



REGISTRATION OF CHARGES

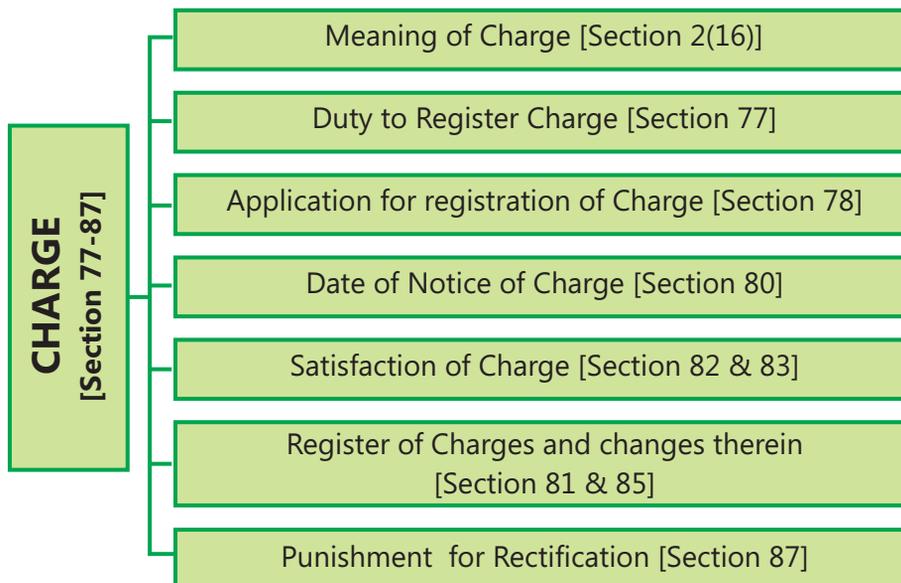


LEARNING OUTCOMES

After reading this chapter, the students will be able to :

- Understand meaning of charge, Notice of Charge
- Know what steps are to be followed for registration of Charge and satisfaction of charge
- Know the penal provisions in case of default

CHAPTER OVERVIEW



1. INTRODUCTION

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.

Thus, Charge is :

- 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.

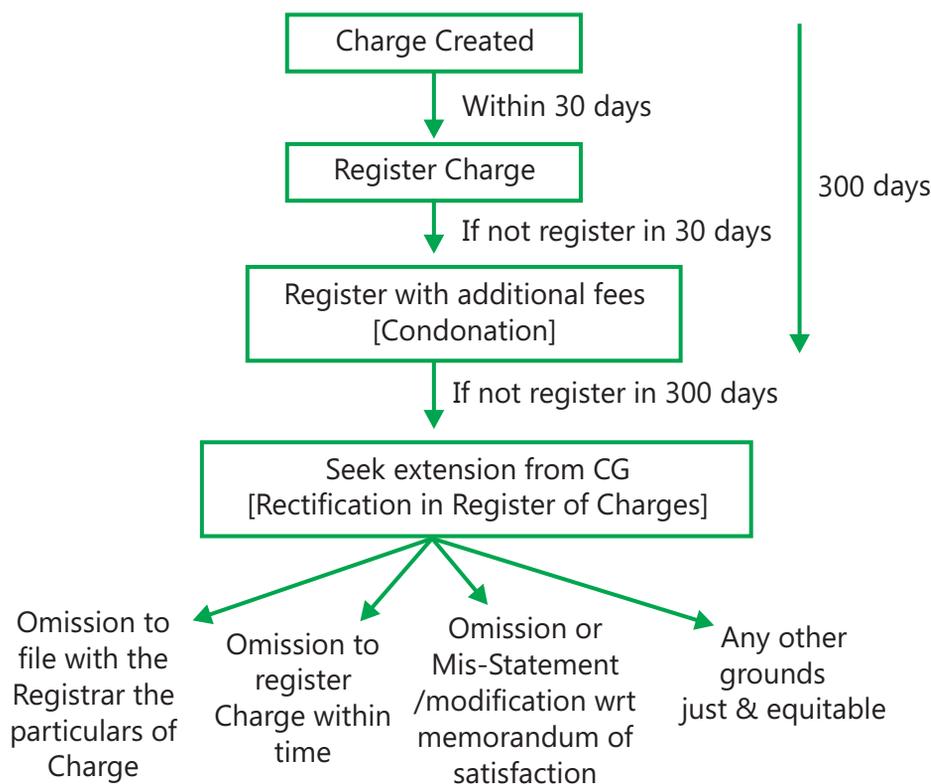
On reading the above definition, the first question that arises in the minds of the reader is that why creating a charge is a necessity for companies.

