Chapter VI

REGISTRATION OF CHARGES

Ch. VI of the Companies Act, 2013
Registration of Charges
(Section 77-87)
The Companies (Registration of Charges) Rules, 2014

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Charges	
Definition [Sec.2(16)]	'Charge' is an **interest or lien created on the property or assets of he company** or any of its undertaking or both as security and includes a mortgage. (subsidiary / Associate).
Types of Charges Distinguish betn - (c) Risk	Charges can be either

Fixed Charge	Floating Charge
1. Charge created on ascertained / definite assets of permanent nature. Eg. Land, Building, Machinery.	Charge on assets of fluctuating nature, no definite property. Eg. Stock-in-trade, debtors. crystallisation of charges -
2. Can't be converted into floating.	Can be converted into fixed charge.
3. It is less risky.	It is more risky.
4. Generally, created for long span of time.	Generally, created for short span of time.

not without permission.

Company deal ???	5.	Company loses right to dispose such property until unencumbered.	Company is free to deal with property until secured creditors exercises his right. to crystallise.
	6.	Assets are identified at the time of creation of charge.	Does not attach to any definite property.
	7.	Nature and identity of the property does not change during the existence of the charge.	Nature and identity or the property changes based on varying conditions from time to time
crystallisation	8. 6.	No crystallisation is possible.	On crystallisation, floating charge becomes the fixed charge.
	9.	Without the consent of the chargeholder, the company cannot sell such asset; neither create subsequent charge having priority over such charge.	Without obtaining the consent of the chargeholder, the company can deal in such an asset in the ordinary course of business.

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

7.Q(B).

Crystallization of Floating Charge → converting floating into fixed charge.

A floating charge crystallizes or gets fixed when:

1. The company goes into liquidation or
2. The company ceases to carry on business or
3. A receiver is appointed or (settlement → court appoint a receiver)
4. A default is made in paying the principal and/ or interest and the holder of the charge brings an action to enforce his security.

Points	"Mortgage"	"Hypothecation"	"Pledeg"
1. Type of Asset	Immovable Property	Movable Property	Portable Asset
2. Possession	Borrower	Borrower	Lender
3. Example	Land Building, Factory Plant	Car, Vehicles, Debtors	Gold, Jewelry, Shares, Investments, FD.

Registration of Charges with ROC

option 2.	interested in the mortgage or charge; b) **in case property is situated in India (whether wholly or partly):** 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.
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)	
Certificate of Registration [Sec. 77(2) & Rule 6(1), 6(3)]	1. On registration of charge, the **Registrar shall issue a certificate of registration of charge in Form No. CHG-2.** 2. The certificate shall be issued to the company and the charge holder.
Non-applicability of Section 77 All time limit.	The section 77 shall not apply to certain charges as may be prescribed by C.G. in consultation with RBI. (e.g. – provision not application to banks who charged their asset to RBI)

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)** If co borrows money
2. **MNC Limited realised on 2nd May, 2016 that particulars of charge created on 12th March, 2016 in favour of a Bank were not filed with Registrar of Companies for Registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2016 instead of 12th March, 2016? Explain with reference to the relevant provisions of the Companies Act, 2013.(NOV 2016) (MTP NOV 2018)** (i) procedure → sec. 77 with additional fees (upto 60 days cover)

Hint – (ii) If charge create on 12 feb – Then co. has to pay advalorem fees.

3. **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.**
   (a) What procedure should the company follow to get the charge registered? 77 – additional fees.
   (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? yes with advalorem fees

   Advise with reference to the relevant provisions of the Companies Act, 2013. (RTP May 2022)

   (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.

   (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.

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.

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.

4. **Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation. (5 Marks) (MTP Oct. 22** sec-77

time limits mention.

ROC every state.

Central Registry. I.G.T. India

1. Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising 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 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.

2. 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)* advalorem fees
   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.

Recovery of Fees paid [Proviso to Sec. 78]	Where a charge is registered by the Registrar on an application made by the charge holder, the charge holder shall be entitled to recover from the company the fees paid by him to the Registrar.

1. 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 charge-holder 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.

