

6. Registration of charge

Definition of charge

means an interest or lien created on the property or assets of a Co. or any of its undertakings or both as

security & includes a mortgage.

Duty to Register charges, etc (Sec-77)

Co. shall within 30 days of its creation register the charge

Types of charge

Fixed charge

- created on specific Assets
- Assets are of permanent nature Eg:- land & Building, Machinery etc
- Identified at the time of creation
- Asset remains fixed
- Co. is not allowed to sell but allowed to use such assets
- Asset under Fixed charge can be ~~created~~ sold only with prior ~~info~~ consent of charge holder
- charged is ~~valued~~ on repayment of borrowed money in full

Floating charge

- assets are fluctuating or changing in nature
Eg:- raw material, stock in trade, debtors etc.
- Assets ^{are} ~~may be~~ of Present and future
- Co. is permitted to use them for trading or producing final goods for sale.

How to Register charge:

For the purpose of registration of charge by the Co.

→ The particulars of charge in

Form CHG-I (Other than Debentures) or

Form CHG-II (in case of Debentures)

→ and together with a copy of the instrument creating the charge if any, duly signed by the Co & charge holder shall be filed with ROC within 30 days of creation of charge along with the prescribed fee.

The provisions of sec (77) shall not apply to such charge as may be prescribed by Co in consultation with RBI.

Verification of Instrument of charge:

A copy of every instrument creating (or modifying) any charge which is required to be filed with ROC, shall be verified as follows, where instrument relates to the Property

[Situating wholly outside India] [Situating wholly or partly in India]

→ under the seal (if any) or

→ by any director or CS of Co or authorised officer of the charge holder or

→ by some person other than the Co, who is interested in the mortgage or charge

→ by a certificate issued under the hand of

- any director or

- CS or

- an authorised officer of the charge holder

Extension of Time Limit

Charge Created before
02-11-2018



Register charge within
30 days of Creation



Register within 300 days of
creation on making application
and by payin Add. Fee



→ If not regist-
ered within
300 days

Register within 6 months from
02-11-2018 with Add. Fees.
Diff. fee for Diff. classes of
companies are applicable

Charge created on or
after 02-11-2018



Register the charge within
30 days of Creation



Register in next 30 days
(60 days from creation of
charge) with add. Fee



← If not
registered
in next
30 days

Register within further
Period of 60 days with
ad[voluntary Fee]
↳ will be based on
value of charge i.e. amt
of loan.

Procedure for extension of Time Limit:

- 1) Company ^{make} → Application to registrar in
Form. CHG-9 (for Deb) & CHG-1
- 2) It should be supported by a declaration from the Co.
Signed by its CS or a director that such belated filing
shall not adversely affect the rights of any other
intervening creditors of the company.

3) Requisite add. Fee or ad valorem Fee, as applicable, must also be paid.



After receipt of application for extension of time Period by Roc

On being Satisfied →

that the co had sufficient cause for not filing the Particulars and instrument of charge if any within the original period of 30 days

ROC may allow Registration of Charge within the extended time period

Issue of certificate of Registration:

where a charge or modification is duly registered by Roc

Roc ~~He~~ shall issue

a certificate of Registration in Form No. CHG-2 for fresh Registration of charge (or) a certificate of ~~Re~~ Modification in Form No CHG-3 for modification of charge.

The certificate so issued by Roc shall be the conclusive evidence that the Co. has complied with the requirements ^{ch-6} of Companies Act 2013 & the rules made thereunder.

Non applicability of Sec 77:

The provisions & Rules will not apply to any charge required to be created or modified by a Banking Co. in favour of RBI when any loan or advance has been made to it under RBI Act 1934.

Sec - 78) Registration of charge by the Charge Holder.

- ↳ Where a Co. fails to register the charge within 30 days of its creation, the charge holder may make an application to the ROC for registration of charge in the form and manner and within such time as may be prescribed.
- ↳ Registrar shall give a ~~to~~ notice to the Co. If no objection is received, Registrar will register the charge within a period of 14 days after ~~the~~ giving notice to the Co.
- ↳ The Registrar shall not register the charge if
 - (i) the Co. itself registers the ~~the~~ charge, or
 - (ii) the Co. shows sufficient cause that the charge should not be registered.
- ↳ Where a charge is registered by the ROC on application made by the charge holder, the charge holder shall be ~~allowed~~ entitled to recover from the Co. the fees paid by him to the Registrar.

