

# Swift scan – CA Inter Registration of Charge



**Dear Students.**

**This scanner contains all the questions of**

- RTP (May' 18 – Nov' 23)
- Question papers (May' 18 – May' 24)
- Mock test papers

The scanner has been divided chapter wise to make it easier for you to follow. Do try to solve the questions before looking into the answers.

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Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of 50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry? **(Nov' 19)**

- a) It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.
- b) It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.
- c) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds 1.00 crore.
- d) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds 2.00 crores.



**Answer: B**



On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding \_\_\_\_\_ days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar: (MT May' 20)

- a) 14
- b) 21
- c) 30
- d) 300

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: (MT May' 20)

- a) Debt
- b) **Charge**
- c) Liability
- d) Hypothecation



**Answer: A**  
**Answer: B**



With a view to augment its production, Surya Techno-Products Limited availed a loan of 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ` 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno-Products. (Nov' 19)

- a) Yes, the bank can recover the fees paid by it for registration of charge.
- b) No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
- c) Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.
- d) Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company.

Raj Limited purchased a property from ABC Limited which was mortgaged to DEF Bank against a loan of 50 lakh. Raj Limited settled the dues to DEF Bank and the same was registered with the sub-registrar. However, neither the ABC Limited nor DEF Bank has filed particulars of satisfaction of charge with the Registrar of Companies. In this particular case what will Raj Limited do to file particulars of satisfaction of charge with the Registrar of Companies? (MT)

- a) Raj Limited needs to approach DEF Bank or ABC Limited to file a memorandum of satisfaction as they were the party to mortgage.
- b) Raj Limited can directly request the Registrar to file a particulars of satisfaction noting the release of charge.**
- c) Raj Limited needs to approach DEF Bank (mortgagee) to file particulars of satisfaction of charge with the Registrar of Companies.
- d) Raj Limited needs to approach ABC Limited (mortgagor) to file particulars of satisfaction of charge with the Registrar of Companies.



**Answer: A**

**Answer: B**



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. (MT)

- a) 5
- b) 7
- c) 8
- d) 15

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: (MT)

- a) Debt
- b) Charge
- c) Liability
- d) Hypothecation



**Answer: C**  
**Answer: B**



A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of 1.00 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16<sup>th</sup> February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration. **(Nov' 19)**

- a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27<sup>th</sup> April, 2019.
- b) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17<sup>th</sup> April, 2019.
- c) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2<sup>nd</sup> May, 2019.
- d) The company cannot now get the charge register as the time prescribed by Law has expired.

Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees: **(RTP May' 23)**

- a) Any member of the company
- b) The Creditor of the company
- c) Persons other than member and creditor of the company
- d) No person is allowed to inspect the register of charges



**Answer: B**  
**Answer: C**



Shiv IT Solutions Ltd. is a company engaged in the business of providing customised software to its clients. These software's are usually related to the employee's attendance, leave management, salary preparation, tax calculation and other matters incidental to HR.

The company is having its own building and other infrastructure in Bengaluru and also at Brussels, Belgium. The company have patent rights over few of its software's and also have the trade mark right over the company's logo. The company got sanctioned term loan facility of ` 10 crores from Best Bank Ltd on 1st January, 2022 by creating a charge on the assets of the company which includes the company's own buildings and intangible assets. The charge should have been created by the company within the time prescribed under the Companies Act, 2013 with the Registrar, however, the company could not get registration of charges within the prescribed time line.

During the course of Secretarial Audit of the company, for the year ended March 2022, it came in the knowledge of the Company Secretary in Practice, that charge was not registered with the Registrar. He mentioned it in the report and advised the company to get it registered. However, the Action Taken Report (ATR) on the audit objection made by the Company Secretary was not apprised to the Board and no follow up was made by the company thereafter.

Bank's concurrent auditor and statutory auditor also pointed out this issue and narrated that since charge was not created by the company, hence this advance be treated as clean advance and interest rate of clean / unsecured advance, which is 22% (as against the normal rate of 11%) should be applied from the date of disbursement on the outstanding amount till date. Bank also asked a professional, whether it can get the charge registered, at its own, to satisfy the audit objection.

