



Chapter VI

REGISTRATION OF CHARGES



Q	Section	Topic
1	2(16)	Basics
2	77	Registration of Charge
3	77	Verification of instrument creating charge
4	basics	Fixed and floating charge
5	basics	Crystallisation of charges
6	2(16).77	Registration of Charge
7	77,79	Charged property sold
8	80	Deemed notice of charge
9	82	Satisfaction of charge
10	83	Power of Roc to register satisfaction
11	83	Power of Roc to register satisfaction
12	85	Inspection of charges
13	86	Punishment for default
14	87	Condonation for delay
15	mix	mix

	<p>1.Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar? (MAY 2018)</p>
	<p>Charge: According to section 2(16) of the Companies Act, 2013 “charge” has been defined as 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.</p> <p>Why creating a charge is a necessity for companies? The answer to this lies in the setup of raising capital by the companies. Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets.</p> <p>Once charge is registered and filed, it becomes an information in public domain as to how much company has borrowed against its assets and from whom.</p> <p>Time limit for registration of charge with the registrar:</p> <p>(i)It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in form CHG-1 or in case of debentures – CHG-9, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.</p> <p>(ii)In cases registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation. In other words, a grace period of another 30 days is granted after the expiry of the original 30 days, on payment of additional fees as prescribed.</p> <p>If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees</p>



PRACTICAL QUESTION

<p>Question 2</p>	<p>Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.</p> <p>(a)What procedure should the company follow to get the charge registered?</p> <p>(b)Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?</p> <p>Advise with reference to the relevant provisions of the Companies Act, 2013. (RTP May 2022)</p>
<p>Law:</p>	<p>As per sec 77 of companies act,2013</p> <p>(i)It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge</p>

	<p>holder together with the instruments, if any, creating such charge in form CHG-1 or in case of debentures – CHG-9, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.</p> <p>(ii) In cases registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation. In other words, a grace period of another 30 days is granted after the expiry of the original 30 days, on payment of additional fees as prescribed.</p> <p>(iii) If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees</p>
Conclusion:	<p>(a) Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.</p> <p>(b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.</p> <p>If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.</p> <p>Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.</p>

	<p>3. How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified? (3 Marks) (MTP M 21)</p>
	<p>A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:</p> <p>(i) <i>in case property is situated outside India:</i> 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;</p> <p>(ii) <i>in case property is situated in India (whether wholly or partly):</i> 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.</p>

PRACTICAL QUESTION	
Question 4	<p>Adhar Ltd. and Mittal Ltd. both took loans from different banks and provided security against them. Adhar Ltd. mortgaged its factory building and machinery, while Mittal Ltd. pledged its stock-in-trade, raw materials, and accounts receivable. Specify the type of charges created in both cases. Justify your answer in light with the relevant provisions under the Companies Act, 2013. Also, analyze what would happen if both companies fail to repay their loans. (MTP May 25)</p>
Law:	<p>A charge may be either fixed or floating.</p> <p>Fixed Charge</p> <p>A 'Fixed Charge' is a charge on specific assets of the borrowing company. These assets are of permanent nature like land and building, machinery, office premises, etc. Further, these assets are identified at the time of creation of charge. A fixed charge is usually created by way of mortgage or by deposit of title deeds. When a charge is created on such 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. Assets under fixed charge can be sold only with the permission or consent of the charge-holder.</p> <p>Floating Charge</p> <p>A 'Floating Charge' is created on assets or a class of assets which are of fluctuating or changing in nature- like raw material, stock-in-trade, debtors, etc. It is a charge upon assets both present and future. 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.</p>
Conclusion:	<p>In the given scenario, following nature of charges are created w.r.t the following companies:</p> <p>(i) Fixed Charge (Adhar Ltd.):</p> <p>The company mortgaged its factory building and machinery, which are permanent, identifiable assets. Since these assets do not change frequently, the bank created a fixed charge over them. The company cannot sell these assets without the bank's approval during the loan tenure. In case the company fails to repay the loan, the bank can take possession of the factory and machinery to recover its dues.</p> <p>(ii) Floating Charge (Mittal Ltd.):</p> <p>The company pledged stock-in-trade, raw materials, and accounts receivable, which are changing in nature. The bank created a floating charge, allowing Mittal Ltd. to use, sell, and replenish these assets in the normal course of business. In case if the company repays the loan, the floating charge automatically ceases.</p> <p>However, if the company fails to repay, the floating charge crystallizes, meaning:</p> <ul style="list-style-type: none"> • The bank converts the floating charge into a fixed charge. • Mittal Ltd. loses control over its assets. • The bank can seize and sell the assets to recover its loan amount. <p>Hence in the above case, Adhar Ltd., loan is secured by a fixed charge, limiting its ability to dispose of the secured assets where as in the case of Mittal Ltd., loan is secured by a floating charge, allowing normal business operations unless a default occurs. If both companies default, the bank can take control of the respective assets and sell them to recover the loans.</p>

	5.Explain the meaning of Crystallization of a Floating Charge. (MTP Sept 24)
	<p>Crystallization of a Floating Charge</p> <p>Conversion of fixed Charge into floating charge is called crystallization of a floating charge A floating charge remains dormant until it becomes fixed or crystallizes.</p> <p>A floating charge crystallizes or gets fixed when:</p> <ol style="list-style-type: none"> 1. the terms and conditions of floating charge are violated 2. The company goes into liquidation or 3. The company ceases to carry on business or 4. A receiver is appointed or 5. A default is made in paying the principal and/ or interest and the holder of the charge brings an action to enforce his security.

