

# CHARGE REGISTRATION UNDER THE COMPANIES ACT, 2013

## Practical Aspects



## Chapter VI - Recapitulation

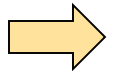
<b>King Vikramaditya came catching the bus, number</b>	<b>77</b>
And single handed caught Vetala exact at the tree number	78
He changed the burden of Vetala from right to left	79
He got the certificate of valor on his sword	80
Chitragupt also got everything duly noted in his diary	81
And ...as the King gave satisfactory answer, Vetala was released	82
Vikram knew that Chitragupt had every power of regn	83
And ...Vetala's manager had every right to notify his possession	84
Vikram was duty bound to maintain Vetala's diary	85
Everytime King Vikramaditya was warned to cut into pieces, for not following the above rules	86
Everybody knows that Lord Brahma had the ultimate power	87

# Important Matters for bankers

- Due diligence report from professional is mandatory for consortium finance above Rs. 5 Crore. (notification 10<sup>th</sup> & 12<sup>th</sup> Feb 2009)
- Guarantee or security should be received from disinterested directors/ companies.
- Charge can be registered for LLPs.
- Equitable mortgages should be registered with CERSAI w.e.f. 31.03.2011
- Registration of other charges made mandatory w.e.f. 01.07.2016

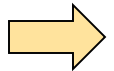
# Important Sections

- Section 180 - Restrictions on Board's powers (Previous Sec. 293)
- Section 185 - Loans to Directors (Previous Sec. 295)
- Section 186 - Investments, Loans, Guarantees and Securities by Company (Previous Sec. 372A)
- Section 188 - Related Party Transactions (Previous Sec. 297)



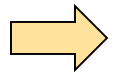
# Section 180 (1)(c)

- The board of directors shall exercise the power of borrowing only with the consent of the company by special resolution if it exceeds Paid up capital + Free Reserves + Securities Premium
- Temporary loans in ordinary course exempted
- Exemption offered to private companies (notification 05/06/2015)



# Section 185 (1)

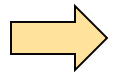
- Company shall not advance loan, give guarantee or provide security in connection with any loan taken by –
  - director or holding company partner or relative of such director
  - any firm in which such a director / relative is a partner





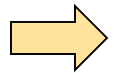
## Section 185 (2)

- Company may advance loan, give guarantee or provide security in connection with any loan in whom any of the directors is interested, if
  - Special resolution is passed in **GM and**
  - Borrower company utilizes such loan for its principal business activity



## Section 186 (2)

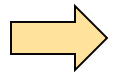
- Company shall not directly or indirectly advance loan to any \*person or other body corporate or give guarantee or provide security in connection with such loan –
  - Exceeding 60% of Paid up capital + FR + SP or 100% of FR + SP whichever is more
- \*Person does not include employee





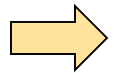
## Section 186 (3)

- Where the aggregate of loans advanced, investments made and guarantees/ securities provided exceed the prescribed limits –
  - None of such fresh activity could be done unless previously authorized by special resolution in GM.
  - Holding-sub subsidiary (WOS), JV relationship excluded.



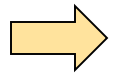
## Section 186 (4)

- The company shall disclose to its members in its financial statements the full particulars of loans advanced, investments made and guarantees/ securities provided.



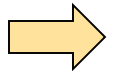
## Section 186 (5)

- While making the investment, giving the loans, guarantees/ securities provided, the company shall pass a unanimous resolution at the Board meeting **and**
- Where the term loan is subsisting, prior approval of public financial institution is not necessary if the limits are not exceeded and there is no default in repayment.



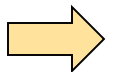
# Basics of a charge

- Charge means an encumbrance over the movable or immovable property.
- Is the registration of charge mandatory?
- Types of charge
- Common types of mortgages
- Difference between hypothecation and hire purchase
- Difference between lien and pledge



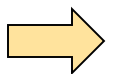
# Important definitions (I)

- **Section 2(16) of the CA, 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;
- **Section 172 of the ICA 1872:** The bailment of goods as security for payment of a debt or performance of a promise is called PLEDGE;
- **Section 171 of the ICA 1872:** Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may retain as a security for a general balance of account, any goods bailed to them is called LIEN



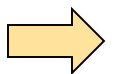
## Important definitions (2)

- **Section 2(n) of the SARFAESI, 2002 :** HYPOTHECATION means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge of movable property;



# Important definitions (3)

- **Section 58 of the TP Act, 1882 :**  
MORTGAGE is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.





