

6

CHAPTER

Registration of Charges

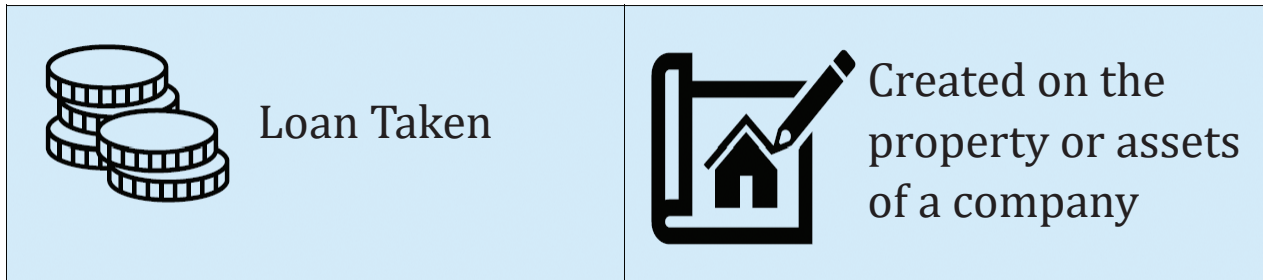
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■ INTRODUCTION

Chapter VI

Consists of sections 77 to 87 as well as the Companies (Registration of Charges) Rules, 2014.

Section 2(16) - CHARGE



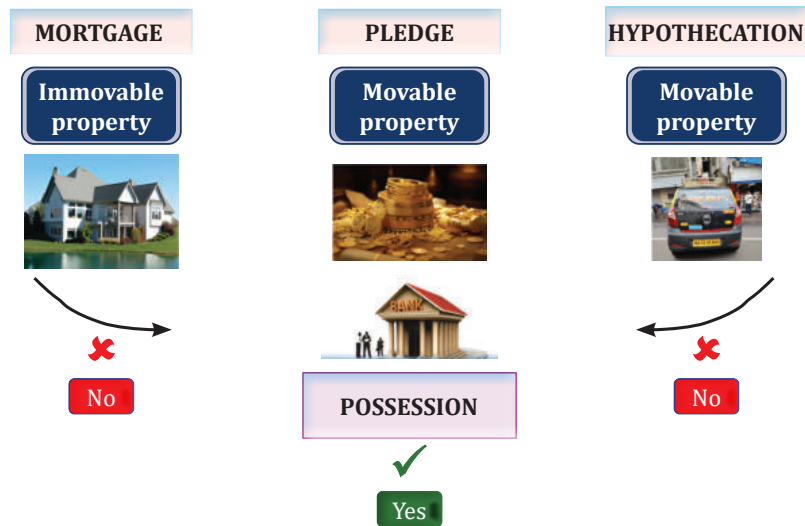
- A “charge” is an interest or lien created
- on the **property or assets** of a company or
- any of its **undertakings or both**
- as **security** and **includes a mortgage**.
- Whenever a company borrows money by way of loans, including term loans or working capital loans, from financial institutions, banks, or any other person
- by offering its property or assets as security or any of its undertakings,
- Then 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.

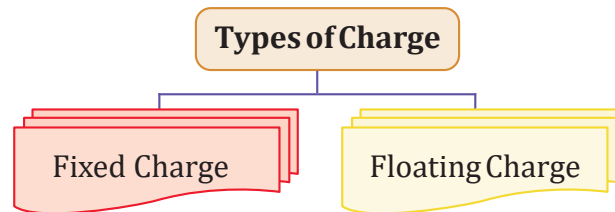
MULTIPLE CHOICE QUESTIONS (MCQ)

1. 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:
(a) Debt (b) **Charge**
(c) Liability (d) Hypothecation
2. Which of the following definition of ‘Charge’ is correct as per Section 2(16) of the Companies Act, 2013?
(a) ‘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 but does not include a mortgage.
(b) ‘Charge’ means mortgage or lien created on the property or assets of a company or any of its undertakings or both as security and but does not include interest.
(c) **‘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 a mortgage.**
(d) None of the above.

Difference between Mortgage, Pledge and Hypothecation



TYPE OF CHARGES



A charge may be either fixed or floating.

Fixed or Specific Charge	Floating Charge
Created on some specific or identifiable property of the company	Created on a class of assets which are fluctuating in nature means it is a charge that floats above ever-changing assets.
Example: Fixed Assets, which are permanent in nature, like PM, LB, etc.	Example: Current Assets – Stock in trade, Raw material, debtors, bill receivable, etc.
Assets are identified at the time of creation and thus can't be changed once created.	Asset can be changed as it is in a class of asset (PRESENT & FUTURE) means assets are not definite.
The borrowing company is not permitted to sell such assets during the period of charge, though it may use them.	The borrowing company is permitted to use them for trading or producing final goods for sale.
Assets under fixed charge can be sold only with the permission or consent of the charge-holder.	Consent of the charge holder is not required, as they keep on changing.
Crystallisation is not possible	Crystallisation is possible means it can be converted into a fixed charge
A fixed charge is usually created by way of a mortgage or by deposit of title deeds.	Thus, unlike a fixed charge, the assets offered as security by the company can be dealt with by it in the ordinary course of business. The buyer of the asset will get it free of charge.