The Bank applied for registration of charge which was considered by the Registrar and registration of creation of charge was granted. The Bank in order to address the audit objections, applied the interest @ 22% on the outstanding amount in the loan account of the company. The company aggrieved with the decision of the Bank, managed to liquidate the term loans account by raising funds from other sources and filed the 'Satisfaction of Charge' with the Registrar. (MT)

The company can create charge in favour of the lender on the assets which are:

- a) Tangible Assets and situated in India only
- b) Intangible Assets and situated in India only
- c) Assets that are tangible or otherwise and situated in India or Brussels (Belgium)
- d) Assets that are tangible or otherwise and situated in India only

Where the company fails to get the registration of charge, whether the Best Bank Ltd, in whose favour the charge was to be created, can move the application for creation of charge:

- a) No. It is the responsibility of the borrower company only to get the charge registered in favour of the lender.
- b) If the company do not get the charge registered in favour of the lender, the lender suo-moto cannot move application for registration of charge in its favour.
- c) The borrower company can be held liable to pay the penalty only.
- d) Yes. The lender company can move the application for registration of charge in its favour, if the borrower do not get the charge registered with the prescribed time.



**Answer: C**  
**Answer: D**





Cyplish Games and Toys Limited was sanctioned a term loan of 60.00 lacs by Zawn Industrial Bank Limited on 21<sup>st</sup> November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed. However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge.

(Nov' 19)

- a) Special Fees.
- b) Ad-valorem Fees.
- c) A Late Registration Fees.
- d) Ad-valorem Duty.

The Registrar shall keep a register of charges which shall be open to inspection by \_\_\_\_\_ on payment of fee: (MT)

- a) the company
- b) the charge holder
- c) holder
- d) any person



**Answer: B**

**Answer: D**



Rose (Private) Limited on 3rd April 2019 obtained 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

- i. Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?
- ii. State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation. (Nov' 20)



As per the provisions of Section 2(16) of the Companies Act, 2013, “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 mortgage. Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security it is required to create a charge on it.

In the above case Rose (Pvt.) Ltd. obtained a loan of 30 lakh by offering its stocks and accounts receivables as security and 5 lakh adhoc overdraft on the personal guarantee of a Director. Charge is created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

Thus

- i. Rose (Private) Limited is required to create a charge on the stocks and accounts receivables in favour of the lender for 30 Lakhs but it is not required to create a charge for 5 Lakh adhoc overdraft on the personal guarantee of a director. Since
- ii. As per Section 77 of the Companies Act, 2013, in case a charge is not registered within 30 days of creation of the charge, the Registrar may 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. The application for extension 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.



**M**r Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat 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 the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? **(RTP May' 18)/ (RTP May' 17)/ (MT May' 20)/ (MT)**



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 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.

In the above case NRT Ltd. had a property in Delhi which was charged and the charge is registered. Mr. Akshat entered into a contract to purchase this property. At the time of registration Mr. Akshat comes to know about the charge and the company expresses its inability to transfer the title deeds in the name of Akshat. As per the Act, Mr. Akshat must have knowledge of the charge on the assets of the company.

Thus, the contention of NRT Ltd. is correct and Akshat must have known about the charge.



**D**efine 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. (RTP Dec’ 21)



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’.

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).



What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? (Nov' 18)



**Registration of charge:** According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

- i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.
- ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019 within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.



**K**rish (Private) Limited on 7th May 2022 obtained 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013? (MT)



As per the provisions of section 2(16) of the Companies Act, 2013, “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 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.

Thus, when Krish (Private) Limited obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it. Krish (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company



**N**ivedita Limited hypothecated its plant to a Nationalized Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full. The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013, to register the satisfaction of charge in the above circumstance. State the time frame upto which the Registrar of Companies may allow the Company to intimate satisfaction of charges. (Nov' 22)



According to Section 82 of the Companies Act, 2013, the company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction. If the company fails to intimate within 30 days it may do within a further period not exceeding 300 days from the day of such payment or satisfaction on payment of prescribed additional fees.