# Stamp duty – schedule as per BSA

- For hypothecation or deposit of title deeds – Re. 1 for every Rs. 1,000/- upto loan of Rs. 5 lacs, Rs. 3 for every Rs. 1,000/- for loan exceeding Rs. 5 lacs, minimum Rs. 100/-.
- For mortgage – Rs. 1 for every Rs. 1,000/- or part thereof, upto loan of Rs. 5 lacs, Rs. 3 for every Rs. 1,000/- for loan exceeding Rs. 5 lacs minimum Rs. 100/- and maximum Rs. 10 Lacs.
- Above % duty is effective from **09/02/2021**
- Each document needs to be properly stamped.

# Section 77 (earlier S. 125, 132)

- Duty of company to create a charge and to register the particulars of charge within 30 days.
- Proviso I allows leniency within 60 days.
- Proviso II allows condonation for belated filing up to further period of 60 days.
- Subsequent regn gets priority.
- Certificate of registration from ROC.
- Consequence of non-registration.

[central.servicedesk@mca.gov.in](mailto:central.servicedesk@mca.gov.in)

16 Jan at 2:56 PM

To [rajascs@yahoo.co.in](mailto:rajascs@yahoo.co.in)

**Dear Sir/Madam,**

Your Service Request SR395704 has been Resolved by MCA Service Desk.

**Summary-** e-filing Related

**SRN-**

**Company Name-**

**DIN-**

**Solution-** Dear User,

**As per MCA fee rules, the due date for AOC-4 will be Date of AGM + 29 days.**

**As per the norms, late fees should be charged 6 times the normal fee if number of delay days is between 60 and 90 days.**

**As delay days are 29.12.2016 - 29.10.2016(Due Date 29.09.2016 +29 days) = 61 days which is more than 60 days, additional fee is calculated as 6 times of normal fee which is 1800.**

Regards,

MCA Support Team

Rajas Bodas & Associates,  
Company Secretaries, Pune



**From:** Bhasker Subramanian [[mailto:Bhasker\\_S@infosys.com](mailto:Bhasker_S@infosys.com)]

**Sent:** Thursday, December 29, 2016 8:12 PM

**To:** roc mumbai

**Subject:** RE: Wrong calculation of filing fees on last date

Dear Sir

It is advisable if the filled form and challan is shared with us for detailed examination. However, it may please be noted that the fee logic in this case shall be T+29 days. Beyond this date, additional fee as applicable becomes payable.

Regards

S Bhasker

## Excerpts of my reply to mail sent by helpdesk

...The words used in Section 137(1) of the Companies Act 2013 are "...within 30 days from the date of AGM". Hence in my view, the logic applied for calculating filing fees is not only wrong but causing an avoidable harm to the stakeholders besides leading confusion. Similar technical problem is occurring in other forms like CHG-1, CHG-4 also.

- You may go through the Limitation Act 1963 and the General Clauses Act 1897 for verification of similar provisions. There are many judgements of honorable courts reiterating **the principle on exclusion of the date of event.**

# Registrable charges I

- A charge for the purpose of securing any issue of Debentures.
- A charge on uncalled share capital of the company.
- A charge on any immovable property.
- A charge on book debts of company.
- A charge “not being a pledge” on any movable property

# Registrable charges II

- A floating charge on the undertaking or any property
- A charge on calls made but not paid
- A charge on any ship or any share in a ship
- A charge on Goodwill or a Patent or Licence under patent, Trade mark, Copyright or licence under copyright.



# Section 78 (earlier S. 134)

- If company fails to register the charge, charge holder may apply from 31<sup>st</sup> day to 120<sup>th</sup> day from the date of creation.
- ROC issues notice to the company and gives 14 days for reply.
- If no sufficient cause or reply is received, ROC allows registration.
- Proviso 1 - Charge-holder is entitled to recover registration fees from company.

# Section 79 (earlier S. 127, 135)

- Provisions of Section 77(I) shall be mutatis mutandis applicable when the company acquires any property subject to charge or modification with respect to terms, conditions, extent or operation of charge.

# Modification of charge I

- Change in the rate of interest, margin, other credit terms.
- Increase in the amount of loan facility.
- Change in the nature of security.
- Revision in the list of assets creating charge.
- Assignment of a charge.
- Induction of other banker through consortium or multiple banking.

# Modification of charge II

- Change in the terms relating to maintenance of margin.
- Change in the nature of security in respect of a charge already
- Re-schedulement or revision in terms and conditions or extent of operations

# Section 80 (earlier S. 126)

- Deemed notice of charge from the date of registration.
- This constructive notice confirms the charge registration however it may not extend the terms and conditions of charge.