(Sec-80) Deemed notice of charge:

where a charge on any property of the co. is registered then any person acquiring such property or interest in such property shall be deemed to have the notice of charge from the date of such registration

Effects of Non registration of charge (Part of sec-71)

validity of unregistered charge:

In case of winding up (liquidation)

The liquidator shall not take into account the unregistered charge

→ It shall ~~be~~ become void against the liquidator

→ The charge holder shall become an unsecured creditor

The co. shall ^{continue to} be liable for the repayments of money received by the charge.

In case of no winding up (in ordinary course)

Unregistered charge shall continue to be valid

→ Unregistered charge holder shall continue to be a secured creditor

Priority of subsequent registered charge:

If the company creates a subsequent charge which is registered, such subsequent charge ^{shall} ~~shall~~ have priority over the previous unregistered charge.

co. & every officer in default shall be liable for punishment as provided u/s 86.

It may be noted that failure to register charge shall not absolve a company from its liability in respect of any offence under ch-6.

Example: Delay in registration of charge

1st Jan charge created in favour of Bank A	10th Feb Charge created in favour of Bank B (same pr- perty)	20th Feb Co registered the charge created in favour of Bank B	28 Feb Charge registered for charge created in favour of Bank A
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Property sold

- ↳ First repay → Bank B since it is registered first
- ↳ Second " → Bank A

Hence date of registration of charge is important.

(Sec-77) Applicability of sec-77 in certain cases;

The provisions of Sec-77 shall apply to —

- (a) any ~~company~~ property acquired by a Company, which is already a subject matter of charge and
- (b) Modification in the terms or conditions or the extent or operation of any charge registered u/s 77.

A. Company acquiring any property subject to charge

Property where charge is registered → Sold with Permission of Charge holder → it shall be duty of the Co. acquiring the Property

New charge
could get registered ←
by Co. which as now
acquired the property

Hence earlier charge
should be
vacated ←

to get the charge
registered u/s 77

B. Modification of charge when there is change in Terms and conditions etc.

Any modification in charge shall be registered by the company in accordance with sec 77.

Examples of modification of charge:

1. Varying the terms and conditions of existing charge through agreement
2. Enhancing or decreasing the limit
3. Change in rate of interest (other than Bank rates in case of fluctuating loans)
4. Ceding a pari passu charge
 - ↳ vacate or removal
 - ↳ multiple lenders share equal rights over the same collateral or assets without any preference. In the event of default, the assets are sold and proceeds are distributed to the lenders in proportion to their o/s loan amounts.
5. Change in repayment schedule of loan
6. Partial release of charge on a particular Asset.



~~On removal,~~

(Section-81) Register of charges to be kept by the Registrar:-

- ↳ The ROC shall keep a register of charges in such form and manner as may be prescribed.
- ↳ The particulars of charges maintained on the MCA portal shall be deemed to be the register of charges for the purpose of sec 81
- ↳ Such register shall be open to inspection by any Person on payment of such fee as may be prescribed for each inspection

(Sec-85) Register of charges to be kept by the Co.:-

- ↳ Every company shall keep a register of charges in Form CHG-7.
- ↳ The Register shall include all charges & floating charges affecting any property or assets of the company or any of its undertakings indicating in each case the Prescribed particulars
- ↳ A copy of the instrument creating the charge shall also be kept at registered Office along with the Register of charges.
- ↳ The entries in the Register shall be authenticated by a director or the CS or any other person authorised by the Board for the purpose

Inspection of Register of charges and Instrument of charges

The register of charges maintained by the Co. and the instruments creating the charges shall be open for inspection during business hours —

- (i) by any member or creditor, without any fee
- (ii) by any ~~person~~ other person, on payment of prescribed fee

The register of charges shall be preserved permanently and the instrument creating a charge or modification shall be preserved for a period of 8 years from the date of satisfaction of charge.

(Sec-82) Company to report satisfaction of charge

- ↳ Where a charge is paid or satisfied in full, the Co. shall give an intimation to the Registrar in Form CHG-4 [Satisfaction happens when an asset of equal value is offered in the place of property being released]
- ↳ The intimation shall be given within 30 days
- Condonation of delay for not giving intimation within 30 days

Registrar may ^{on} application made by the Co. or the charge holder, allow such intimation of payment or satisfaction to be made within 300 days of such payment of or satisfaction on payment of prescribed additional fee.

On Receipt of such intimation, the ROC shall issue a notice to the charge holder requiring him to show cause as to why payment or satisfaction in full should not be recorded.