Example: Pearl Electronics Limited raised a term loan of Rs. 10 lakh from Everest Commercial Bank Limited, against the security of its office building. In this case, the company shall create a charge on specific asset i.e. its office building and such charge shall be a fixed charge. The company can sell this particular office building either by repaying the borrowed amount in full or after seeking permission from the charge-holder i.e. lender bank.

Example: A retail showroom in Lajpat Nagar, New Delhi, contains numerous articles like clothes, apparel, footwear, kitchen items, cosmetics, etc., kept for sale. The owner of the showroom might have borrowed against the security of all these goods; but he may still sell or otherwise deal with them in the ordinary course of business. The buyer i.e. customer will get the items purchased by him free of charge.

Example: Smart Shoes Limited manufactures leather goods. The raw material in the form of leather, which is subject matter of floating charge, may be used by the company to manufacture leather goods without seeking any permission from the lender.

■ CRYSTALLIZATION OF A FLOATING CHARGE

- ❑ A **floating charge** is a security interest over a pool of changing assets like raw materials or stock-in-trade. It remains *dormant* until it *crystallizes*.
- ❑ **Crystallization** means that the floating charge becomes a **fixed charge** on the assets of the company.
- ❑ This usually happens in the following situations:
 - **Breach of terms and conditions** of the floating charge.
 - The **company goes into liquidation**.
 - The **company ceases to carry on business**.
 - The **creditor enforces the security** under the floating charge.
- ❑ Once crystallized, the security becomes **fixed on the available assets as on that date**. These assets are then available for realization by the lender.
- ❑ The proceeds from the realization of these assets are used to **repay the borrowed money**.

Example: Prism Limited had taken a loan from ABC Bank, on the security of its stock. Now, in the event of Prism Limited failing to repay the security interest or entering liquidation, the floating charge will change to a fixed charge. Once a floating charge gets converted to a fixed charge, the stock can neither be sold nor used by the company in its business operations.

MULTIPLE CHOICE QUESTIONS (MCQ)

3. A charge made to cover definite and ascertained assets of permanent nature is called as:
- (a) Floating charge
 - (b) **Specific charge**
 - (c) Registered charge
 - (d) Modified charge
4. Which of the following statement is/are correct?
- (a) In case of fixed charge, the company retains possession of the assets charged and it can sell/dispose the asset charged without the consent of the charge holder.
 - (b) In case of floating charge, the company retains possession of the assets charged but it cannot sell/dispose the asset charged without the consent of the charge holder.

- (c) A fixed charge becomes floating when the money borrowed against the asset is repaid in full.

(d) None of the above.

5. A floating charge becomes fixed when:

- (a) The borrowing company goes in liquidation
- (b) The borrowing company ceases to be in business
- (c) **Both (a) and (b)**
- (d) None of the above.

6. Which of the following statement is/are

not correct with respect of Registration of charges under Companies Act, 2013?

(a) **It shall be the duty of every company creating a charge only if it is within India.**

(b) It shall be the duty of every company creating a charge on its assets irrespective of whether they are tangible or intangible.

(c) It shall be the duty of every company creating a charge on its assets whether in India or outside India.

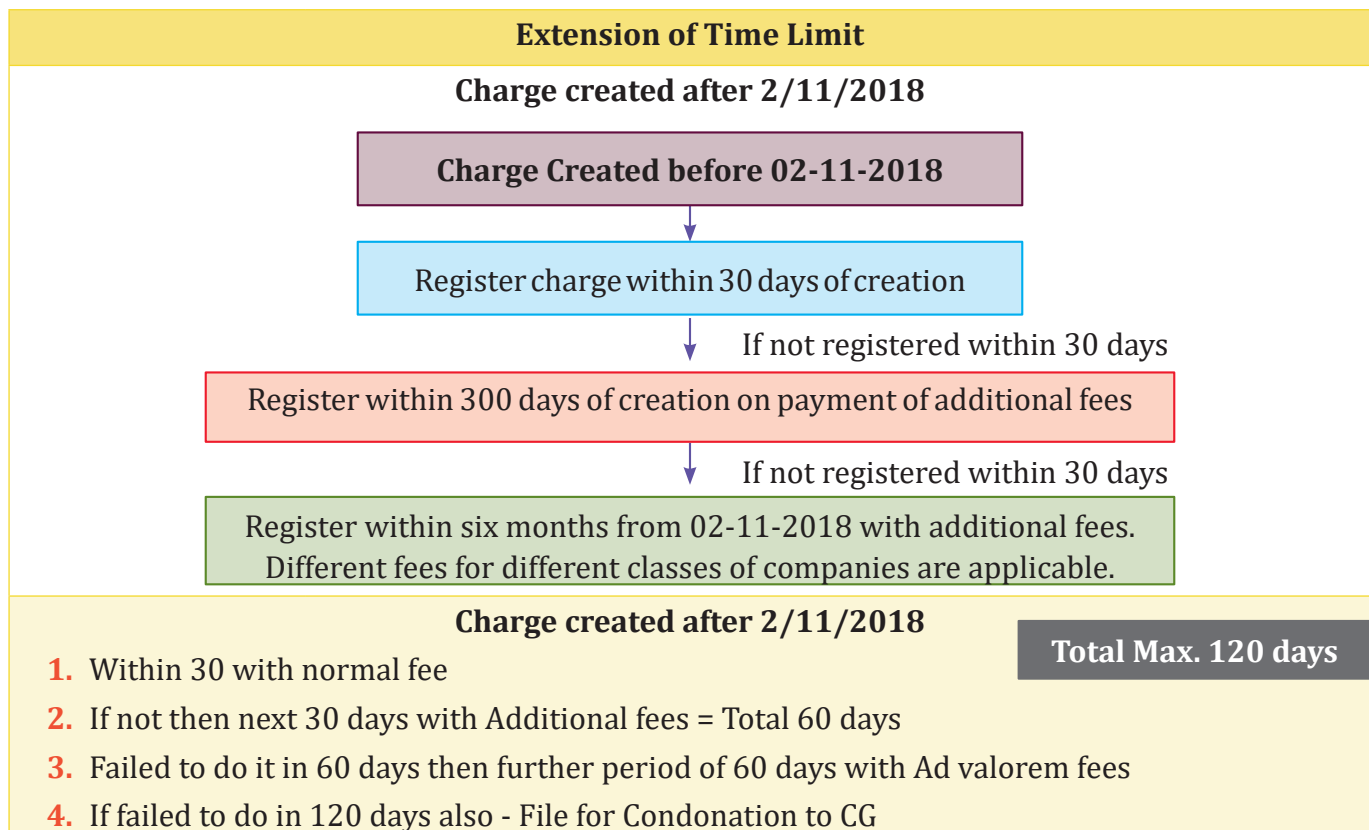
(d) All of the above.

