

Chapter 6 :- Registration Of Charges

1. Definition of Charge and Types of Charge

<u>Definition of Charge</u>	Section 2(16) of the Companies Act, 2013 defines “charge” means	
	<ul style="list-style-type: none"> - as an interest or lien - created on the property or assets of a company or any of its undertakings or both - as security (for repayment of loan) and - includes a mortgage. 	
<u>Types of Charge</u>	<u>Fixed Charge</u>	<u>Floating Charge</u>
	A ‘Fixed Charge’ is a charge on specific assets of the borrowing company.	A ‘Floating Charge’ is created on assets or a class of assets which are of fluctuating or changing in nature-
	These assets are of permanent nature like land and building, machinery, office premises, etc.	like raw material, stock-in-trade, debtors, etc. It is a charge upon assets both present and future.
	These assets are identified at the time of creation of charge.	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.
	A fixed charge is usually created by way of mortgage or by deposit of title deeds.	A floating charge is a charge that floats above ever-changing assets.
	The charge remains ‘fixed’ and the borrowing company is not permitted to sell such assets during the period of charge though it may use them.	<u>Crystallization of a Floating Charge-</u> When the creditor enforces the security due to the breach of terms and conditions of floating charge or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date. This is called crystallization of a floating charge.
	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.	

2. Duty To Register Charges, Etc. [Section 77]

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 signed by company and charge holder to the Registrar within 30 days of its creation. As per Rule 3, **Form CHG-1**(for other than debenture) or **Form CHG-9** (in case of debentures) is to be filled.

➤ **Verification of Instrument of Charge [Rule 3 of Company (Registration Of Charges) Rule 2014.] 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.

➤ **Extension of Time Limit:-** The company is required to make an application to the Registrar in **Form CHG-1** (for other than debentures) or in **Form CHG-9** (for debentures) for seeking extension of time. The said application needs to be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not affect the rights of any creditors of the company.

- A. In case the charge was created before **02-11-2018**[before the commencement of Companies (Amendment) Act, 2019]
 - Register charge within 30 days of creation
 - If not registered in 30 days
 - Register within 300 days of creation on payment of additional fees
 - If not registered in 300 days
 - Register within 6 months from **02-11-2018** with additional fees. Different fees for different classes of companies.
- B. In case the charge Created on or after **02-11-2018**
 - Register the charge within 30 days of creation
 - If not registered within first 30 days
 - Register in next 30 days (i.e. within 60 days from creation of charge) with additional fees
 - If not registered in next 30 days
 - Register within a further period of 60 day with ad valorem fees.

➤ **Issue of Certificate of Registration as per Section 77 (2) and Rule 6.**

- Certificate of Registration/Modification shall be issued by the Registrar in **Form No. CHG-2** [for fresh registration of charge] and **Form No. CHG-3** [for modification of charge].

➤ **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.

3. Application For Registration Of Charge By Charge-Holder [Section 78]

According to 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.

- A. Where a company fails to register the charge within 30 days U/s 77
- B. Without prejudice to its liability With respect to any offence under this chapter
- C. The person in whose favor 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.
- D. On receipt of application from the charge-holder,
- E. The Registrar shall give a notice to the company
- F. **If no objection is received :-** Registrar will register charge within a period of 14 days after giving notice to the company.
- G. **If objection is received:-** If company registers by itself or sufficient cause why such charge should NOT be registered is provided and Registrar shall not allow registration by charge- holder.

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

4. Acquisition Of Property Subject To Charge And Modification Of Charge [Section 79]

According to Section 79 of the Companies Act, 2013 The provisions of section 77 relating to registration of charges shall apply both following cases

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

- 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 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 now acquired the property.

B. Requires any modification in charge [Section 79 (b)] (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
- 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.

5. Deemed Notice Of Charge [Section 80]

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,

- 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.

6. Register Of Charge

A. Register of Charges to be kept by the Registrar [Section 81]

According to Section 81 of the Companies Act, 2013 contains provisions regarding Register of Charges to be kept by the Registrar.

1. Registrars of Companies shall, in respect of every company, maintain register of charges registered with Registrars of Companies in prescribed form and manner.

Note:- In addition, Rule 7 (1) states that the particulars of charges maintained on the **Ministry of Corporate Affairs portal** shall be deemed to be the register of charges for the purposes of Section 81.

2. Rule 7 (2) states that the Register shall be open to inspection by any person on payment of fee.

B. Register of Charges to be kept by the company [Section 85]

According Section 85 of the Companies Act, 2013 contains provisions regarding Register of Charges to be kept by a company.

- A. **Place of keeping company's register of charges:** According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges in FORM CHG-7.

- B. **Inspection of the register of charges and instrument of charges:** The register of charges and instrument of charges, shall be open for inspection during business hours-

- a) by any member or creditor without any payment of fees or
- b) by any other person on payment of such fees as may be prescribed,

-subject to such reasonable restrictions as the company may, by its articles,

C. **As per Rule 10 Company's Register of Charges**

1. Every company shall maintain such register in **FORM CHG-7** and enter in the Register following particular
 - All the charges registered with the Registrar.
 - Any property acquired subject to a charge.
 - Any modification of a charge and satisfaction of charge.
2. The entries in the Register shall be made forthwith after the creation, modification or satisfaction of charge,
3. The entries in the Register shall be authenticated by
 - A director
 - The secretary of the company
 - Any other person authorized by the Board for the purpose.
4. The register of charges shall be preserved permanently and the instrument creating a charge or modification preserve for 8 years from the date of satisfaction of charge.

7. Company To Report Satisfaction Of Charge (Repayment of loan by company) [Section 82]

1. Intimation regarding Satisfaction of Charge:-

- According to **Section 82(1) of the Companies Act, 2013**, requires a company to give **intimation of payment (discharge debt) or satisfaction (see note)** in full of any charge earlier registered, to the Registrar in the FORM CHG-4.
- The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction
- **Extended period of intimation**
- On an application by the company or the charge holder,
- Registrars of Companies 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

Note:- 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.

2. Notice to the Charge Holder by the Registrar As per according Section 82(2)

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

Note:- Notice of charge holder not required – if intimation is signed by charge holder .

- A. If no cause is shown by the charge-holder:-** the Registrar shall order entering of a memorandum of satisfaction in the register of charges and he shall inform the company **In FORM CHG-5**
- B. 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. The instrument creating a charge or modification preserve for 8 years from the date of satisfaction of charge.

8. Power Of Registrar To Make Entries Of Satisfaction And Release In Absence Of Intimation From Company [Section 83]

According to Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where 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].

- Section 83 of the Companies Act, 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.

9. Intimation Of Appointment Of Receiver Or Manager [Section 84]

Section 84 of the Companies Act, 2013 deals with the appointment of a receiver or manager and of giving intimation thereof to the company and the Registrar.

- A person to manage the property which is subject to a charge by order of court
- Any power contained in any instrument, creating charge
- 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.
- The person appointed as above shall On ceasing to hold such appointment give a notice to that effect to the company and the Registrar in Form CHG -6 .

10. Punishment For Contravention [Section 86]

- Company – 500000/- rs
- Officer – 50000/- rs
- Accordingly, if any person willfully furnishes:
 - any false or incorrect information; or
 - knowingly suppresses any material information Liable for action u/s 447

11. Rectification By Central Government In Register Of Charges [Section 87]

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

- When there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time
- When there was omission or misstatement of any particulars in any filing previously made to the Registrar with respect to charge or modification of charge or any memorandum of satisfaction

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or misstatement 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.

