



Ministry of Corporate Affairs
Government of India
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REGISTRATION OF CHARGES



LEAD PARTNER INSTITUTES



NFCG



CHARGE

Meaning of A Charge

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. The power of the company to borrow includes the power to give security also.

Section 2(16) of the Companies Act, 2013 defines charges so as to mean 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.

The following are the essential features of the charge which are as under:

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.

Need For Creating A Charge

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 institutions or banks. 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. As a matter of convenience and practice, as and when more funds are required by companies, they approach the same institutions/banks or certain new institutions/ banks and offer same assets as security for fresh loans.

Kinds of Charges

A charge on the property of the company as security for debts may be of the following kinds, namely:

- Fixed or specific charge.
- Floating charge.

CHARGES

FIXED OR SPECIFIC CHARGE

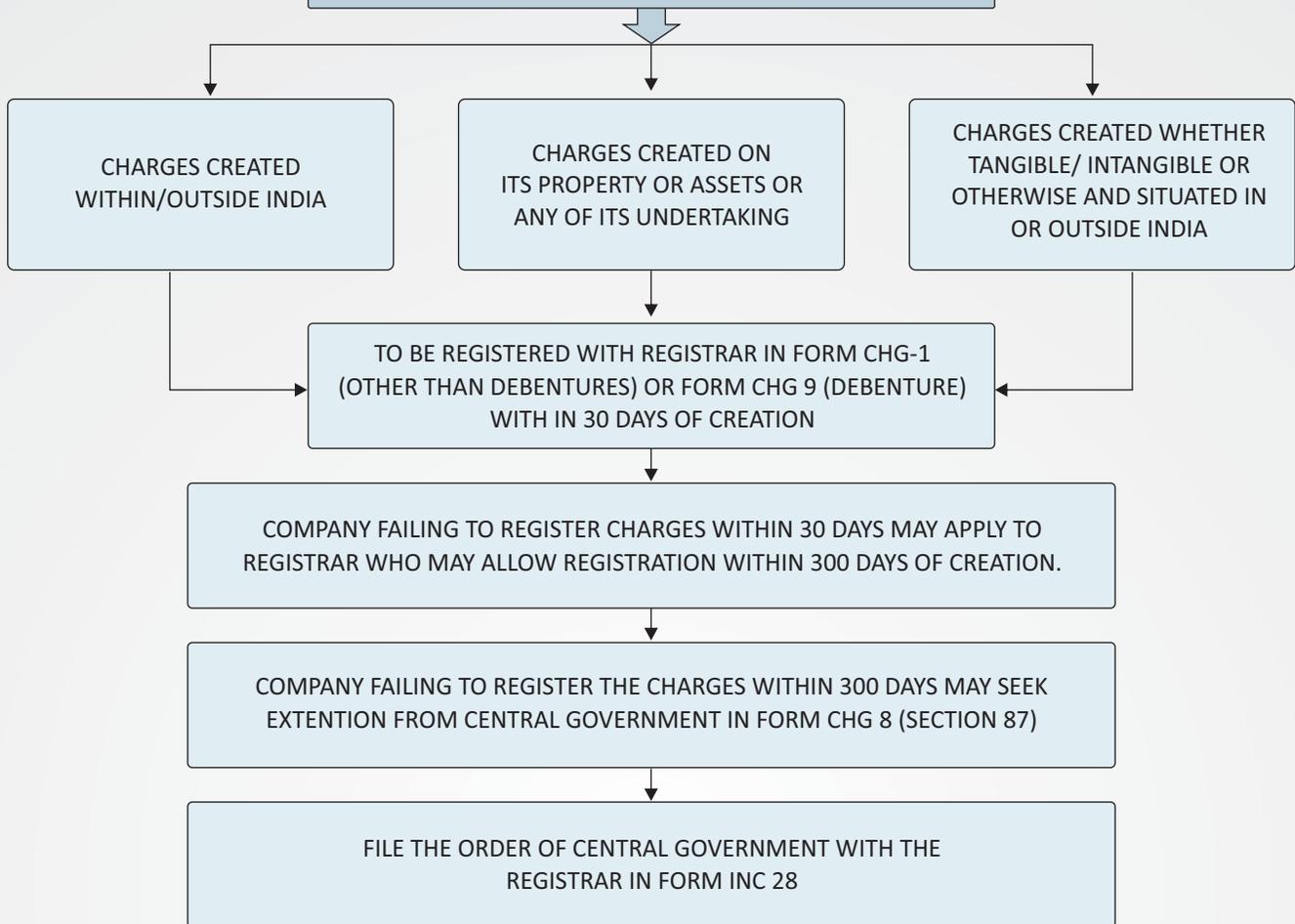
A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied. In other words, the company can deal with such property, subject to the charge so that the charge holder's interest in the property is not affected and the charge holder gets priority over all subsequent transferees except a *bona fide* transferee for consideration without notice of the earlier charge. In the winding-up of the company, a debenture holder secured by a specific charge will be placed in the highest ranking class of creditors.