If charge holder does not show any cause within the time specified in the notice (not being more than 14 days), the Registrar shall —

- (i) enter the memorandum of satisfaction in the register of charges &
- (ii) inform the company

No notice is required ~~requ~~ to charge holder where intimation to ROC is given in the prescribed form & is signed by the charge holder.

where any cause is shown by the charge holder, the ROC shall —

- (i) record a note to the effect in the register of charges maintained by him;
- (ii) inform the co. regarding the cause shown by the charge holder.

where registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of Registration of Satisfaction of charge in Form No CH-5

Charge is
Paid or Satisfied

→ Intimate ROC
within 30 days

→ If Failed to intimate
within 30 days
↓

When Co. makes
the intimation
within 30 days
or 300 days.

← ROC will
allow intimation
within 300 days

← File an application
(by Co. or charge
holder)

↓
ROC shall issue
a notice to
charge holder

→ To show a cause ~~for~~ as to
why the payment or satisfaction
shall not be recorded

↓
If Charge holder
does not
show any cause

→ within the ^{time} specified
in notice (not more
than 14 days)

↓
Shows a cause

↓
ROC shall

↓
record a note
to the effect in
the register and
inform the Co. regarding
the cause shown

↓
ROC shall
↓
Enter the memorandum
of Satisfaction in
Register &
inform the Co.

↓
Non entry no

notice is required to
be given to charge holder

↓
ROC shall issue a
Certificate of Registration
of Satisfaction of Charge

(Sec-83) Power of Registrar to record satisfaction of charge.

If the Registrar is satisfied (on the basis of evidence produced before him) that in relation to a registered charge

(a) the debt has been repaid in full or

(b) the property charged has been released from charge or

(c) the property charged has ~~been~~ ceased to be the property of the company.



~~then the~~

then the ROC may record the satisfaction of charge in the register of charges maintained by him.



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



ROC shall inform the affected parties within 30 days of making the entry in Register of charges



ROC shall issue a certificate of registration of satisfaction of charge.

Sec-84 Intimation of appointment of receiver or Manager :

If any person obtains an order from the Court to appoint a person as a receiver or manager of any property of the Co. which is subject to charge

If any person ~~by~~ by virtue of any power contained in ~~the~~ any instrument, appoints (or) a person as a receiver or manager of any property of the Co. which is subject to charge.

Such person (who appoints) shall, within 30 days give a notice to the Co. and the Registrar along with a copy of such order or such instrument, and the Registrar will register the same.

If the person appointed as receiver or manager ceases to hold his office

→ he (receiver or manager) shall give a notice of such fact to the Co. and the Registrar and ROC shall register the same.

Sec-87 Rectification by CG in Register of charges :

where there is default by the company in the following cases :

(a) there is an omission to give intimation of payment (or) Satisfaction of charge to the ROC within the time specified ~~30 days~~ (300 days) (or)

(b) there is some omission ~~to give in~~ or misstatement of any particulars in any filing previously made to the ROC with respect to —

- (i) Registration of charge
- (ii) Modification "
- (iii) Satisfaction "



And an application is made to CG by

- Company or
- any other interested person



CG is satisfied that omission to give intimation of payment or satisfaction of charge or omission or misstatement of any particulars in any filing previously made to

ROC was

- (i) Accidental or
- (ii) due to inadvertence or
- (iii) due to some other sufficient cause or
- (iv) not of a nature which may prejudice the position of creditors or shareholders of the co.



Then CG is empowered to make an order that

- (i) the time for giving intimation of payment or satisfaction of a charge shall be extended
- (ii) the omission or misstatement of any particulars in any filing previously made to the ROC, with respect to registration, modification or satisfaction of a charge, shall be rectified



While passing such order CG may impose such terms and conditions as it may deem just and expedient.

(Sec- 86) Punishment For Contravention

If a company contravenes any provision of the Chapter - Registration of charges then

the company $\longrightarrow$ penalty :- ₹ 500000

Every officer who $\longrightarrow$ Penalty :- ₹ 50000
is in default

If any person wilfully furnishes any false or incorrect information or knowingly

suppresses any material information,

required to be registered in accordance

with the provisions of sec 77 will be liable for action

under sec 447

Crystallisation of a Floating Charge:

Meaning $\longrightarrow$ ~~the~~ Crystallisation means that the right of the company to deal in the assets, which are subject to floating charge, comes to an end.

Cases where crystallisation takes place:

(a) where the co. is ordered to wound up

(b) where the co. ceases to carry on business

(c) where a receiver or manager is appointed

(d) where the company makes any default in payment of interest or repayment of principal to the charge holder in accordance with the terms of the charge and the charge holder brings an action to enforce his security