

CHARGE under the Companies Act 2013 – Registration, Modification and Satisfaction

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(SAIL & TATA STEEL JV COMPANY)

CHARGE

CHARGE is a **right** created by a company (**Borrower**) on its **assets and properties**, in favour of a financial institution or a bank, (**Lender**) which has agreed to extend **financial assistance**.



- Section – 2(16) – 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**.
- Chapter VI, Section 77 to 87, The Companies (Registration of Charges) Rules 2014
- Property or assets may be tangible or intangible, situated in India or outside India, present or future, movable or immovable.
- Mortgage, hypothecation, pledge, lien etc. also comes under the definition of charge.
- It shall be the **duty of every company** creating a charge.
- There should be two parties to the transaction, the **creator of the charge** and the **charge holder**. Both has to sign the Form to be filed.

CHARGES REQUIRING REGISTRATION

All types of charges are required under the Act to be registered –

- Charge securing issue of debenture / deposit
- Charge on uncalled share capital
- Charge on calls made but not paid
- Charge on movable / immovable property
- Floating Charge on book debt / stock in trade or any other assets
- Charge on any undertaking
- Charge on ship or share in a ship
- Charge on intangible assets including goodwill, patent, copyright, licence, trade mark etc.
- Charge by lien on FDs
- Charge on property situated outside India
- **Motor Vehicles**
- **Pledge of securities or other assets**
- Others



TYPES OF CHARGE



Fixed Charge

Floating Charge

Pari Passu Charge

Exclusive Charge

Further Charge

REGISTRATION / CREATION OF CHARGE

- File Form No. **CHG – 1** (for other than Debentures) or Form No. **CHG – 9** (for Debentures) with ROC within **30 days**
- The following particulars in respect of each charge are required to be filed with the Registrar:
 - (a) date and description of instrument creating charge;
 - (b) total amount secured by the charge;
 - (c) date of the resolution authorising the creation of the charge; (in case of issue of secured debentures only);
 - (d) general description of the property charged;
 - (e) a copy of the deed/instrument containing the charge duly certified or if there is no such deed, any other document evidencing the creation of the charge to be enclosed;
 - (f) list of the terms and conditions of the loan; and
 - (g) name and address of the charge holder.
- ROC shall issue a certificate of registration in Form No. **CHG – 2**
- Every Company shall keep at its registered office a Register of Charges in Form No. **CHG – 7** and enter therein the particulars of Charge.

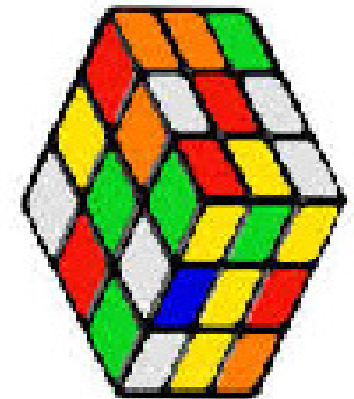
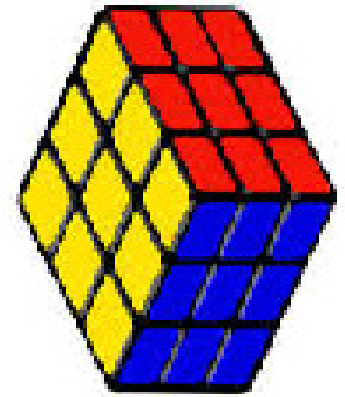
REGISTRATION/CREATION OF CHARGE

- It shall be the responsibility of the Company to file with ROC, for registration of each charge created.
- If the Company fails, then the person in whose favour the charge is created may apply with ROC for registration of charge and the ROC may, on such application, within 14 days after giving notice to the Company allow such registration. (Section – 78)



MODIFICATION OF CHARGE

- File Form No. **CHG – 1** (for other than Debentures) or Form No. **CHG – 9** (for Debentures including rectification) with ROC within **30 days**.
- File evidence of modification of Charge / Instrument regarding modification of Charge along with the Form.
- ROC shall issue a certificate of modification of Charge in Form No. **CHG – 3**
- Make necessary entry in the Register of Charges



SATISFACTION OF CHARGE

- File Form No. **CHG – 4** with ROC within 30 days of the payment or satisfaction in full of any charge registered.
- File evidence of satisfaction of Charge along with the Form.
- ROC shall issue a certificate of registration of satisfaction of Charge in Form No. **CHG – 5**.
- Make necessary entry in the Register of Charges.
- The Register of Charges and instrument of charges kept by the Company shall be open for **inspection** –
 - (a) by any member or creditor without payment of fees,
 - (b) by **any other person** on payment of such fees as may be prescribed.



SATISFACTION

CONDONATION OF DELAY IN CASE OF CREATION / MODIFICATION OF CHARGE

Beyond 30 days upto 300 days

- **ROC** has the power to condone and grant extension of time, if satisfied that the Co. had sufficient cause for not filing the Charge.
- Application for delay shall be made in Form No. **CHG – 1 / 9**.
- File a **declaration** signed by CS or Director that such belated filing shall not adversely affect rights of any other intervening creditors of the Company.



CONDONATION OF DELAY

Beyond 300 days for Creation / Modification or Beyond 30 days for Satisfaction or in case of Rectification)

- CG (Regional Director) has the power to condone if satisfied that omission / misstatements was accidental or due to inadvertence or due to some other sufficient cause and is not prejudicial to creditors or shareholders
- Application for delay shall be made in Form No. **CHG – 8**.
- File the Order of RD with ROC in Form No. **INC – 28**.
- File Charge related Form with ROC within the extended time granted.

APPLICABLE FORMS

CHG - 1

- Registration / Modification of Charge (o/t Debenture)

CHG - 2

- Registration Certificate of Charge issue by ROC

CHG - 3

- Modification Certificate of Charge issue by ROC

CHG - 4

- Satisfaction of Charge

CHG - 5

- Satisfaction Certificate of Charge issue by ROC

CHG - 6

- Appointment / Cessation of Receiver

CHG - 7

- Register of Charge

CHG - 8

- Application to CG for condonation of delay

CHG - 9

- Registration / Modification of Charge for Debenture

INC - 28

- Order of CG to be filed with ROC

PENAL PROVISIONS

- Fine on **Company** not less than Rs. 1 lakh which may extend to Rs. 10 lakhs
- Fine on every **Officer in default** not less than Rs. 25 thousand which may extend to Rs. 1 lakh, or imprisonment which may extend to 6 months or with both.





THANK YOU

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