SECTION 77 DUTY TO REGISTER CHARGES, ETC.

Duty to Register Charge Section 77(1)	<input type="checkbox"/> Company creating a charge <input type="checkbox"/> within or outside India <input type="checkbox"/> on its property, assets, or undertakings <input type="checkbox"/> tangible or intangible <input type="checkbox"/> must register the particulars of the charge <input type="checkbox"/> with the Registrar of Companies (ROC).
Location of Assets	Assets charged may be located within or outside India.
Nature of Assets	<input type="checkbox"/> Tangible Assets: Land, building, machinery, etc. <input type="checkbox"/> Financial Assets: Shares, debentures, etc. <input type="checkbox"/> Intangible Assets: Patents, trademarks, copyrights.
Deposit of Title Deeds	<p>Note: The word 'otherwise' when used in a section would have the effect of widening the scope and operation of the provision.</p> <p>Charges created by deposit of title deeds (Common with banks) are also registrable.</p>
Who Can Register	<input type="checkbox"/> Company (Borrower) creating a charge (Primary duty) <input type="checkbox"/> Charge-holder (Lender) under Section 78 if the company fails <input type="checkbox"/> Purchaser of property with an existing charge under Section 79
Forms for Registration	<input type="checkbox"/> CHG1 – For charges (Other than debentures) <input type="checkbox"/> CHG9 – For charges on debentures <input type="checkbox"/> Together with a copy of the instrument, if any, duly signed by the company and the charge holder
Time Limit for Registration	<input type="checkbox"/> 30 days from creation of charge along with the prescribed fee.

Certificate of Registration Section 77(2)	<input type="checkbox"/> CHG2 <input type="checkbox"/> Certificate of Registration <input type="checkbox"/> On registration of charge, the ROC will issue a certificate of registration <input type="checkbox"/> to the company and charge holder. <input type="checkbox"/> It's a conclusive evidence once certificate is obtained
Verification of Instrument Rule 31	<input type="checkbox"/> A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows: <input type="checkbox"/> Where the instrument or deed relates solely to the Property outside India: Verified under the hand of - <input type="checkbox"/> Seal of the company or <input type="checkbox"/> Director/CS/Authorised officer of the charge-holder or <input type="checkbox"/> some person other than the company who is interested in the mortgage or charge
	<input type="checkbox"/> Where the instrument or deed relates to the property in India (whether wholly or partly). Verified under the hand of - <input type="checkbox"/> Director/CS/Authorised officer of the charge-holder

Note: Thus, in case the instrument or deed relates solely to a property situated outside India, the copy may also be additionally verified by a certificate issued under the hand of some person other than the company who is interested in the mortgage or charge. This type of verification is not possible when the instrument or deed relates to the property situated in India, whether wholly or partly.



Procedure for Extension	<input type="checkbox"/> Application in CHG-1/CHG-9 along with <input type="checkbox"/> a declaration by the Director/CS ensuring no adverse effect on intervening creditors. <input type="checkbox"/> ROC may allow if sufficient cause is shown.
Certificate of Registration	ROC issues Certificate of Registration/Modification, which is conclusive evidence of compliance with provisions.
Exemption (Section 77 does not apply)	<p>Certain charges created by banking companies in favour of the RBI (e.g., Under Section 17(4)(d) of the RBI Act, 1934) are exempt from these provisions.</p> <div style="text-align: center;"> <p>The diagram illustrates a transaction between a Banking Company and the Reserve Bank of India (RBI). On the left, a box labeled 'Banking Company' is accompanied by an icon of a bank building. On the right, a box labeled 'RBI' is accompanied by the RBI logo. A blue arrow points from the Banking Company to the RBI, labeled 'Taken loan'. A return blue arrow points from the RBI back to the Banking Company, labeled 'Created charge in favour of RBI'.</p> </div>
<p>Note - Ad Valorem Fee is a fee which is based on the value of the charge (loan amount secured by the charge).</p>	

MULTIPLE CHOICE QUESTIONS (MCQ)

7. Eztech Machines Limited owns a plot of land, which was mortgaged to Urbane Commercial Bank Limited for raising a 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 the 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? **(RTP NOV 2019)**
- (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.
8. 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 16th 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.