FLOATING CHARGE

A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. “The essence of a floating charge is that the security remains dormant until it is fixed or crystallised”. But a floating security is not a future security. It is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security. The advantage of a floating charge is that the company may continue to deal in any way with the property which has been charged.

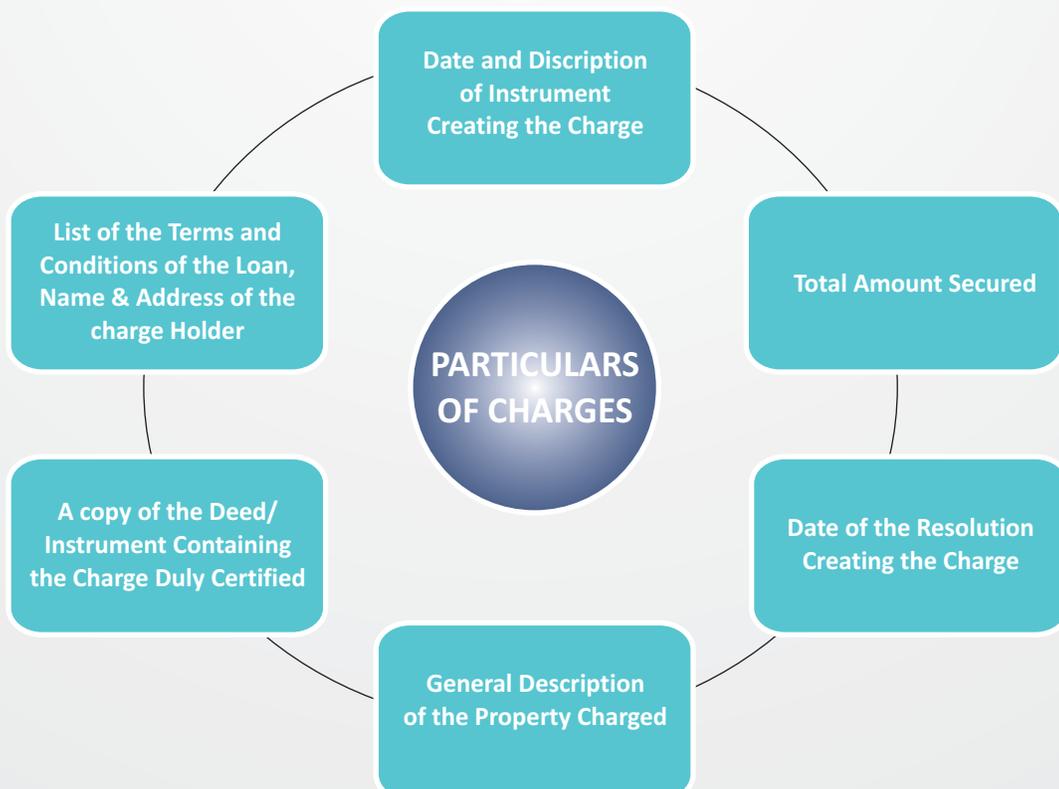
Registration of Charges: Provisions of Companies Act, 2013

CHARGES TO BE REGISTERED (SECTION 77)



PARTICULARS OF CHARGES

The following particulars in respect of each charge are required to be filed with the Registrar:



Modification of Charges

Section 79 of the Act makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

The certificate issued by the Registrar whether in case of registration of charge or registration of modification, shall be conclusive evidence that the requirements of Chapter VI of the Act (Registration of Charges) and the rules made there under as to registration of creation or modification of charge, as the case may be, have been complied with.

The provisions relating to condonation of delay shall apply, *mutatis mutandis*, to the registration of charge on any property acquired subject to such charge and modification of charge under section 79 of the Act.

Satisfaction of Charges

According to section 82 read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in Form No.CHG-4 along with the fee. Where the satisfaction of the charge is not filed within thirty days from the date on which such payment or satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government

On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling a show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar.

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 maintained by the registrar under section 81 and shall inform the company. If the cause is shown to the registrar shall record a note to that effect in the register of charges and shall inform the company accordingly. However the aforesaid notice shall not be sent, in case intimation to the registrar is in specified form and is signed by the holder of charge

Verification of Instruments

According to the rules, 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 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.

List of E-Filing under Charge Management

S.No	E-Form	Purpose
1	CHG-1	Creating or modifying the charge (for other than Debentures)
2	CHG-2	Certificate of registration
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 of receiver or manager
7	CHG-7	Register of charges
8	CHG-8	Application for condonation of delay
9	CHG-9	Creating or modifying the charge in (for debentures including rectification)
10	CHG-10	Application for delay to the registrar

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