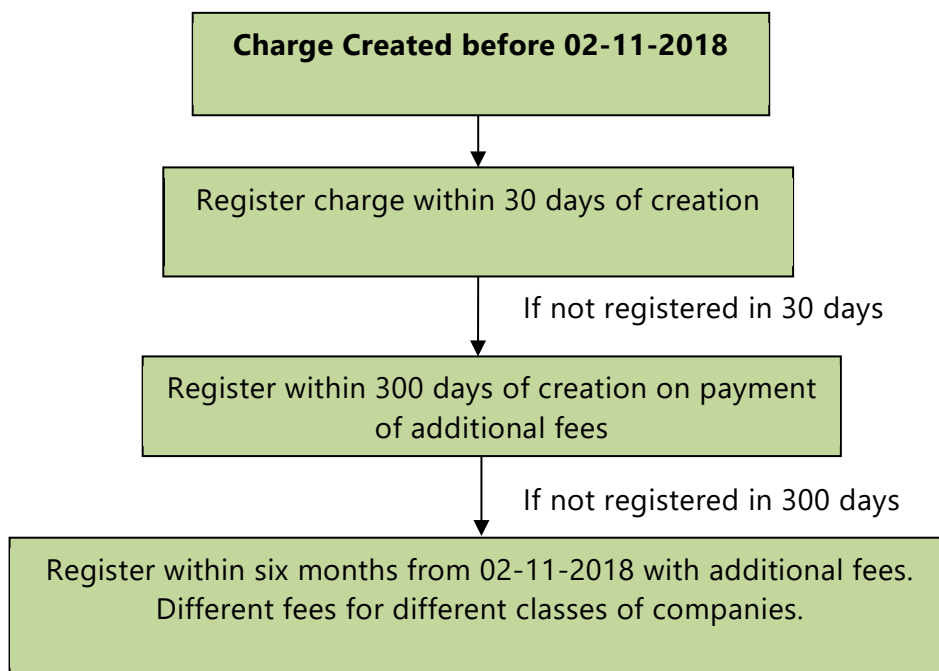
<sup>4</sup> As per Rule 3 (4).

**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)*<sup>5</sup>: 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 charge is not registered within the extended period of 300 days, it shall be done 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.



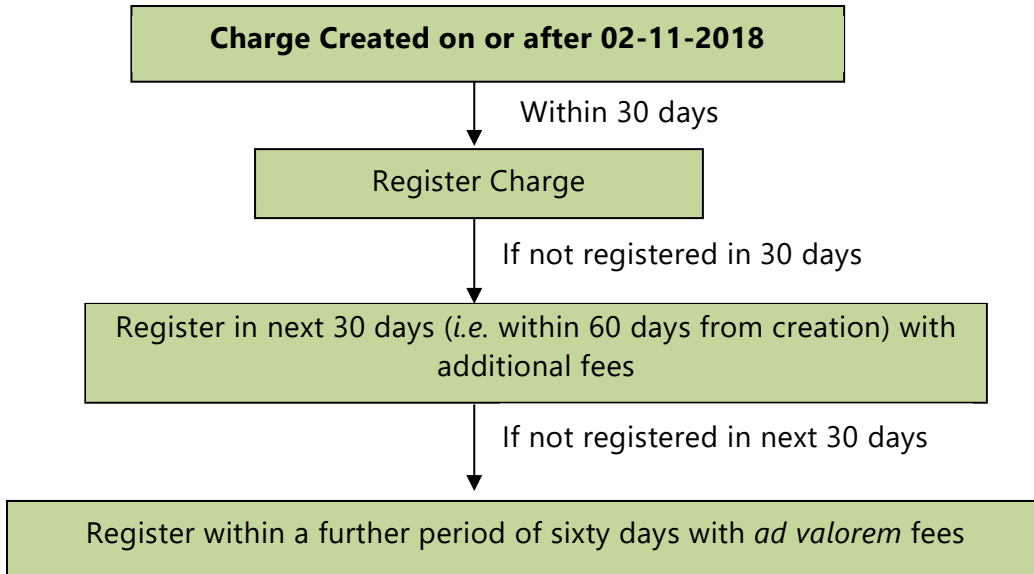
(ii) *Charges created on or after 02-11-2018 (i.e. on or after the commencement of the Companies (Amendment) Second Ordinance, 2019)*<sup>6</sup>: In such cases (i.e. where the charge was created on or after 02-11-2018 but the registration of charge was not

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

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

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. a grace period of another 30 days is granted after the expiry of the original 30 days), on payment of additional fees as prescribed.

