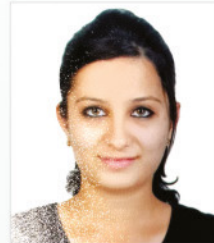


REGISTRATION OF CHARGES UNDER COMPANIES ACT, 2013



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The provisions relating to Registration of charges are governed under sections 77 to 87 of the Companies Act, 2013 and the Companies (Registration of charges) Rules, 2014.

Meaning of Charge:

The company may borrow monies by providing security of its assets and may create a lien on the properties of the Company. The Company may also issue Debentures to raise funds which may carry a right/ interest in the Assets/Properties of the company. A charge is a way of security to the creditor/lender of his interest/right on the properties of the company for the amounts due to him by the company.

Section 2(16) of The Companies Act, 2013 defines a Charge as an interest or lien created on the assets or property of a Company or any of its undertaking as security and includes a mortgage.

Provisions relating to registration of charges: (1992-2021)

Section 77(1) and Rule 3 of Companies (Registration of charges) rules, 2014 puts the duty of registration of charges on the Company. As per Section 77(1), every Company creating or modifying the charge, whether in India or outside, shall register the particulars of charge, signed by the company and the charge holder within 30 days of the creation or modification of the charge.

An analysis of section 77(1) highlights the following points relating to registration of charge:

The charge may be created:

- ◆ Within or outside India
- ◆ On its property or assets or any of its undertakings
- ◆ Whether tangible or otherwise
- ◆ The particular of charge to be signed by the company and the charge holder
- ◆ Within 30 days of its creation or modification

Time limit for registration of charge:

Section 77(1) states that the Charge shall be registered with the Registrar within 30 days of its creation or modification.

Further, first proviso to Section 77(1) provides for certain cases whereby registrar may allow registration of charge beyond 30 days. Following are the cases enumerated below:

- (a) *in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019, within a period of three hundred days of such creation; or*
- (b) *in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed: Provided further that if the registration is not made within the period specified*
- (a) *in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;*
- (b) *in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed.*

To understand the proviso better, the following can be inferred thereupon:

1. For charges created before Companies (Amendment) Ordinance, 2019: Clause (a) provides for an additional time period of 270 days after the specified period of 30 days for registration of charges alongwith payment of additional fees. Further, if the registration is not made within the specified period, registration shall be made within 6 months from commencement of the Ordinance on payment of additional fees prescribed by the RoC. Different fees may be applicable to different class of companies.
2. For charges created after Companies (Amendment) Ordinance, 2019: Clause (b) provides for a time period of 60 days for registration of charges (i.e 30 days normal period and 30 days additional time period). However, if registration is not made within the specified period of 60 days, registrar may allow an additional period of 60 days on an application made by the Company by paying an advolarem fees as prescribed. In this case, an application to Central government shall be made for extension of time limit and if approved, the registrar shall allow registration of charge on payment of advolarem fees.

Note: The effective date of Companies (Amendment) Ordinance, 2019 is 2nd November, 2018 as the 2019 Ordinance was repealed and the Companies (Amendment) Ordinance, 2018 shall be deemed to be effective in its place.

Forms for registration of charge:

The following are the forms prescribed for Registration of creation / modification of charge:

- ◆ Form CHG-1: Form for creation/registration of charge other than debentures by the Company
- ◆ Form CHG-9: Form for debentures including modifications

Fees for filing of Forms:

Normal fees:

Nominal Share Capital	Fee applicable
Less than 1,00,000	Rs. 200
1,00,000 to 4,99,999	Rs. 300
5,00,000 to 24,99,999	Rs. 400
25,00,000 to 99,99,999	Rs. 500
1,00,00,000 or more	Rs. 600

Additional fees:

- A. Charges created or modified before 02.11.2018, and allowed to be filed within a period of 300 days of such creation or six months from 02.11.2018 (i.e. 1st May 2019), whichever is later:

Period of delay	Fee applicable
Upto 30 days	2 times of normal fees
More than 30 days and up to 60 days	4 times of normal fees
More than 60 days and up to 90 days	6 times of normal fees
More than 90 days and up to 180 days	10 times of normal fees
More than 180 days	12 times of normal fees

- B. Charges created or modified on or after 02.11.2018:

- i) Additional fees / Advalorem fees payable upto 31st July, 2019 by all companies:

Period of delay	Fee applicable
Upto 30 days	2 times of normal fees
More than 30 days and up to 60 days	4 times of normal fees
More than 60 days and up to 90 days	6 times of normal fees

ii) Additional fees / Advalorem fees payable w.e.f 1st August, 2019:

Period of delay	Small companies & OPC	Other than Small companies & OPC
Upto 30 days	3 times normal fee	6 times normal fee
More than 30 days and upto 90 days	3 times of normal fees plus an ad valorem fee of 0.025 per cent. of the amount secured by the charge, subject to the maximum of rupees one lakh.	6 times of normal fees, plus an ad valorem fee of 0.05 per cent. of the amount secured by the charge, subject to the maximum of rupees five lakhs.

Authors' note / conclusion:

The matters relating to creation and registration of charges play a very vital role for practicing professionals (such as CA, CS, CMA, Advocates and other management consultants) as the aspects of finance / loans / debts are involved in every business and a sound knowledge of the same is very essential to enable correct advisory services at the professional level. The registration of charges play a very crucial role at the time of liquidation / winding up of Companies also. Hence, from the start of a business upto the winding up of a business, matters relating to charges are present at all levels of the business cycle and therefore every professional shall be regularly updated about it.

Contributed by

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