

REGISTRATION OF CHARGES. [4-2M]

Definition of charge [Sec-2(16)]

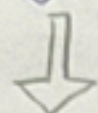
Charge is an interest (or) lien created on the property (or) assets of the co (or) any of its undertaking (or) both as security & includes mortgages.

Duty of The co to Register charges [Sec-77]

* if co creates any charges in india (or) outside india on any of its property whether tangible (or) intangible then such charges is required to be register with Roc



* charge is required to be registered with Roc within 30 days of creation of charge.

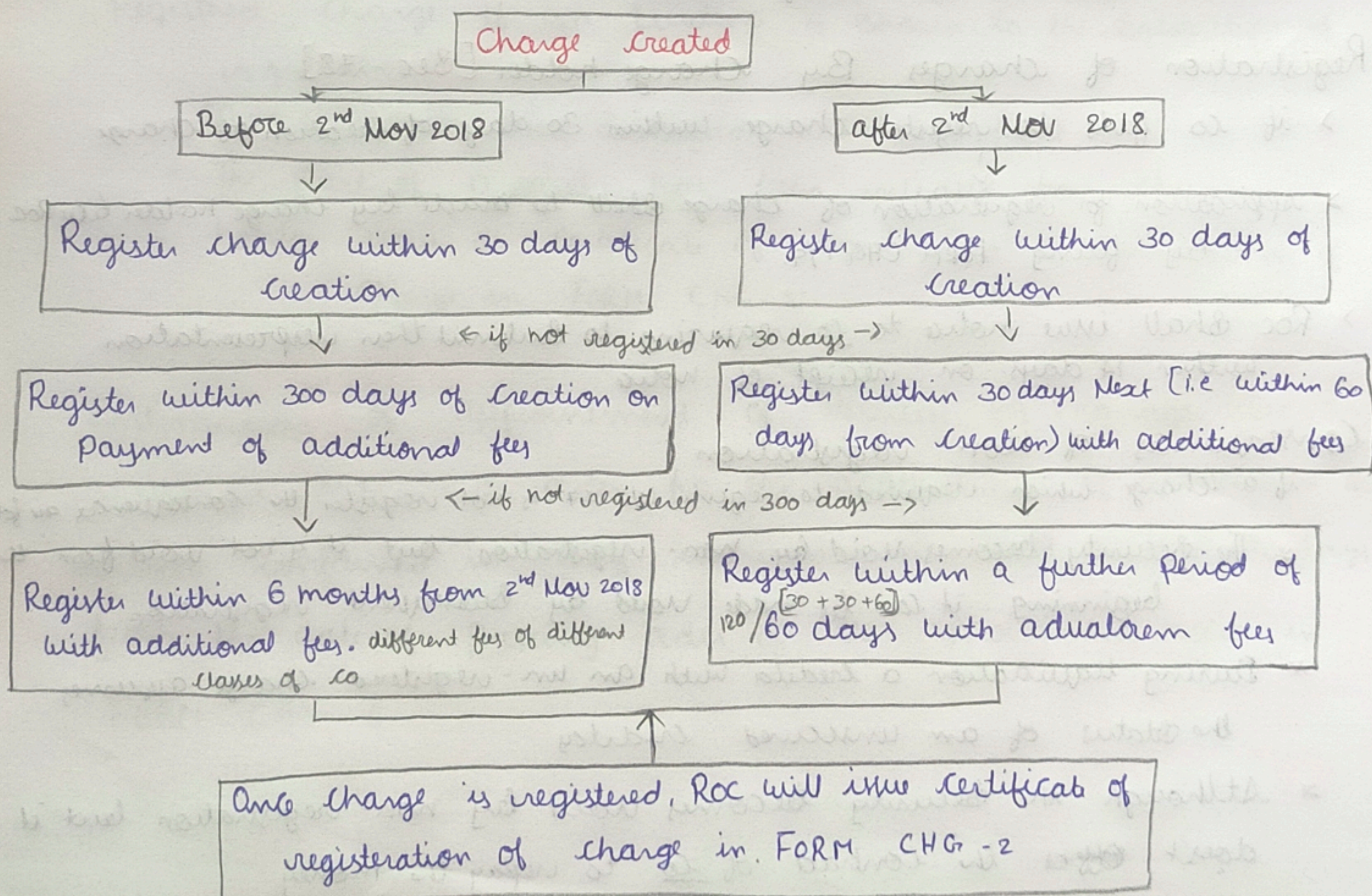


* For ^{for normal} registration of charge the co is required to file FORM CHG-1 with Roc within 30 days of creation of charge.