(RTP NOV 2019)

- (a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th 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 17th 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 2nd May, 2019.
 - (d) The company cannot now get the charge register as the time prescribed by Law has expired.
9. Cyplish Games and Toys Limited was sanctioned a term loan of ₹60.00 lacs by Zawnn Industrial Bank Limited on 21st 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. **(RTP NOV 2019)**
- (a) Special Fees.
 - (b) Ad-valorem Fees.**
 - (c) A Late Registration Fees.
 - (d) Ad-valorem Duty.

10. A company took loan from bank against security of its book debts. Particulars of the charge would be filed with Registrar of companies in:

- (a) Form No.CHG-1**
- (b) Form No.CHG-9
- (c) Form No.CHG-5
- (d) Form No.CHG-10

11. A company creating a charge is required to register the charge with the Registrar by paying normal fee within:

- (a) 30 days of intimation by the lender
- (b) 30 days of execution of instrument creating charge**
- (c) 30 days from the Board Meeting where the lending is approved
- (d) 30 days from the date of Annual General Meeting

12. Rana Machines Ltd. took a term loan of 150 Lakh from PBN Bank Ltd. by mortgaging its factory land. The mortgage was registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). The Director of Rana Machines Ltd. is of the opinion that there is no further registration required with Registrar of Companies. What is your advice to the company?

- (a) When the mortgage is registered with Central Registry, no registration is required with Registrar of Companies.
- (b) Registration of charge with Registrar of Companies is required irrespective of the fact that mortgage is registered with the Central Registry.**
- (c) Registration of charge with Registrar of Companies is required only if the value of Bank loan exceeds 100 Lakh.
- (d) Registration of charge with Registrar of Companies is required only if directed so by Central Government.

13. X Ltd. took a loan on its Plant & Machinery and created a charge in favour of the Bank. The Plant & Machinery was sold to Y Ltd. in a slump sale whereby all the assets and

liabilities get transferred to Y Ltd. Which of the following statement is/are correct with respect to Registration of charges?

- (a) X Ltd. is required to file intimation of sale of Plant & Machinery.
- (b) Y Ltd. is required to file Registration of charge in respect of Plant & Machinery T**
- (c) X Ltd. is required to file Modification of charge in respect of Plant & Machinery
- (d) All of the above

14. Reliant Hydra Limited was sanctioned a term loan of ns Lakh by Yesterday Bank Limited on 13th January, 2020 on mortgage of title deeds of its Corporate Office Building situated in Gurgaon (Haryana) and an instrument of charge was executed. Reliant company omitted to get the charge registered with the Registrar of companies. This fact came to light during the annual audit of the company in April, 2020 when the Chief Manager of Yesterday Bank issued a warning to recall the loan unless the company takes steps

for registration of charge. In addition to the normal fee and additional fee for filing of Registration of Charge, the company would be required to pay:

- (a) Special Registration Fee
- (b) Ad valorem Fee**
- (c) Late Registration Fee
- (d) Ad valorem Cess

15. A charge was created by PQR Ltd. on its office premises to secure a term loan of no Lakh availed from IndusInd Bank Ltd. through an instrument of charge executed by both the parties on 8th January, 2020. Soon after the Company Secretary of PQR Ltd. died and the charge could not be registered. Advise the company regarding the latest date within which it must register the charge with the Registrar to avoid ad valorem fee.

- (a) 7th February, 2020
- (b) 31st January, 2020
- (c) 8th March, 2020**
- (d) 7th May, 2020

■ SECTION 77 (3) & (4) – CONSEQUENCES OF NON-REGISTRATION OF CHARGE

Non-Recognition of Charge	<ul style="list-style-type: none"> <input type="checkbox"/> If not registered, the charge is void against (If the company goes into winding up) <input type="checkbox"/> Liquidator (Under Companies Act, 2013 or IBC, 2016) <input type="checkbox"/> Other creditors
Status of Creditor	<input type="checkbox"/> The creditor becomes an unsecured creditor in case of liquidation/winding up.
Validity of Debt	<ul style="list-style-type: none"> <input type="checkbox"/> The debt remains valid; it can be enforced through courts by filing a suit, but security is lost. <input type="checkbox"/> Means Contract of charge becomes void, but Contract of loan remains valid – means payable immediately
Offence under Companies Act	<input type="checkbox"/> Non-registration does not absolve the company from penalties/offences under Chapter VI of the Companies Act, 2013.
Loss of Priority	<ul style="list-style-type: none"> <input type="checkbox"/> Priority is lost to other charges registered before the date of actual registration. <input type="checkbox"/> Even registration within extended time won't protect against prior rights acquired.

Example: Bank A advanced Rs. one crore to Vasudha Medicos Limited against the security of the company's land and building at Mulund. The charge was created by the deposit of title deeds on 1st June 2024. The company did not register the charge within 30 days. Subsequently, the charge was registered on 12th August 2024 after payment of ad valorem fees and providing sufficient cause.

In the meantime, Bank B advanced Rs. two crore to Vasudha Medicos Limited against the security of the same property on 18th June 2024. This charge was duly registered on 26th June 2024.

Subsequently, Vasudha Medicos Limited goes into liquidation and the property realises only Rs. two crore.