Modification of charge [Sec. 79]

Modification of charge when there is change in Terms & Conditions, etc. [Sec. 79(b)] 70(B)	1. Any modification in charge (i.e. change in terms and conditions or change in extent or operation of any charge, etc.) to be registered by the company in accordance with section 77. (form no & time limits same) 2. Even if the rights of a charge holder are assigned to a 3rd party, it will be regarded as a modification. **3. Such modification also to be registered with ROC in Form No. CHG-1 or CHG-9 (for debentures). The time limits for registration are same as u/s 77.** 4. As per Rule 6 (2), the Registrar shall issue a certificate of modification of charge in Form No. CHG-3; where the particulars of modification of charge is registered u/s 79. 5. Other **examples of modification** are as under: (i) where the charge is modified by varying any terms and conditions of the existing charge through an agreement; (ii) where the modification is in pursuance of an agreement for enhancing or decreasing the limits; (iii) where the modification is by ceding a pari passu charge; ranking equally **Note**: A pari passu charge-holder is entitled to a proportionate share in the property mortgaged. When this ceded the charge-

loans.
E.g 12.6.2022 → 80 lac
2023 → 30 lac
10.12 → 40 lac
150 lac

No pari passu clause → payments will be made in priority of time

pari passu clause → All debts rank equally
equal priority.

<table>
<tr><td></td><td>holder will become a second charge-holder and as such his right entitlement will be subject to full satisfaction of the First Charge-holders claim.
(iv) where there is change in rate of interest (other than bank rate);
(v) where there is change in repayment schedule of loan; (not applicable in case of working loans which are repayable on demand); and
(vi) where there is partial release of the charge on a particular asset or property.</td></tr>
<tr><td colspan="2">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)</td></tr>
</table>

modification ✗

Co has to register modification with ROC U/S 79 or else face punishment of this chapter.

deemed notice → similar to doctrine of constructive notice

Date of Notice of Charge [Sec. 80] (A) P.Q/MCQ.

Registration of Charges to act as Constructive Notice	1. All charges registered with the registrar are public document. 2. Any document filed with the registrar for registration acts as Constructive Notice. Constructive means 'deemed'. Notice means 'Knowledge'. Thereby, it means 'deemed knowledge '. This means even though the 3rd party has not referred to the public document he would still be considered or deemed to have seen it.
(i) **Legal provision of Section 80**	Where any charge is registered u/s 77, any person acquiring such property, assets, undertaking or part of it or any share or interest on it; **shall be deemed to have notice of the charge** from the date of such registration.
(ii) **No recovery of damages**	In case, any person enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot claim the loss from the company, for it shall be deemed that he had notice of the charge.

1. Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? (RTP MAY 2018) ?(MTP NOV 2019)

charged.

Law → Sec. 80 quote. (pt. 1 & 2 above).

Conclusion: yes contention of NRT ltd is correct. once charge is registered with ROC, it is deemed that everyone has knowledge of it. including Akshat. If not, Akshat is at fault. he cannot recover damages from co.

2. Mr. A is working with a reputed Chartered Accountant firm in Delhi. After gaining an experience of 5 years, now Mr. A is planning to open his own firm A and Associates. He has now purchased a commercial property in Delhi belonging to Kesha Limited after entering into an agreement with the company. At the time of registration, Mr. A comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of Kesha Limited is correct? Give your answer with respect to the provisions of the Companies Act, 2013.(4 Marks) (MPT M 21)

Exactly same question as no 1

Imp

1. 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**

→ Free / Asset Release / Debt paid.

Satisfaction of Charge [Sec. 82] TQ(B) / MCQ.	
Intimation of Satisfaction of Charge [Sec. 82(1) & Rule 8]	1. The company shall give intimation to the Registrar of payment or satisfaction in full of any charge registered earlier. 2. The intimation shall be given in **Form CHG-4 within 30 days** from the date of payment or satisfaction.
Extension of intimation satisfy fees 30 day. next 270 days. 300 additional fees	1. 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. 2. In case of IFSC public and IFSC private company, the Registrar may, on an application by the company allow such registration to be made within 300 days of such creation on payment of additional fees as may be prescribed.
Notice to the Chargeholder [Sec. 82(2)] not needed in mean question Extra pt.	1. On receipt of intimation, the Registrar shall send a notice to the charge holder calling him to show cause within time specified in the notice **but not exceeding 14 days**. The charge holder shall show cause as to why payment or satisfaction in full should not be recorded. 2. However, **no notice is required to be sent, where the intimation to the Registrar in Form CHG-4 is signed by the chargeholder**. 3. If the charge holder does not show any cause within specified time or within 14 days, the Registrar shall: (i) Record the satisfaction of charge in the register of charges maintained; and (ii) Inform the company that the satisfaction of charge has been reorded. 4. Where any cause is shown by the charge holder, the Registrar shall (i) Record a note to that effect in the register of charges maintained by him; (ii) inform the company regarding the cause shown by the charge-holder.
Issue of certificate [Rule 8(2)]	Where 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**

1. 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) → sec. 82.

charge journey: create → modify → satisfy

Asset giving → Asset free.

charge.

2.	**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) (5 Marks) (MTP Sep. 22)** yes 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. follow time limits and fees requirement

1. 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

T.Q.

→ without company informing it in CHG-4.