The Registrar shall, on receipt of intimation of satisfaction, cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in the notice, as to why payment or satisfaction in full should not be recorded as intimated to the registrar and if no cause is shown by such holder of the charge, the registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under Section 81 of the Act and shall inform the company that he has done so.

In the given question, Nivedita Limited had taken a term loan against its assets and registered the charge. The Company settled the term loan in full and requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. The company can apply for satisfaction within 30 days of satisfaction or the extended period of 300 days with additional fees.



**B**ows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation. (MT)



As per the provisions of Section 77 of the Companies Act, 2013, in case the charge was not registered within 30 days of creation of the charge, 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.

For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. 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.





**H**ow will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified? (MT)

**OR**

Define Charge. Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013. (MT)



**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:

- i. 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;
- ii. 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.



**K**rish Limited created a charge on its assets on 2<sup>nd</sup> February, 2021. However, the company did not register the charge with the Registrar of companies till 15<sup>th</sup> March, 2021.

- a) What procedure should the company follow to get the charge registered?
- b) Suppose the company realises its mistake of not registering the charge on 27<sup>th</sup> May, 2021 (instead of 15<sup>th</sup> March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013. **(RTP May' 22)**



According to section 77(1) of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, with the Registrar within 30 days of its creation. The company shall register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge. The property on which the charge is created may be situated in or outside India. However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered 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. If the company fails to register the charge within the extended time the company shall be given another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.

In the above case Krish Limited created a charge on its assets on 2<sup>nd</sup> Feb, 2021. The company did not register the charge with the Registrar of companies till 15<sup>th</sup> March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4<sup>th</sup> March, 2021). Taking advantage of clause (b) of first proviso to section 77 (1), Krish 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 27<sup>th</sup> May, 2021 instead of 15<sup>th</sup> March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge. Since the first sixty days from creation of charge have expired on 3<sup>rd</sup> April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3<sup>rd</sup> April, 2021 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.

Thus

- a) The company can ask for an extension of time for another 30 days.
- b) If the company realises its mistake on 27<sup>th</sup> May, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3<sup>rd</sup> April, 2021 after paying the prescribed ad valorem fees.



Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank. The Company is not willing to register the charges with the Registrar of Companies. In the light of the provisions, if the Companies Act, 2013, discuss:

1. Is there any provision empowering the Nationalized Bank (charge holder) to get the charges registered?
2. When can the Registrar refuse to register the charges the present scenario?

(May' 22)



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, the company is primarily responsible for registering the charge however it 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. 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.

In the above case, Beauty Limited obtained a working capital loan from a Nationalized Bank against the hypothecation of Stocks & Accounts receivable of the Company. An instrument creating the charge was duly signed by the Company and the Bank but the Company is not willing to register the charges. In case of non registration of charge by the company the charge holder may register the charge.

Thus

1. Nationalized Bank can get the charges registered.
2. Registrar may refuse to register the charge if the company itself registers the charge or shows sufficient cause why such charge should not be registered.



Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?  
(May' 18)



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.

**Necessity for creation of charge:**

Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets.

Once charge is registered and filed, it becomes information in public domain as to how much company has borrowed against its assets and from whom.

**Time limit for registration of charge with the registrar:**

According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

- i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.
- ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019 within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.



**M**ind Limited realised on 2<sup>nd</sup> May, 2018 that particulars of charge created on 12<sup>th</sup> March, 2018 in favour of a Bank were not filed with Registrar of Companies for Registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12<sup>th</sup> February, 2018 instead of 12<sup>th</sup> March, 2018? Examine with reference to the relevant provisions of the Companies Act, 2013. (Nov' 16)/ (MT Aug' 18)



According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

- i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.
- ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019 within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.

In the above case the company created a charge on 12<sup>th</sup> Mar, 2018 which was not registered till 2<sup>nd</sup> May, 2018. As the time period for registration of charge has already lapsed, the company may apply for extension of time to the Registrar.