* If co has issued ^{for debentures} debentures which is Secured against the assets of co then co is required to file FORM CHG-9 within 30 days of creation of charge.

Time limit for registering Charge.



Procedure For Extension of time limit

1. The Co is required to make an application to register, FORM CHG-1/9
2. It should be supported by a declaration from the Co signed by CS or director that such belated filing shall not adversely affect the intervening Co
3. Requisite additional fee as applicable, must also be paid

The application made to ROC must satisfy the ROC that the Co had sufficient cause for not filing the particular instrument of charge within original period of 30 days

He will allow registration of charge within the extended period

They were before the actual registration even if the charge is actually registered within the extended period

Verification of instrument of charge

A copy of every instrument creating any charges is required to be filed with ROC shall be verified as follows.

(i) Property situated outside India

Copy verified by a certificate issued either under a Seal, director or Company Secretary, authorised person, officer or charge holder

(ii) Property situated in India

Copy verified by a certificate issued under hand of director, CS, authorised officer of the charge holder.

Registration of charges By Charge-holder [Sec - 78]

- > if Co fails to register charge within 30 days of creation of charge
- > application for registration of charge shall be made by charge holder to ROC by filing FORM CHG 1/9.
- > ROC shall issue notice to Co requiring to submit their representation within 14 days on receipt of notice

Consequences of Non-registration

if a charge which required to register U/s 77 is not registered the consequences are follow

- * The Security becomes void by non-registration but it is not void from the beginning. it can be made void by subsequent registration
- * During liquidation a creditor with an un-registered charge assumes the status of an unsecured creditor
- * Although the Security becomes void by non-registration but it doesn't affect the contract of Co to repay the money.

Registration of modification of charge [Sec-79]

to acquiring any property which is subject to charge

In case of a property where charge is already registered & if it is sold with the permission of the holder of charge it shall be the duty of to acquiring it to get the charge registered in accordance with Sec 77

Making modification in terms & conditions of any charge already registered Examples of modification of charge

- Change in repayment schedule of loan
- change in tenure of loan
- Change in rate of int
- Partial release of the charge on a particular asset or property

An registration of charge with ROC, ROC shall issue

Certificate of registration of creation of charges → FORM CHG-2

Certificate of registration of modification of charges → FORM CHG-3

Company To Report Satisfaction of Charge [Sec-82]

- Co shall give intimation to registrar within 30 days **Satisfaction**
 - Co not intimation to registrar may allow within 300 days & additional fees [Specified IFSC public / Private Co within 300 days]
- Registrar on receipt of intimation send notice to holder within 14 days
- if any cause is shown, registrar shall record a note in register to charges & shall inform the Co

Power of Registrar [Sec-83]

Registered charge if an Evidence is shown to the satisfaction of registrar

- The debt has been satisfied in whole (or) part
- The part of property has been released from charge
- holder issue a certificate of registration of Satisfaction of Charge in FORM CHG-5

Intimation of appointment of Receiver (or) manager [Sec-84]

Person obtain an order for the appointment of a receiver such receiver contained in any instrument he shall within 30 days

from the date of passing order of the appointment notice in

FORM CHG-6.

Punishment for Contravention [Sec-86]

- For company - fine 50000
- Every officer of the Co who is in default shall be punishable with - fine 50000

Rectification by govt in register of charges [Sec-87]

- > Omission giving intimation
- > Omission of any particular in any file previously registered
- > Govt need satisfaction that such default was due to inadvertence of some other sufficient cause
- > Form CHG-8 shall be filed by the Co

Registration of Charges

Maintained by Company
in FORM CHG-7 [Sec-85]

Maintained by the ROC
[Sec-81]

- * Shall be preserved permanently
- * Shall kept at the registered office of the Co
- * Can be maintained in physical form
- * Entry in the register need to be made in chronological order within 7 days of transaction
- * Shall be preserved under custody of CS (or) appointed by director
- * Shall be authenticated by CS (or) appointed by director
- * The instrument creating charge need to be preserved for a period of 8 years from the satisfaction of charge
- * Registrar shall keep a register containing particulars of the charges registered
- * Particulars of charges maintained on the MCA shall be deemed to be register of charges for the purposes of Sec-81