Power of Registrar to Record Satisfaction of Charge [Sec. 83]	
Where Registrar may record satisfaction of charge in absence of such intimation [Sec. 83(1)]	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 ceased to be the property of the company; then, the Registrar may record the satisfaction of charge in the register of charges maintained by him; even if, no intimation of satisfaction of charge has been given to him by the company.
Notice to parties [Sec. 83(2)]	Within 30 days of recording satisfaction of charge in the register of charges, the Registrar shall inform the affected parties regarding recording of satisfaction of charge.
Certificate [Rule 8(2)]	The Registrar shall issue certificate of registration of satisfaction of charge in Form No. CHG-5
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)	

due date → Co didn't pay → chargeholder sue in court.

appoint ← or ask chargeholder to appⁿ Receiver

7Q(B) MCQ (A) → kab →

Appointment of Receiver or Manager [Sec. 84]	
Notice of Appointment of Receiver or Manager	1. If;

who

sells the asset & Recover money and pay it to chargeholder to satisfy his debt.

[Sec. 84(1) & Rule 9] receiver MCQ.	(a) Any person obtains an order from the Court to appoint a person as receiver or manager of any property of the company on which charge is created; or (b) Any person appoints a receiver or manager of any property of the company on which charge is created due to the power contained in any instrument, then, such person shall **within 30 days**, give a notice to the **company** and the **Registrar** in **Form No. CHG-6** along with fee; along with a copy of order of Court or instrument conferring power. 2. The Registrar shall register the same.
Notice of Cessation [Sec. 84(3)]	If the person appointed as a receiver or manager ceases to hold his office: (i) He shall give a notice of such fact to the company and the Registrar; and (ii) The Registrar shall register the same.

C

Register of Charges to be kept by ROC (sec 81)

Topic	**Detailed Explanation**
Register to be kept by the ROC for all the Companies	The ROC shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of this Section.
Register to be open for Inspection	A register kept in pursuance of this section shall be open to inspection **by any person** on payment of **such fees as may be prescribed** for each inspection.
a)	100 ₹ – currently

1. 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

MCQ (A).

Company's Register of Charges [Sec. 85]

Register of Charges to be kept in the Registered Office of the Company	Every company shall keep at its registered office **1.** Register of Charges in **Form CHG 7.** 2. **Copy of the Instrument** (Loan Agreement) creating the charge.
~~Preservation~~ of Register Inspection.	The Register of Charges and Instrument of Charges shall be kept at **registered office** and **open for inspection** during business hours— a) by any member or creditor without any payment of fees; or b) by any other person on payment of fees, subject to such reasonable restrictions

	as the company may, by its **Articles,** impose.	
Preservation of Register MCQ.	**Register of Charges**	Permanently
	Copy of the Instrument 77	8 years from the date of satisfaction of charge
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) → regd office → member/creditors → without fees → any other person → with fees		

1. 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

2. 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

Register of charge - permanently
instrument → 8 yrs

learn (A)

Punishment for Contravention [Sec. 86]		
Punishment [Sec. 86(1)]	**On company**	**5,00,000**
	On officer in default	**' 50,000**
Wilful Defaults [Sec. 86(2)] fraud.	If any person wilfully: (a) Furnishes any false or incorrect information; (b) Knowingly suppresses any material fact required to be registered in accordance with Sec. 77; - he shall be liable for action u/s 447.	
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)		

R.D. & Condonation.

Power of Central Govt. for Rectification in Register of Charges [Sec. 87]	
Application to C.G. (R.D)	A company or any person interested can make an application in Form **No. CHG–8** for rectification in the Register of Charges to the C.G. in the following cases:

Registration

	(a) **Omission** to give **Intimation to the Registrar** of the payment or satisfaction of a charge, within time allowed; or (b) **Omission or misstatement** of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction.
Grounds / Reasons	The CG shall make order under Section 87 only if it is satisfied that such **omission or misstatement** was: (i) Accidental; or (ii) Due to inadvertence (unintentionally); or (iii) Some other sufficient cause; or (iv) It is not of a nature to prejudice the position of creditors or shareholders of the company.
Powers of C.G. [Rule 12]	The CG may on an application filed in Form No. CHG-8 in accordance with section 87- (a) **direct rectification** of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar w.r.t any charge or modification thereof, or w.r.t any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, (b) **direct extension of time** for satisfaction of charge, if such filing is not made within a period of 300 days from the date of such payment or satisfaction.
Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. (MTP NOV 2018) (MTP MAY 2018)	

HW3
H.W.

1 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 includes 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 includes 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

2 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

3 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

4 A floating charge becomes fixed when:
   a. The borrowing company goes in liquidation
   b. The borrowing company ceases to be in