In such a situation, Bank B will get repayment of its loan in full, but Bank A will not realise anything because the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B, which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 16.** Where the charge is not registered by the borrower company, it can be filed for registration by the charge holder within:
- (a) 30 days of creation of charge
 - (b) 60 days of creation of charge
 - (c) 90 days of creation of charge
 - (d) Time originally allowed to company creating the charge**
- 17.** Where registration is affected on the application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of:
- (a) Normal fee paid by him to the Registrar
 - (b) Normal fee plus any additional fees paid by him to the Registrar**
 - (c) Normal fee paid by him to the Registrar plus incidental charges
 - (d) Normal fee plus any additional fees paid by him to the Registrar plus incidental charges
- 18.** A charge was created on assets of Prakash Limited. Such charge is registered on 12th January, 2020. As per the provisions of Companies Act, 2013, any person acquiring such assets shall be deemed to have notice of the charge from:
- (a) 12th January, 2020**
 - (b) 13th January, 2020
 - (c) 12th February, 2020
 - (d) 12th March, 2020
- 19.** The maximum time allowed by the Registrar to the company for filing intimation of satisfaction of charge is:
- (a) 30 days from the date of creation of charge
 - (b) 30 days from the date of satisfaction of charge
 - (c) 300 days from the date of satisfaction of charge**
 - (d) 330 days from the date of satisfaction of charge
- 20.** Which of the following statement is not correct with respect to provisions of Section 77 of Companies Act, 2013:
- (a) Any charge which is not registered shall be void as against the liquidator.
 - (b) Any charge which is not registered shall be void as against any other creditor of the company.
 - (c) Any charge which is not registered shall be void as against the company.**
 - (d) None of the above.
- 21.** The company shall be liable to punishment for contravening any provision of Chapter VI of the Companies Act, 2013 shall be:

- (a) A fine which shall not be less than 1 Lakh but which may extend to 10 Lakh.
- (b) A fine which shall not be less than 25,000 but which may extend to 1 Lakh.
- (c) Imprisonment for a term which may extend to 6 months.
- (d) All of above

■ SECTION 80 – DEEMED NOTICE OF CHARGE

Public Document	<ul style="list-style-type: none"> <input type="checkbox"/> All registered charges are public documents accessible through the MCA Portal. <input type="checkbox"/> Section 80: Any person acquiring property with a registered charge is deemed to have notice from the date of registration.
Purpose of Public Access	Enables potential lenders or buyers to check if the property is already charged before lending or buying.
Constructive Notice	<ul style="list-style-type: none"> <input type="checkbox"/> Means ‘deemed knowledge’ of the charge. <input type="checkbox"/> Even if a person hasn’t checked the records, they are deemed to have notice of the charge by law (legal fiction).
Relevant Certificates	<ul style="list-style-type: none"> <input type="checkbox"/> CHG-2: For fresh registration of charge. <input type="checkbox"/> CHG-3: For modification of charge.
Responsibility of Third Party	<input type="checkbox"/> It’s the duty of every person proposing to deal with a company to check the ROC records for charges before entering the transaction.
Effect of Ignorance	<input type="checkbox"/> If a person fails to check and suffers a loss due to the charge, he cannot claim the loss from the company.
Prevention of Fraud	<input type="checkbox"/> Compulsory registration helps prevent a company from fraudulently offering the same asset as security to multiple lenders.

Example: Vishnu Marketing Limited obtained a term loan of rupees fifty lakh from Alpha Commercial Bank Limited by creating a charge on one of its office buildings and got the charge duly registered. Later on, if the building is sold to another person, say Neeraj, then he is deemed to have notice of such charge. In other words, it shall be presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan. Therefore, Neeraj cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

Consequence of Non-Registration	<ul style="list-style-type: none"> <input type="checkbox"/> The charge-holder loses priority. <input type="checkbox"/> Any subsequent registration of a charge i.e <input type="checkbox"/> if it is registered within the extended period instead of original thirty days <input type="checkbox"/> shall not prejudice any right acquired in respect of any property before the charge is actually registered
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Example: Bank A advanced one crore to Vasudha Medicos Limited against the security of the company’s land and building at Mulund. The charge was created by deposit of title deeds on 1st June 2022. The company did not register the charge within 30 days.

Subsequently, the charge was registered on 12th August 2022 after payment of ad valorem fees and providing sufficient cause.

In the meantime, Bank B advanced ₹two crore to Vasudha Medicos Limited against the security of the same property on 18th June 2022. This charge was duly registered on 26th June 2022.

Subsequently, Vasudha Medicos Limited goes into liquidation and the property realises only ₹two crore.

In such a situation, Bank B will get repayment of its loan in full, but Bank A will not realise anything because subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later.