If the charge is not registered 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 *ad valorem*<sup>7</sup> fees.



**Procedure for Extension of Time Limit<sup>8</sup>:** The company is required to make an application to the Registrar in the prescribed form<sup>9</sup> for seeking extension of time. 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 Registrar on receiving an application for extension of time as aforesaid shall be satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any within the original period of thirty days. Only then shall

<sup>7</sup> *ad valorem* means in proportion to the estimated value of the transaction concerned. In this case it will be based on value of the charge i.e. the amount of loan advanced against security of the property.

<sup>8</sup> As per Rule 4.

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



he allow registration of charge within the extended period. Further, requisite additional fee or *ad valorem fee*, as applicable, must also be paid.

**E. Issue of Certificate of Registration**<sup>10</sup>

Where a charge or Modification is duly registered by the Registrar, a certificate of Registration/ Modification shall be issued by the Registrar in the prescribed form<sup>11</sup>. 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.

**F. Section 77 not to apply to certain charges**

The application of Section 77 shall not be made to certain charges which are prescribed in consultation with the Reserve Bank of India.<sup>12</sup>

### 3. CONSEQUENCE OF NON-REGISTRATION OF CHARGE [SECTION 77 (3) & (4)]

No charge created by a company shall be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 or any other creditor unless it is duly registered and a certificate of registration of such charge is given by the Registrar.<sup>13</sup>

This means that the charge will become void against the liquidator and other creditors of the company. That is to say, at the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will give legal recognition to a charge that is not registered.

But this shall not prejudice any contract or obligation for the repayment of the money secured by a charge.<sup>14</sup> This means that the debt is valid and may be enforced against the company through the courts by filing a suit, but the security is lost.

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<sup>10</sup> As per Section 77 (2) and Rule 6 (1).

<sup>11</sup> Form No. CHG 2 for fresh registration and in Form No. CHG 3 for modification.

<sup>12</sup> As per Fourth Proviso to Section 77 (1) Inserted by The Companies (Amendment) Act, 2017 - Amendment Effective from 7th May 2018

<sup>13</sup> As per Section 77 (3)

<sup>14</sup> As per Section 77 (4)

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.

Another important consequence of non-registration is that the charge-holder loses priority. Any subsequent registration of a charge (i.e. even if it is 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.<sup>15</sup>

**Example 4:** Bank A has advanced Rs. One Crore to Akash Limited against the security of the company's land and building at Mulund. The charge was created by deposit of title deeds on 1<sup>st</sup> June 2019. The company did not register the charge within 30 days. Subsequently, the charge was registered on 13<sup>th</sup> August 2019 after payment of ad valorem fees and proving sufficient cause.

In the meantime, Bank B has advanced Rs. Two Crore to Akash Limited against the security of the same property on 20<sup>th</sup> June 2019. This charge was duly registered on 27<sup>th</sup> June 2019.

Subsequently, Akash Limited goes into liquidation and the property realises only Rs. Two crores.

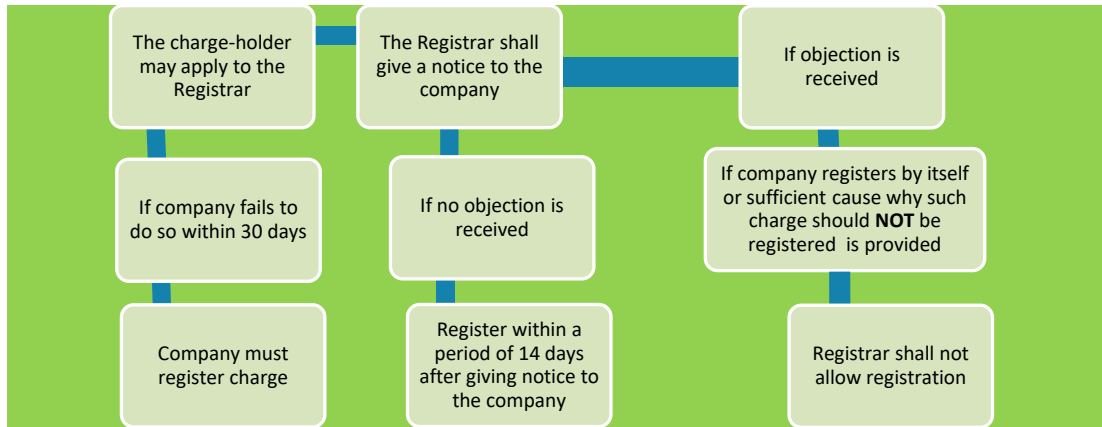
Now, Bank B will receive its loan back fully, but Bank A will not realise anything. Because the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later.