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.

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.

The law with respect to the registration of charges are dealt in sections 77 to 87 of the Companies Act, 2013.

2. DUTY TO REGISTER CHARGES, ETC. [SECTION 77]



Section 77 of the Act deals with duty to register charges. According to the section :

- (1) **Duty of the company to register charges** : 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 such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.
- (2) **Registration by the registrar** : The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87.

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

In terms of Rule 3 of the *Companies (Registration of Charges), Rules 2014*,

Verification of instrument evidencing creation or modification of Charge : A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

- (a) 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;
 - (b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, 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.
- (3) **Condonation of delay by Registrar**
 - (a) 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 thirty days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of additional fee.

- (b) 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].
- (4) **Issue of certificate of registration by registrar** : Where a charge is registered with the Registrar, a certificate of registration of such charge shall be issued in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.
- (5) **No charge to be taken into account by the liquidator/creditor** : No charge created by a company shall be taken into account by the liquidator appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be or any other creditor, unless –
- (i) it is duly registered under sub-section (1), and
 - (ii) a certificate of registration of such charge is given by the Registrar under sub-section (2).

However, not registering charge shall not impact/negate any contract or obligation for the repayment of the money secured by a charge. Further, it may be noted that failure to register charge shall not absolve company's liability in respect of any offence under this Chapter.

3. APPLICATION FOR REGISTRATION OF CHARGE [SECTION 78]

As per section 78 of the Companies Act, 2013, where a company fails to register the charge within the period 30 days, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of 14 days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed.

[For details students may refer Rule 3 of *the Companies (Registration of Charges) Rules, 2014*].

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.



4. SECTION 77 TO APPLY IN CERTAIN MATTERS [SECTION 79]

Modification of charge : The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

The provisions applicable to the registration of a charge under section 77 shall apply to modification of the charge." Some **examples** of modification are as under:

1. where the charge is modified by varying any terms and conditions of the existing charge by agreement;
2. where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
3. where the modification is by ceding a *pari passu* charge;
4. change in rate of interest (other than bank rate);
5. change in repayment schedule of loan; (this is not applicable in working loans which are repayable on demand) and
6. partial release of the charge on a particular asset or property.

Section 79 of the Companies Act, 2013, says that section 77 relating to registration of charges shall, so far as may be, apply to—

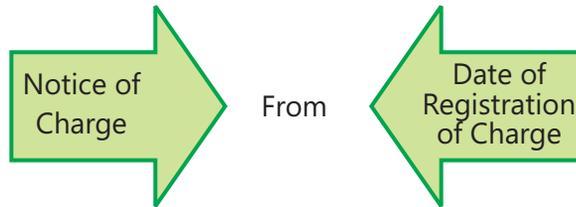
- (a) a company acquiring any property subject to a charge within the meaning of that section; or
- (b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

As per *The Companies (Registration of Charges) Rules, 2014*, where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge. The certificate issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.



5. DATE OF NOTICE OF CHARGE [SECTION 80]

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, 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.



6. REGISTER OF CHARGES TO BE KEPT BY REGISTRAR [SECTION 81]

Section 81 of the Companies Act, 2013 deals with maintenance of the register of charges by the registrar. According to it, the Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.

Such a register, shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

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 section 81 of the Act.

7. COMPANY'S REGISTER OF CHARGES [SECTION 85]

1. 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 in such form and in such manner as may be prescribed, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

Section provides that a copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

According to the rules related to the Company's register of charges-

- (1) every company shall keep at its registered office a register of charges and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- (2) The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- (3) Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

(4) The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.

2. Inspection of the register of charges and instrument of charges : The register of charges and instrument of charges, shall be 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 such fees as may be prescribed, -subject to such reasonable restrictions as the company may, by its articles, impose.

As per Rule 10 of *the Companies (Registration of Charges) Rules, 2014* :

Company's Register of Charges

- (1) Every company shall keep at its registered office a register of charges in Form No. CHG.7 and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- (2) The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- (3) Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.
- (4) The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.