MULTIPLE CHOICE QUESTIONS (MCQ)

22. Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:

- (a) Thirty days of such charge (b) Date of application for charge
(c) Date of acquiring the property (d) **Date of such registration**

■ SECTION 78 APPLICATION FOR REGISTRATION OF CHARGE BY CHARGE-HOLDER

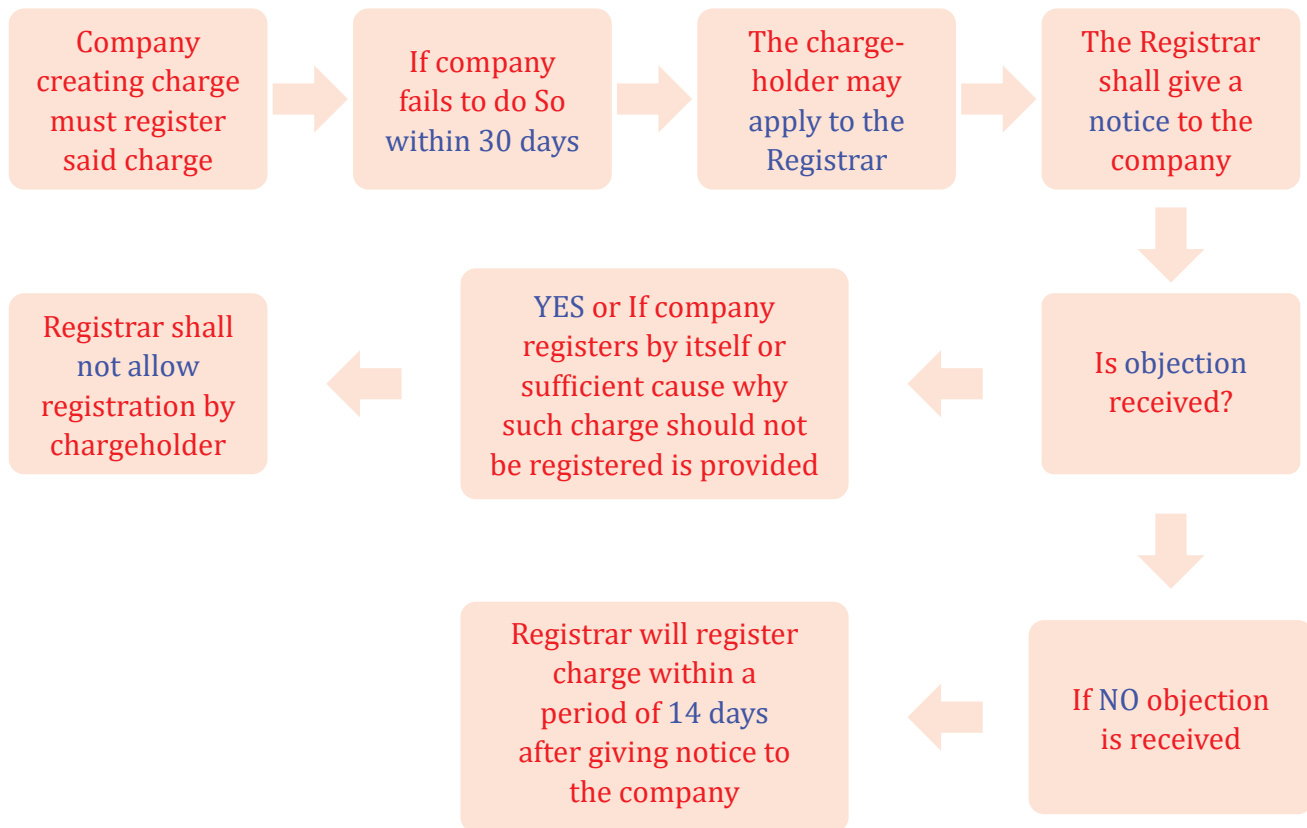
It can be seen from the above discussion that non-registration or delayed registration would seriously affect the interest of the charge-holder.

Therefore, the law provides the charge-holder an opportunity in this respect.

This section empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

- Where a **company fails to register** a charge within 30 days
- Then CH may make an application to ROC and
- ROC may after intimating (notice) the Company
- **ROC within 14 days allow registration** of charge on payment of such + fees
- If company itself registers the charge or shows sufficient cause that the charge should not be registered then ROC shall not register the same.
- CH may recover the fees from the company.

SECTION 78 - FLOW - REGISTRATION BY CHARGE HOLDER



MULTIPLE CHOICE QUESTIONS (MCQ)

23. 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 chargeholder 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. **(RTP NOV 2019)**
- (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.

■ SECTION 79 (a) & (b) - REGISTRATION OF CHARGE IN SPECIFIC MATTERS

Acquisition of Property Subject to Charge and Modification of Charge

<p>TWO Cases covered in this section where Section 77 shall apply -</p> <p>When a company -</p> <p>A. Acquiring a property which is already subject to charge.</p> <p>B. Any modification in terms & conditions of a charge registered.</p>		
A	<p>Company acquiring any Property subject to Charge [Section 79 (a)]</p>	<ul style="list-style-type: none"> <input type="checkbox"/> In case of a property where charge is already registered and <input type="checkbox"/> if it is sold with the permission of the holder of charge, <input type="checkbox"/> it shall be the duty of the company acquiring it <input type="checkbox"/> to get the charge registered in accordance with Section 77. <input type="checkbox"/> 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	<p>Modification of Charge when there is Change in Terms and Conditions, etc. [Section 79 (b)]</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Any modification in charge (i.e. Change in terms and conditions or change in extent or operation of any charge, etc.) <input type="checkbox"/> to be registered by the company in CHG-1 & CHG-9 under section 77 (Time limits are also same) <p>'Modification' includes -</p> <ul style="list-style-type: none"> <input type="checkbox"/> variation in any of the terms and conditions of the agreement including change in rate of interest which may be by mutual agreement or by operation of law.
		<ul style="list-style-type: none"> <input type="checkbox"/> Variation in extent or operation of any charge is also a kind of modification. <input type="checkbox"/> Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
<p>Some of the cases of modification -</p> <ul style="list-style-type: none"> <input type="checkbox"/> Variation in T/C of the agreement <input type="checkbox"/> Interest rate <input type="checkbox"/> Modification because of pari passu charge <input type="checkbox"/> In pursuance of an agreement for increase/decrease limits <input type="checkbox"/> Change in repayment schedule <input type="checkbox"/> Partial release of charge 		

