

CHARGES UNDER COMPANIES ACT 2013

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What is a Charge?

Charge – a brief

- Charge specially gives security and empower the charge holder that in case the Company makes a default for the repayment of the loan than charge holder can get the claim amount from the security which was charged by the Company in favour of the charge holder.

Charge Under Companies Act, 2013

- 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.

Why Charge is Created ?

1. Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks.
2. The financial institutions/banks do not lend their monies unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/ banks etc.
3. In other words a charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

Essential features of a Charge

The following are the essential features of the charge

1. There should be two parties to the transaction, the creator of the charge and the charge holder.
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.
4. A charge may be fixed or floating depending upon its nature

Types Of Charges

Fixed Charge

Floating Charge

Exclusive Charge

Subsequent Charge

Pari-Passu Charge

Crystallization of Floating Charge

Charges – a brief

Fixed Charge:

- A charge which is identifiable with specific and clear asset/property at the time of creation of charge.
- The Company cannot transfer such identified and defined property unless the charge holder (creditor) is paid off his dues.

Floating Charge:

- It covers the floating and circulating nature of properties of a company, like sundry debtors, stock in trade etc.
- The nature of the property charged may change from time to time.
- The floating charge crystallizes into fixed charge if the Company crystallizes or the undertaking ceases to be a going concern.

Crystallisation of Floating Charge

- This conversion of floating charge into a fixed charge is usually called Crystallisation of floating charge. Such an event happens under the following circumstances:
- The debtor is unable to pay off the debts.
- The business couldn't be carried out when the creditor/debenture Holder takes action against the debtor for not repaying the debts and in all such circumstances which are listed out under the relevant provisions of the Companies Act, 2013.
- Company goes into liquidation
- Company cease to carry on its business
- On the happening of any event as specified in deed of agreement.

Charge under Transfer of Property Act 1882

➤ Charge as defined in Transfer of Property Act, 1882

According to Section 100 of the Transfer of Property Act, 1882, where an immovable property of one person is by act of parties or operation of law made security for the payment of money to another and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge.



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

Charge – governing sections under Companies Act 2013

- 77 Duty to Register Charges, etc
- 78 Application for Registration of Charge
- 79 Section 77 to Apply in Certain Matters
- 80 Date of Notice of Charge
- 81 Register of Charges to be kept by Registrar
- 82 Company to Report Satisfaction of Charge
- 83 Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company
- 84 Intimation of Appointment of Receiver or Manager
- 85 Company's Register of Charges
- 86 Punishment for Contravention 87 Rectification by Central Government in Register of Charges

Registration of Charges

The main purpose of registration of a Charge is to give notice to the Registrar of Companies ("ROC") and to people who intend to advance money to the company about the encumbrance created on the assets of the company.

A charge created by a company is required to be registered with the Registrar within thirty days of its creation in the prescribed form and on payment of specified fees. According to Companies (Registration of Charges) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge is Form No. CHG-1

The charge created over security offered becomes void if it is not registered within the stipulated period prescribed Companies Acts.

Duty to Register Charges

- ▶ Every company creating charge within or outside India on its property assets or any undertaking shall register the charge with the Registrar of Company within 30 days from the date of creation or modification of charge

| CHG-1 | CHG-9 |
|--|--|
| Creation/Modification of charge other than Debenture | Creation/Rectification of charge for Debenture |

The Registrar may, on an Application by the Company, allow such registration to be made

| If charge is created | Time Limit | If not registered within this time limit, then registration shall be done |
|--|--|---|
| Before the commencement of the Companies (Amendment) Ordinance 2019 [Commencement] | 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 |

- When the charge is registered with the ROC, he 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.
- 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.

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

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 charge holder 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

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.

- It shall include details of-
 - a) all the charges registered with the Registrar on any of the property, assets or undertaking of the company
 - b) particulars of any property acquired subject to a charge
 - c) 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.

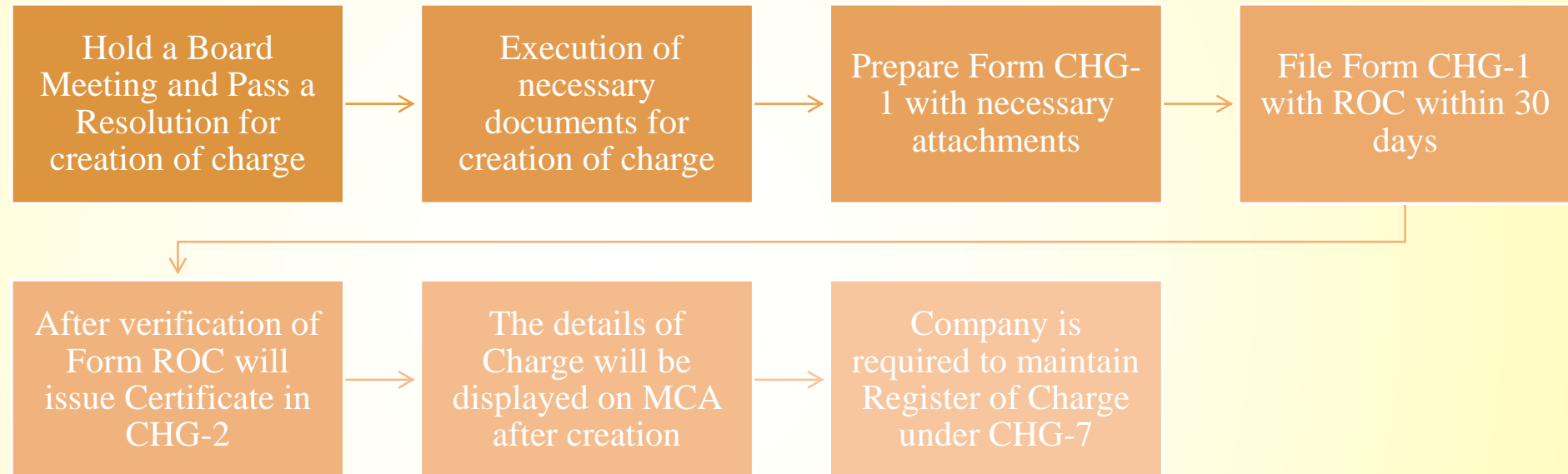
Section 87: Rectification by Central Government in Register of Charges