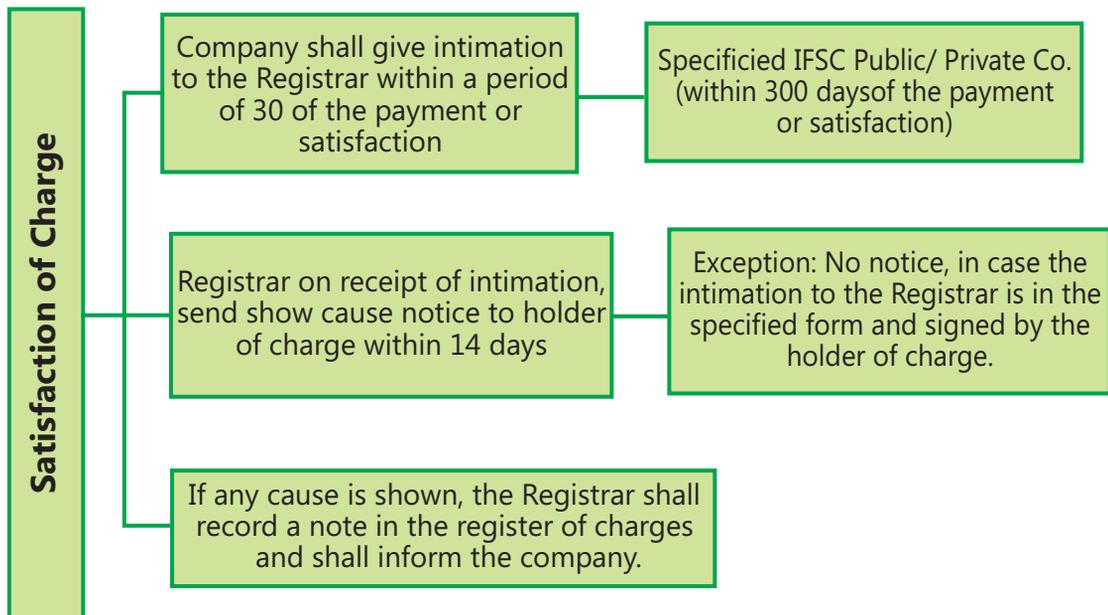


8. COMPANY TO REPORT SATISFACTION OF CHARGE [SECTION 82]

1. Company to intimate the registrar on the satisfaction of charge : According to section 82 of the Companies Act, 2013, a company shall give intimation to the Registrar in the prescribed form [Form CHG 1], of the payment or satisfaction in full of any charge registered under this Chapter within a period of 30 days from the date of such payment or satisfaction and the provisions of section 77(1) shall, as far as may be, apply to an intimation given under this section.¹

- 1. Provided that in case of a Specified IFSC public company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.
Provided that in case of a Specified IFSC private company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

2. **Notice to the holder of charge by the registrar :** The Registrar shall, on receipt of intimation, cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81 and shall inform the company that he has done so.
However, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge.
3. **If any cause is shown,** the Registrar shall record a note to that effect in the register of charges and shall inform the company.
4. **No effect of this section on the powers of the Registrar :** Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.



9. POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]

Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been

received by him from the company.

- (i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—
 - (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
 - (b) that 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, - enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that 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, as the case may be, despite the fact that no intimation has been received by him from the company.
- (ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81(1).
According to *the Companies (Registration of Charges) Rules, 2014* with respect to the satisfaction of charge-
 - (1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
 - (2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge.



10. INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER [SECTION 84]

Section 84 of the Companies Act, 2013 provides that if any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of 30 days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Any person appointed above shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.



11. PUNISHMENT FOR CONTRAVENTION [SECTION 86]

According to section 86 of the Companies Act, 2013, if any company contravenes any provision relating to the registration of charges contained under chapter VI of the Act, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.



12. RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES [SECTION 87]

- I. **Rectification by Central Government in register of charges** : Section 87 of the Companies Act, 2013 empowers the Central Government to make rectification in register of charges. According to the provision—
- (1) The Central Government on being satisfied that—
 - (i) (a) **the omission to file with the Registrar the particulars of any charge** created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or
 - (b) **the omission to register any charge within the time** required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or
 - (c) **the omission or mis-statement of any particular** with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,
 - was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or
 - (ii) **on any other grounds**, it is just and equitable to grant relief,
 - it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

II. **Condonation of delay and rectification of register of charges.** According to Rule 12 of the *Companies (Registration of Charges) Rules, 2014* :

- (1) Where the instrument creating or modifying a charge is not filed within a period of 300 hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.
- (2) The application for condonation of delay and for such other matters covered in sub-clause (a), (b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government along with the fee.
- (3) The order passed by the Central Government under section 87(1) of the Act shall be required to be filed with the Registrar along with the fee as per the conditions stipulated in the said order.