<p>Issue of Certificate of Modification</p> <p>Rule 6</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Where the particulars of modification of charge is registered under section 79 <input type="checkbox"/> the Registrar shall issue a certificate of modification of charge in - <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>CHG 3 Certification of Modification</p> </div> <input type="checkbox"/> The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the Rules made thereunder as to registration of modification of charge have been complied with.
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MULTIPLE CHOICE QUESTIONS (MCQ)

24. ABC Ltd. took a term loan from XYZ Finance Company for 10 Lakh @ 15% interest per annum against security of stock in trade of the company. The charge was duly registered by ABC Ltd. in due course. Due to ease of credit in economy, XYZ Finance company decided to lower the interest rate to 12% per annum. It is the duty of ABC Ltd. to:
- (a) File for fresh Registration of charge
 - (b) File for Modification of charge**
 - (c) File for Intimation of payment of interest
 - (d) File for Rectification of charge

■ SECTION 82 – COMPANY TO REPORT SATISFACTION OF CHARGE

Satisfaction of Charge with Rule 8

<p>Duty to Intimate</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>CHG 4</p> </div>	<ul style="list-style-type: none"> <input type="checkbox"/> Company to inform ROC about full payment/satisfaction of charge <input type="checkbox"/> Time Limit - 30 days from date of payment/satisfaction.
<p>Extended Time (Proviso to Section 82)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Up to 300 days (With additional fees & application by company or charge-holder).

Note- In case of a specified IFSC public company and Private company the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed (Vide Notification No. GSR 8 (E), dated 04-01-2017).

<p>Notice by ROC to Charge-holder</p>	<ul style="list-style-type: none"> <input type="checkbox"/> ROC will send notice to charge-holder to confirm or oppose satisfaction with a show cause notice
<p>Time to Respond by Charge-holder</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Maximum 14 days.
<p>If No Objection is raised by CH</p>	<ul style="list-style-type: none"> <input type="checkbox"/> If charge-holder does not reply within 14 days then ROC can enter Memorandum of Satisfaction & inform the company.

If Objection Raised is raised by CH	<input type="checkbox"/> ROC records a note of objection in Register & informs the company.
No Notice Required When	<input type="checkbox"/> If intimation is in prescribed form & signed by charge-holder.
<p>ROC on recording of such satisfaction of charge in FULL - Issue Certificate of Satisfaction under CHG 5</p>	
Preservation of Records	<input type="checkbox"/> Instrument creating/modifying charge to be preserved for 8 years from date of satisfaction.

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.

MULTIPLE CHOICE QUESTIONS (MCQ)

- 25.** 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:
(1 Mark) (MTP NOV 2019)
- (a) 14 (b) 21
(c) 30 (d) 300
- 26.** Particulars of the charge to be filed with the Registrar of Companies should be in prescribed form and duly signed by authorised signatory of:
- (a) the Company
(b) the Charge holder
(c) Both (a) and (b)
(d) None of the above

■ SECTION 83 POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY

Empowered Authority - Registrar (ROC)	
When Applicable ?	<input type="checkbox"/> Property subject to charge is sold/released <input type="checkbox"/> No intimation received from company/charge-holder.
Registrar's Power	<input type="checkbox"/> Can enter memorandum of satisfaction in the Register of Charges on being satisfied.
What can be recorded ?	<input type="checkbox"/> Full satisfaction of debt <input type="checkbox"/> Partial satisfaction <input type="checkbox"/> Release of the charged property <input type="checkbox"/> Charged property cease to be property of the company
Independent Power (SUO MOTO)	<input type="checkbox"/> ROC can act even without intimation from the company or charge-holder.

Intimation to Parties	<input type="checkbox"/> Registrar must inform affected parties within 30 days of making the entry.
ROC on recording of such satisfaction of charge in FULL - Issue Certificate of Satisfaction under CHG 5	

Maintenance Requirement BY A COMPANY - SECTION 85	
Every company must maintain a Register of Charges at its registered office.	
Contents of Register <div style="background-color: #f08080; padding: 5px; display: inline-block;">CHG 7</div>	<input type="checkbox"/> All charges & floating charges affecting property, assets, or undertakings of the company. <input type="checkbox"/> All properties acquired are subject to a charge <input type="checkbox"/> Modification and satisfaction of charge in prescribed form and manner
Copy of Instrument	<input type="checkbox"/> A copy of the charge instrument must also be kept at the registered office with the Register.
Timing of Entries	<input type="checkbox"/> Entries to be made forthwith after creation, modification, or satisfaction of charge.
Authentication of Entries	<input type="checkbox"/> By a Director, Company Secretary, or an authorized person
Inspection Rights	<input type="checkbox"/> Free for members or creditors in business hours <input type="checkbox"/> Fee applicable for any other persons (Subject to reasonable restrictions by Articles).
Preservation Requirement	<input type="checkbox"/> Register → Permanently <input type="checkbox"/> Instrument → 8 years from date of satisfaction of charge.