PRACTICAL QUESTION



Question 6	<p>Rose (Private) Limited on 3rd April 2019 obtained ` 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ` 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.</p> <p>(i)Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?</p> <p>(ii)State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation. (MTP May 25)(4 Marks) (nov 2020)</p>
Law:	<p>As per the provisions of Section 2(16) of the Companies Act, 2013, “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 mortgage.</p> <p>(i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for ` 30 Lakhs working capital loan, it is required to create a charge on it.</p> <p>Rose (Private) Limited is not required to create a charge for ` 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.</p> <p>(ii) As per the provisions of Section 77 of the Companies Act, 2013, in case the above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.</p>
Conclusion:	<p>Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors</p>

	<p>of the company.</p> <p>The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or <i>advalorem fee</i>, as applicable, must also be paid.</p>
--	--



PRACTICAL QUESTION

Question 7	<p>PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.</p> <p>After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.</p> <p>Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013. (RTP Jan 25)</p>
Law:	<p>The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:</p> <ol style="list-style-type: none"> a. a company acquiring any property subject to a charge within the meaning of that section; or b. any modification in the terms or conditions or the extent or operation of any charge registered under that section. <p>According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and 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.</p>
Conclusion:	<p>According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge as its own. This means that PQR Limited must create a fresh charge over the acquired property and register it with the Registrar of Companies (RoC) as per section 77.</p> <p>Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge. Hence, the contention of directors of PQR Limited that since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.</p>



PRACTICAL QUESTION	
Question 8	Mr. Prakash purchased a commercial property in Mumbai belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Prakash came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Prakash's name contending that he ought to have the knowledge of charge created on the property of the company. In line with the provisions of the Companies Act, 2013, advise whether the contention of PQR Limited is correct? (MTP Jan 25) (RTP MAY 2018) (4 Marks) (MPT M 21)
Law:	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, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
Conclusion:	Thus, 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. Mr. Prakash, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property. In view of above, the contention of PQR Limited is correct.



	9.DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.(NOV 2019)
	Intimation regarding Satisfaction of Charge Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in Form CHG-4 within 30 days from the date of payment or satisfaction. Extended period of intimation: On application by the company or the charge holder, the Registrar may, allow such intimation of payment or satisfaction to be made within 300 day from the date of payment or satisfaction along with additional fees.

PRACTICAL QUESTION	
Question 10	Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.(MTP NOV 2020) (MTP Jan 25)
Law:	<p>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.</p> <p>(i)Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that</p> <p>(a)the debt has been satisfied in whole or in part; or</p> <p>(b)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.</p> <p>then he may enter in the register of charges a memorandum of satisfaction This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.</p> <p>(ii)Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.</p> <p>(iii)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.</p>
Conclusion:	Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.



	11. What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.(RTP NOV 2020) (MTP MAY 2019) (MTP Sept 24)
	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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

	<p>ceased to form part of the company's property or undertaking.</p> <p>This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.</p> <p>Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.</p> <p>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.</p>
--	---

	12.Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'.
	<p>Inspection of Register of Charges and Instrument of Charges</p> <p>As regards inspection, section 85 (2) of the Companies Act, 2013, states that the register of charges and the instrument of charges shall be open for inspection during business hours:</p> <p>(i)by any member or creditor without any payment of fees; or</p> <p>(ii)by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.</p>

	13.Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.(MTP MAY 2019)
	<p>The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 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.</p> <p>Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.</p> <p>Punishment for contravention –</p> <p>(i)According to section 86 (1) of the Companies Act, 2013, if any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.</p> <p>(ii)According to section 86 (2) if any person wilfully furnishes:</p> <p>(a)any false or incorrect information; or</p> <p>(b)knowingly suppresses any material information;</p> <p>which is required to be registered under section 77, he shall be liable for action under section 447.</p>

PRACTICAL QUESTION	
Question 14	<p>ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ` 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.(MTP NOV 2020)</p> <p>Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges.(MTP MAY 2018)</p>
Law:	<p>1.Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:</p> <ul style="list-style-type: none"> (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time; (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release). <p>2.Before directing that the ‘time for giving the intimation of payment or satisfaction shall be extended’ or the ‘omission or mis-statement 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.</p> <p>3.The application in Form CHG-8 shall be filed by the company or any interested person.</p> <p>4.The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.</p>
Conclusion:	<p>The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013</p>

	<p>15. What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges. (NOV 2018)</p>
	<p>Time limit for registration of charge with the registrar: According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.</p> <p>The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.</p> <p>The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014].</p> <p>Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.</p> <p>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.</p> <p>Inspection of the register of charges and instrument of charges:</p> <p>The register of charges and instrument of charges, shall be open for inspection during business hours—</p> <p>(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, impose.</p>