SUMMARY

- “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.
- A charge created by a company is required to be registered with registrar within 30 days of its creation
- Condonation of delay by Registrar: The Registrar may on application by the Company may allow registration of charge within 300 days of creation or modification of charge on payment of additional fee.
- If Company fails to register the charge even within this period of 300 days it may seek extension of time from the Central Government in accordance with section 87.
- The company shall give intimation to Registrar of payment or satisfaction in full of any charge within a period of 30 days from the date of such payment or satisfaction

- On receipt of such intimation, the registrar issues a notice to the holder calling a show cause within such time not exceeding 14 days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar.
- In case, the company fails to send intimation of satisfaction of charge to the Registrar, the registrar may enter in the register of charges memorandum of satisfaction on receipt of evidence to his satisfaction.
- Where Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

Company's register of Charges

- Every company shall keep at its registered office a register of charges which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings. It will be updated after the creation, modification or satisfaction of charge
- This register shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.
- The register of charges and instrument of charges shall be kept open for inspection during business hours by members, creditors or any other person subject to reasonable restriction as the company by its articles impose.
- **Rectification by Central Government in register of Charges/Condonation of delay**
 - (i) The Central Government on being satisfied that—
 - o the omission to file with the Registrar the particulars of any charge created by a company or any charge.
 - o the omission to register any charge within the time required or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time prescribed as per Act.
 - o the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83 was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or,
 - (ii) on any other grounds, it is just and equitable to grant relief.

 **TEST YOUR KNOWLEDGE****Multiple Choice Questions**

1. The company's instrument creating a charge or modification thereon shall be preserved for a period of ____ years from the date of satisfaction of charge by the company.
 - (a) 5
 - (b) 7
 - (c) 8
 - (d) 15
2. 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:
 - (a) 14
 - (b) 21
 - (c) 30
 - (d) 300
3. The register of charges and instrument of charges, shall be open for inspection during _____.
 - (a) Working Hours
 - (b) Business Hours
 - (c) At all times
 - (d) 9 am to 5 pm
4. Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:
 - (a) end of 30 days
 - (b) date of application for charge
 - (c) date acquiring the property
 - (d) date of such registration

5. 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:
- Debt
 - Charge
 - Liability
 - Hypothecation

Answer to MCQs

1. (c)	2. (a)	3. (b)	4. (d)	5. (b)
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Question and Answer

Question 1

How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified?

Answer

Verification of instrument evidencing creation or modification of Charge : A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

- 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;
- where the instrument or deed relates, whether wholly or partly, to the property situated in India, 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.

Question 2

Explain briefly the provisions relating to registration of charges.

Answer

Registration of charges :

Under section 77 (1) of the Companies Act, 2013 it shall be the duty of every company creating a charge :

- a. within or outside India,
- b. on its property or assets or any of its undertakings,
- c. whether tangible or otherwise, and
- d. 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 such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation

Provided that the Registrar may, on an application made by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87 which empowers the Central Government to grant extension of time for filing of charges on an application made to it and under specified circumstances.

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Section 77 (2) provides that where a charge is registered with the Registrar under sub-section (1) (as explained above), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

Section 77 (4) further provides that nothing shall prejudice any contract or obligation for the repayment of the money secured by a charge. This means that the obligation of a company to repay the debt is not affected by the non registration of the charge.

Section 78 further provides that if the company fails to register the charge, the same can be done by the person in whose favour the charge is created by following the prescribed conditions.

Question 3

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.

Answer

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.

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.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI, a penalty shall be levied, ranging from ` 1 lakh to 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

Question 4

MNC Limited realised on 2nd May, 2017 that particulars of charge created on 12th March, 2017 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, 2017 instead of 12th March, 2017? Explain with reference to the relevant provisions of the Companies Act, 2013.

Answer

The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge [Section 77 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, MNC Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

There will be no change in the situation if the charge was created on 12th February, 2017.

Question 5

Mr Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Antriksh 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 Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

Answer

Notice of Charge : 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.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct.