■ SECTION 81 – REGISTER OF CHARGES TO BE KEPT BY THE REGISTRAR

Maintenance of Register	<input type="checkbox"/> Registrar of Companies (ROC) shall maintain <input type="checkbox"/> a Register of Charges for every company in prescribed form & manner.
Online Availability Rule 7 (1)	The MCA Portal (www.mca.gov.in/MCA21) deemed to be the Register of Charges as per
Inspection Rights Section 81(2) & Rule 7(2)	Open to inspection by any person on payment of prescribed fee

NOTE: Pari passu charge-holder is entitled to proportionate share in the property. If ceded, becomes second charge-holder and is entitled after first charge-holder is fully satisfied.

MULTIPLE CHOICE QUESTIONS (MCQ)

27. The Registrar shall keep a register of charges which shall be open to inspection by on payment of fee: **(1 Mark) (MTP Oct. 23)**
(a) the company (b) the charge holder
(c) holder **(d) any person**
28. Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company____.
(MTP MAY 2019)
(a) for minimum 8 years from the date of creation of charge
(b) For minimum 10 years from the date of creation of charge
(c) For minimum 8 years from the date of satisfaction of charge
(d) permanently, without any time limit
29. Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:
(RTP Mar 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
30. The entries in the Register of Charges maintained by a company shall be authenticated by:
(a) A Director of the company
(b) Company Secretary of the company
(c) Any person authorised by the Board for the purpose
(d) Any one of above
31. The register of charges and the instrument of charges maintained by the company shall be open for inspection during:
(a) Working hours of the company
(b) Business hours of the company
(c) At all times
(d) 9AM to 5PM
32. Which of the following statement is/ are correct with respect to provisions of Companies Act, 2013?
(a) The Register of Charges shall be open for inspection by any member or creditor on payment of such fees as may be prescribed.
(b) The Register of Charges shall be open for inspection by any other person (other than member or creditor) without any payment of fees.
(c) Both (a) and (b)
(d) None of the above
33. The Register of Charges maintained by the company is required to be preserved:
(a) For a period of 8 years
(b) Permanently
(c) For a period of 10 years
(d) For a period of 6 years
34. The instrument creating a charge or modification thereof is required to be preserved by the company:
(a) For a period of 8 years from the date of creation of charge by company
(b) For a period of 8 years from the date of modification of charge by company
(c) For a period of 8 years from the date of satisfaction of charge by company
(d) Permanently

■ SECTION 84 INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

When is notice required?

- If a person gets an order from a court to appoint a receiver or manager of property subject to a charge, or
- If a person appoints such receiver/manager under powers given in a charge document,
- They (receiver or manager) must give notice of this appointment to both:
 - The Company, and
 - The Registrar of Companies (ROC)
- Time Limit: Within 30 days of the appointment or order.

CHG 6

What will the Registrar do?

- Register the details of the receiver/manager in the Register of Charges (After payment of fees).

When the receiver/manager's appointment ends: Section 84(3) -

- The person must give notice of this to both the company and the ROC.
- ROC will update the Register accordingly.

■ SECTION 86 PUNISHMENT FOR CONTRAVENTION

Punishment for Contravention

1. Contravenes any provision of this chapter (77 to 85) then -

- Company – Fine 5 Lacs
- Every Officer – 50,000

2. If any person wilfully provides -

- False information or
- knowingly suppresses any material information →>
- Liable under section 447 (Punishment for fraud)

■ SECTION 87 WITH RULE 12 RECTIFICATION ORDER IN REGISTER OF CHARGES BY CG

Authority	Central Government
When Rectification Allowed	<ul style="list-style-type: none"> <input type="checkbox"/> Omission in giving intimation to Registrar about payment or satisfaction of charge within the specified time. <input type="checkbox"/> Omission or misstatement of particulars in any filing related to - <ul style="list-style-type: none"> <input type="radio"/> Creation/modification of charge <input type="radio"/> Memorandum of satisfaction <input type="radio"/> Other entries under Section 82 or 83.
Conditions for Rectification	<ul style="list-style-type: none"> <input type="checkbox"/> Default was accidental, <input type="checkbox"/> Due to inadvertent (Unintentional) or <input type="checkbox"/> Due to some other sufficient cause <input type="checkbox"/> It is not prejudicial to creditors or shareholders.

Who Can Apply CHG 8	<input type="checkbox"/> Company or any interested person in respective application form
Power by CG - Rule 12	A. Order rectification of the omission and misstatement in the filings and statement as per section 82 & 83 B. Extention of time for satisfaction of charge beyond 300 days from the date of payment or satisfaction.

Note: Vide Notification No. S.O. 4090 (E), dated 19-12-2016, powers of the Central Government with respect to Section 87 stand delegated to the Regional Directors.

■ SUMMARY OF ALL CHG FORMS

All CHG Forms covered under Registration of Charge

- CHG1-Other than DH
- CHG 9-Registration of charge for Debenture holder
- CHG 2-Certificate of Registration of Charge**
- CHG 3-Certificate of Modification of Charge**
- CHG 4-On **satisfaction** of charge - Co to intimate ROC in 30 days
- CHG 5-Certificate on satisfaction of charge**
- CHG 6-Appointment of R/M to ROC in 30 days
- CHG 7-Register to be maintained by Company
- CHG 8-Apply to CG for **Extension**
- CHG 10- Reasons for **Extension** to CG