- 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.

Procedure For Creation Of Charge



List of e-filing under Charge Management

| Sr . No. | E-Form | Purpose |
|----------|--------|--|
| ➤ 1. | CHG-1 | Creating or Modifying charge (for other than Debentures) |
| ➤ 2. | CHG-2 | Certificate of Registration of charge. |
| ➤ 3. | CHG-3 | Certificate of Modification of charge. |
| ➤ 4. | CHG-4 | Intimation of the satisfaction to the Registrar. |
| ➤ 5. | CHG-5 | Memorandum of satisfaction of charge. |
| ➤ 6. | CHG-6 | Notice of appointment or cessation or receiver or manager. |
| ➤ 7. | CHG-7 | Register of charges. |
| ➤ 8. | CHG-8 | Application for condonation of delay shall be filed the Central Government. |
| ➤ 9. | CHG-9 | Creating or modifying the charge in (for debentures including rectification) |
| ➤ 10. | CHG-10 | Application for delay to the registrar. |

Consequences For Non-Registration of Charge

- Non-registration of the Charges with the Registrar of Companies shall not invalidate the Charge created but the same shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 on winding up of the company and the creditor. However, this does not prejudice any contract or obligation for the repayment of the money secured by the Charge.
- **Penalty for default**

Section 86 of the Companies Act, 2013 provides for the punishment and contraventions of Section 77. If the company defaults the provision, it shall be punishable with a fine, not less than one lakh rupees and which may extend to 10 lakh rupees. If the officer of the company is in default then he shall be punishable with imprisonment for a term which may extend to six months or with fine not less than twenty five thousand rupees which may extend to one lakh rupees or with both.

FEMA PROVISIONS ON CHARGES

Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2014

Regulation 18:

An Indian party may create charge by way of pledge, on the shares of Joint venture(JV) or Wholly Owned Subsidiary(WOS) or Step Down Subsidiary(SDS) outside India in favour of Authorized Dealer or a public financial institution in India or an overseas lender, for availing of fund based or non-fund based facility.

Provided that

- a) The value of the fund based or non-fund based facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank for overseas direct investments in the JV / WOS from time to time;
- b) In case of the facility from an overseas lender, it should be regulated and supervised as a bank; and
- c) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time.”

Regulation 18 A:

- An Indian party may create charge by of mortgage, pledge, hypothecation or otherwise, on its assets in favour of overseas lender as security for availing of the fund based and/or non-fund based facility for its Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India.

Provided that

- a) The value of the facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank from time to time for overseas direct investments in the JV / WOS;
- b) The overseas lender is regulated and supervised as a bank as per the law of the host country;
- c) A 'No Objection' is obtained from the domestic lender in whose favour if charge is already created on the domestic assets; and
- d) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time.

- An Indian party may create charge by of mortgage, pledge, hypothecation or otherwise on the assets of its overseas JV or WOS or SDS in favour of an AD bank in India as security for availing of the fund based and/or non-fund based facility for itself or its JV or WOS or SDS outside India.

Provided that

- a) The value of the facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank from time to time for overseas direct investments in the JV / WOS;
- b) The overseas lender is regulated and supervised as a bank as per the law of the host country;
- c) A 'No Objection' is obtained from the overseas lender or domestic AD bank in whose favour if charge is already created on the overseas assets;
- d) The facility extended by the domestic AD bank to the Indian party / JV / WOS / SDS is governed by the prudential norms and other guidelines issued by the Department of Banking Operations and Development, Reserve Bank; and
- e) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time."

The following are the compliance requirements under FEMA

- Compliance to the provisions under Regulation 18A(2) of the Notification *ibid*;
- The overseas assets, on which charge is being created, are not securitized;
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created;
- The loan / facility availed by the JV / WOS / SDS from the domestic lender shall be utilized only for its core business activities overseas and not for investing back in India in any manner whatsoever;
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD;
- The invocation of charge resulting into the domestic lender acquiring the overseas assets shall require prior approval of the Reserve Bank.



THANKYOU

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