#### 4. APPLICATION FOR REGISTRATION OF CHARGE BY CHARGE-HOLDER [SECTION 78]

It can be seen from the foregoing discussion that non-registration or delayed registration would seriously affect the charge-holder's interest. Therefore, the law gives the charge-holder a concession. 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.

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<sup>15</sup> As per Third Proviso to Section 77 (1)



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 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.

## 5. ACQUISITION OF PROPERTY SUBJECT TO CHARGE AND MODIFICATION OF CHARGE [SECTION 79]

Two situations are contemplated.

- a. Acquisition by a company of any property that is already subject to charge.
- b. Modification in the terms and conditions or modification in the extent or operation of any charge already registered.

The provisions contained in section 77 relating to registration of charge shall as far as may be apply in both the above situations.

**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 or operation 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*<sup>16</sup> 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.

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<sup>16</sup> A *pari passu* charge-holder is entitled to a proportionate share in the property mortgaged. When this ceded the charge-holder will become a second charge-holder and as such his right entitlement will be subject to full satisfaction of the First Charge-holders claim.

### 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.

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

### 1. Intimation regarding Satisfaction of Charge

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction<sup>17</sup> in full of any charge earlier registered, to the Registrar in the prescribed form<sup>18</sup>. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.<sup>19</sup>

**Extended period of intimation:** Proviso to Section 82 (1)<sup>20</sup> 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 fees<sup>21</sup>.

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<sup>17</sup> Satisfaction happens when the amount is not repaid but an asset of equal value is offered in the place of the property being released from charge.

<sup>18</sup> As per Rule 8, Form CHG-4 is to be used.

<sup>19</sup> (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*).

<sup>20</sup> Proviso inserted *vide* the Companies (Amendment) Act, 2017.

<sup>21</sup> 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.

## 2. **Notice to the Holder of Charge by the Registrar**<sup>22</sup>

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 form<sup>23</sup> 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. **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.

## 4. **Preservation of Records**

The instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.



## **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.

This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.

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<sup>22</sup> As per Section 82 (2).

<sup>23</sup> As per Rule 8, Form CHG-4 is required to be filled for this purpose.

Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly 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
- ◆ 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.

According to Section 82 (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 otherwise than on receipt of an intimation from the company i.e. even if no intimation is 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 deals with 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 appointment<sup>24</sup>, 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 any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.***

(ii) With the insertion of sub-section (2)<sup>25</sup>, 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 87<sup>26</sup> of the Act of 2013 and Rule 12<sup>27</sup> empowers the Central Government<sup>28</sup>

<sup>24</sup> As per Rule 9, the notice of appointment or cessation shall be filed with the Registrar in Form No. CHG-6.

<sup>25</sup> Sub-section (2) of section 86 inserted vide the Companies (Amendment) Second Ordinance, 2019 w.e.f. 02-11-2018.

<sup>26</sup> As substituted by the Companies (Amendment) Second Ordinance, 2019 w.r.e.f. 02-11-2018.

<sup>27</sup> As substituted by the Companies (Registration of Charges) Amendment Rules, 2019 w.e.f. 30-04-2019

<sup>28</sup> 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.



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.

The 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 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 regarding the same.

- ◆ 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

### 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 stands enforced w.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 any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully 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 *ad valorem* fees. Since the first sixty days from creation of charge have expired on 11<sup>th</sup> May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11<sup>th</sup> May, 2019 after paying the prescribed *ad valorem* 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, ought to have been careful while purchasing property and should have verified 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**

*ABC Limited created a charge in favour of OK Bank. The charge was duly registered. Later, the Bank enhanced the facility by another Rs. 20 crores. Due to inadvertence this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.*

**Answer**

The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013.

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. Therefore, OK Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

### **Question 7**

*Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? 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.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.