Thus Mind Ltd. must apply to the Registrar for extension of time to register thee charge. There would be no change in the situation if the charge was created on 12<sup>th</sup> Feb, 2018.



**E**xplain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. (MT Aug' 18)



The Central Government on being satisfied that—

- a) **the omission to file with the Registrar the particulars of any charge** created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or
- b) **the omission to register any charge within the time** required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or
- c) **the omission or mis-statement of any particular** with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or
- d) **on any other grounds**, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

**Condonation of delay and rectification of register of charges.**

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

1. Where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.
2. The application for condonation of delay and for such other matters covered above shall be filed with the Central Government along with the fee.
3. The order passed by the Central Government shall be required to be filed with the Registrar along with the fee as per the conditions stipulated in the said order.





Referring to the provisions of the Companies Act, 2013, examine the validity of the following: Moon Light Ltd. is having its establishment in USA. It obtained a loan there creating a charge on the assets of the foreign establishment. The Company received a notice from the Registrar of Companies for not filing the particulars of charge created by the Company on the property or assets situated outside India. The Company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Company? Give your answer with respect to the provisions of the Companies Act, 2013. **(Jan' 21)**



According to section 77 of the Companies Act, 2013, 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. Also 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.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the 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 whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Moon Light Ltd. not to register the particulars of charge created on the assets located outside India is not correct.



**D**N Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges. **(Nov' 19)**



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

However 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 300 days of such payment or satisfaction on payment of prescribed additional fees.



What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013. (MT Oct' 18)/ (MT Mar' 19)

**OR**

Mr. Raj acquired a property from XYZ Limited which was mortgaged to ABC Bank. He settled the dues to ABC 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 ABC Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Raj approach the Registrar and seek any relief in this regard? (MT)



As per section 83 of the Companies Act, 2013 read with Companies (Registration of Charges) Rules, 2014 if the registrar has not received any intimation of satisfaction and release of charge the registrar has the power to make entries of satisfaction and release of charges.

1. The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—
  - a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
  - b) that 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, enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that 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.
2. The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81.
3. The company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
4. Where the Registrar enters a memorandum of satisfaction of charge in full he shall issue a certificate of registration of satisfaction of charge.



Answer the following in the light of the companies Act, 2013-

MNC Limited realised on 2<sup>nd</sup> May, 2019 that particulars of charge created on 12<sup>th</sup> 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 7<sup>th</sup> June, 2019 instead of 2<sup>nd</sup> May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013. **(MT May' 20)**



As per section 77 of the Companies Act, 2013 a charge created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) shall be registered within 30 days of creation of charge. The company shall send the 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 to the Registrar. If the charge is not registered within 30 days the Registrar is empowered 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. Further if the charge is not registered within the extended 30 days the company shall be given another opportunity for registration of charge by granting a further period of sixty days on payment of advalorem fees.

In the above case MNC Limited created a charge on 12<sup>th</sup> March . on 2<sup>nd</sup> May the company realised that the charge was not registered. The company must immediately file the particulars of charge with the Registrar 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 7<sup>th</sup> June, 2019, a period of sixty days has already expired from the date of creation of charge. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge along with advalorem fee.



## What is 'Floating Charge'? When does it get crystallised? (MT)



A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge.

**Crystallization of a Floating Charge:** In the following events, a floating charge will get crystallised or fixed:

- i. When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.
- ii. When the company ceases to continue its business.
- iii. When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.



Star Ltd. is having its establishment in Canada. It obtained a loan there creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. Do you agree with the stand taken by the Star Ltd.? Give your answer with respect to the provisions of the Companies Act, 2013. (MT)



According to section 77 of the Companies Act, 2013, 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. Also 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. In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the 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 whether situated in or outside India, to register the particulars of the charge.

In the above case Star Ltd. is having its establishment in Canada obtained a loan there creating a charge on the assets of the foreign establishment. The company did not register the charge on the grounds that it shall not be the duty of the company to register the particulars of the charge created on the assets not located in India. As per the Act any charge created by the company on the assets outside India must be registered.

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.