

CHARGES

○ **What is a Charge?**

As per Section 2(16) of 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 a mortgage.

○ **How is it related to Pledge and Hypothecation?**

As per section 172 of the Indian Contract Act, 1872, "pledge" means the bailment of goods as security for payment of a debt or performance of a promise.

As per Section 2 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property.

Charge is where immovable property of one person is made security for the payment of money to another. It refers to the security for securing the debt, by way of pledge, hypothecation and mortgage.

In the pledge, the possession of the asset is transferred, but in the case of hypothecation, possession lies with the debtor only.

○ **Provisions under Companies Act 2013 & Companies (Registration of Charges) Rules, 2014:**

Section 77 with Rule 3 & Rule 6

Duty to Register Charges -

- Every company shall register the charge with Registrar of Companies (ROC) within 30 days of the date of creation or modification of charge along with the fee.

| Purpose | Form | Attachments |
|--|-------------|---|
| Creation/Modification of charge other than Debenture | CHG-1 | Particulars of charge Copy of Instrument evidencing any creation or modification of charge |
| Creation/Rectification of charge for Debenture | CHG-9 | |

- The ROC on receipt of Application may allow registration of the charge as per following:

| If charge is created- | Time Limit | If not registered within this time limit, then registration shall be done |
|------------------------------|-------------------|--|
|------------------------------|-------------------|--|

Contact Us :

201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai – 400 018 |

B: +91 (22) 6611 9696 | D: +91 (22) 6611 9614 | W: www.mehta-mehta.com

| | | |
|---|--|---|
| Before the commencement of the Companies (Amendment) Ordinance 2019 [<i>Commencement</i>] | Within 300 days of creation | Within 6 months from Commencement on payment of additional and different fees |
| On or after the commencement of the Companies (Amendment) Ordinance 2019 | Within 60 days of creation on payment of additional fees | On an application, within another 60 days on payment of advalorem fees |

- Post registration of charge, the ROC shall give a registration certificate to the person in whose favor the charge is created.

| Purpose | Registration Certification in Form |
|--------------|------------------------------------|
| Registration | CHG-2 |
| Modification | CHG-3 |

Note : No charge shall be taken into account by any liquidator, appointed under Companies Act 2013 or Insolvency and Bankruptcy Code, or any creditor unless the charge is duly registered and certificate to this effect is issued.

Section 78

Application for Registration of Charge

- If the Company fails to register the charge as per Section 77, then the person in whose favour the charge is registered may make an application to ROC as per Rule 3 & Rule 6 as mentioned above.
- The ROC on receipt of such application, after giving a 14 days' notice to the Company allow such registration on payment of fees.
However it shall be registered only if the Company has not itself done it or given a sufficient show cause as to why such charge shall not be registered.
- Once ROC allows the registration, the aforesaid person can claim the filing fees and cost from the Company.

Section 81 with Rule 7

Register of Charges to be kept by Registrar

The Registrar shall maintain a Register of Charges on MCA portal and shall be open for inspection on payment of fees.

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Section 82 with Rule 8

Company to Report Satisfaction of Charge

- The Company shall within a period of 30 days from the date of payment or satisfaction of charge intimate the ROC in Form CHG-4
- The ROC may on application by the Company or chargeholder allow such aforesaid intimation to be made within 300 days of such payment or satisfaction on payment of additional fees.
- On receipt of intimation, ROC shall send a 14 days' notice to the chargeholder to show cause as to why such payment or satisfaction in full should not be recorded as intimated to the Registrar.

Conversely no notice shall be sent if the intimation is received in Form CHG-4.

- If no cause is received, the ROC shall enter a memorandum of satisfaction of charge in full in pursuance of section 82 or 83 and shall issue a certificate of registration of satisfaction of charge in Form No.CHG-5

| Purpose | Form | Filed/Issued by |
|---|-------------|-------------------------------------|
| Intimation of payment or satisfaction of charge | CHG-4 | Company/Chargeholder within 30 days |
| Certificate of registration of satisfaction of charge | CHG-5 | ROC |

Section 84 with Rule 9

Intimation of Appointment of Receiver or Manager

Any person appointed upon any order to manage the property of the company which is subject to a charge, shall intimate the Company & ROC in Form CHG-6 about such appointment.

However, any cessation of such person shall also be informed in Form CHG-6

Section 85 with Rule 10

Register of Charges

Every Company shall maintain a Register of Charges in Form CHG-7 at its Registered Office permanently.

Every entry in register shall be authenticated by director/secretary/any authorized person.

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It shall include details of-

- ❖ all the charges registered with the Registrar on any of the property, assets or undertaking of the company
- ❖ particulars of any property acquired subject to a charge
- ❖ particulars of any modification of a charge and satisfaction of charge

The Company shall also keep copy of the instrument creating the charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge.

Section 87

Rectification by Central Government in Register of Charges

Any company may make an application for extension to Central Government in Form CHG-8 for intimations not filed within the specified time or misstatements in previous filings related to charges therein.

CG on receipt of application may extend the time for filing or rectifying such misstatements.

Rule 12

All the fees shall be paid as per Rule 12.

○ ***Summary***

| <u>Form</u> | <u>Purpose</u> |
|--------------------|--|
| CHG-1 | Creation/Modification of charge other than Debenture |
| CHG-2 | Registration Certification of charge in case of new Registration |
| CHG-3 | Registration Certification of charge in case of Modification |
| CHG-4 | Satisfaction of Charge |
| CHG-5 | Certificate of registration of satisfaction of charge |
| CHG-6 | Appointment/Cessation of Receiver |
| CHG-7 | Register of Charges |
| CHG-8 | Application for extension of time to Central Government |
| CHG-9 | Creation/Rectification of charge for Debenture |

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