

Registration of charge - chp-6

Page No. _____

Date _____

Sec 2(6) charge means

- an interest or lien
- created on the property or asset of a co.
- or on any of its undertakings
- as security (for repayment of loan)
- and includes mortgage.

fixed charge:-

fixed charge is a charge on a specific, identifiable asset like land or building the co. cannot sell or dispose that asset without lender's consent. it is usually created by ~~mortgage~~ mortgage and is vacated only after full repayment of the loan.

floating charge

floating charge is a charge on changing assets like stock, raw materials, debtors, co can freely use and sell these assets in the ordinary course of business. it becomes fixed when crystallised.

Crystallisation of a floating charge

Crystallisation is the process by which a floating charge becomes a fixed charge on the assets available on the date of default, cessation of business, liquidation or enforcement by the lender.

77(1) Duty to Co.

- Every Co. Creating a charge On its property or assets (tangible or intangible) or any of its undertakings Situated in India or old India.
- must register the charge with the Registrar. within 30 days of its creation.

Extension of Time

a. Charge created before 2/11/18

- if not Reg. within 30 days $\rightarrow$ Roc may allow Reg within 300 days
- If still not reg. $\rightarrow$ Can register ~~later~~ within 6m from 2/11/18 with additional fees.

b. After 2/11/18

- If not Reg within 30 days $\rightarrow$ Roc may allow registration within next 30 days (i.e 60 days) with additional fees.
- If still not Reg - Roc may allow ~~not~~ further 60 days (i.e total 120 days) with ad valorem fees.

77(3) ~~Effect~~ Effect of non Reg

- If charge is not Registered. charge becomes void against the liquidator and other creditors.
- lender becomes unsecured creditor
- But debt remains valid - only security is lost.

78

Application for Reg of change (by charge holder)

If a Co. fails to register a charge within 30 days under sect 7, the charge holder may

apply to the ROC for registration.

The ROC sends a notice to the Co. and ~~to~~ if no objection is received within 14 days will

register the charge.

If the Co registers it itself or shows

sufficient cause against registration the ROC will not allow the charge holder's application.

Any fees paid by the charge holder can be recovered from the Co.

79

Sec 79 says that,

a. When a Co. acquires property already subject to a charge or

b. When any registered charge is modified, the Co must register that charge or modification with the ROC in the same manner as Sec 77.

80

(Constructive notice (deemed knowledge))

any person acquiring property on which a charge is registered is deemed to have notice of that charge from the date of registration. This is called constructive notice.

87

Co. to Report Satisfaction of Charge

12. When a reg. charge is fully paid the co. must

file form CH-5 with the ROC within 30 days (extendable up to 90 days) with additional fees.

11. Notice to charge holder.

b. ROC sends notice to the charge holder 14 days. If no objection, ROC records

satisfaction and issues CH-5. If CH-5 is signed by the charge holder no notice is required.

Document preserved for 8 years.

13. ROC notice entered & Satisfaction & Release

ROC Power

a. The co. does not file satisfaction the ROC may record satisfaction of a charge on receiving evidence that the debt is fully or partly paid or that the charged property is released.

properly & certificate

ROC must inform affected parties within 30 days and have a satisfaction

certificate CH-5

8.7 Rectification by Cn in Register of Charge (or extension of Time Limit)

The Cn to rectify any Omission or mistake in filing relating to Creation, modification, or Satisfaction of charges, if the error was accidental or due to Sufficient Cause, and if Such rectification does not prejudice Creditors or Shareholders. App is made in form CHN-8