# Section 81 (earlier S. 130)

- ROC shall keep a register containing particulars of registered charges.
- Such register shall be open to inspection on stipulated filing fees.
- ROC has two duties 1) to register the charges 2) issue certificate to facilitate public notice

# Section 82 (earlier S. 130)

- Full satisfaction of charge shall be registered within 30 days.
- For delayed charge satisfaction application may be made within 300 days.
- On intimation, ROC may issue a show cause to the Charge Holder.
- After 14 days of no objection, memorandum of satisfaction is entered and informed to the company.
- ROC also has the power u/s 83.



# Satisfaction of charge

- No dues certificate is **practically** essential.
- In case of immovable property – Release deed is **practically** essential.
- Form CHG 4 needs to be certified by PCS/ PCA/ PCWA.
- Practically innovative ways of charge satisfaction.

# Time limit

- For creation and modification in form CHG-1 – 30 days up to 120 days. No registration with ROC thereafter in normal course.
- For satisfaction – 30 days up to 300 days
- Beyond stipulated period of 300 days, company needs to approach to RD for condonation of delay, w.e.f 21/05/2014.
- Application in CHG-8.
- File form GNL-2
- RD Order
- Intimation in INC-28

Additional/ Ad-valorum fees (in Rs.) w.e.f. 01/08/2019

<b>Period of delay</b>	<b>Small company &amp; OPC</b>	<b>Other company</b>
Up to 30 days	3 times normal fees	6 times normal fees
31 to 90 days	+ 0.025% of amount secured by charge up to Rs. 1,00,000	+ 0.05% of amount secured by charge up to Rs. 5,00,000

\* Normal filing fees (in Rs.)

<b>Nominal capital in Rs.</b>	<b>Small company &amp; OPC</b>
< 1,00,000	200
1,00,001 to 5,00,000	300
5,00,001 to 25,00,000	400
25,00,001 to 1,00,00,000	500
>1,00,00,000	600

# Section 83 (earlier S. 139, 140)

- In respect of a registered charge ROC may record part or full satisfaction of charge, release of part of the property or undertaking suo-moto on providing sufficient evidence.
- ROC shall inform the affected parties within 30 days of making the entries in his register.

# Section 84 (earlier S. 137)

- Appointment of receiver or manager of property, subject to charge, his particulars or instrument shall be registered within 30 days of passing order/ appointment.
- Such an appointment may be through an instrument or by a person.
- ROC should register the appointment and cessation.

# Section 85 (earlier S. 136, 143, 144)

- Register of charges shall be kept at the registered office of the company.
- Register and instrument/s of charge shall be open to inspection during business hours by members without fees and every other person on payment of fees.

# Section 86 (earlier S. 142)

- Deterrent provisions for contravention of Chapter VI:
  - Company – Rs. 5,00,000
  - Officer in default – Rs. 50,000
- Person who willfully furnishing false or incorrect information or knowingly suppresses material information shall be liable for action u/s 447 .



# Section 87 (earlier S. 141)

- Application may be made with the Regional Director (RD) for accidental/ inadvertent omission to file or condon belated filing or omission/ misstatement of any particular with respect to any satisfaction u/s 82 or 83.
- Company or any person interested may make such application.

## Section 403 (earlier S 610D)

- Where any document, fact or information except that as required by section 92 & 137 is not submitted within the principal section; it could be submitted, filed, registered or recorded after expiry of such period on payment of prescribed additional fees.
- Different classes may have different fees.
- For habitual offenders there may be higher additional fees.

# Section 460 (earlier S 637B)

- If a document which is required to be filed with Registrar under any provision of the Act is not filed within the specified time, Central Government may condone the delay, after recording the reasons in writing.
- Form CG-I needs to be filed

# Forms for filing (I)

- CHG – 1 Charge creation/ modification for other than debentures
- CHG – 2 Certificate of registration of charge creation
- CHG – 3 Certificate of registration of charge modification
- CHG – 4 Satisfaction of charge
- CHG – 5 Certificate of registration of charge satisfaction

# Forms for filing (II)

- CHG – 6 Appointment or cessation of receiver/ manager
- CHG – 7 Register of charges (format)
- CHG – 8 Petition with Regional director for matters u/s 87
- CHG – 9 Charge creation for debentures
- CHG – 10 Application for delay with declaration to ROC for belated filing
- INC – 28 Order of Regional director

# Historic circulars in DCA

- **Delay in Registration of Charges**  
(Issued by the Ministry of Industry, Department of Company Affairs, vide No. I/1/90 CL.V. dated 5-9-1990; Circular No. 14/90)
- **Delay in Registration of Documents**  
(Issued by the Ministry of Industry, Department of Company Affairs, vide Nos. I/3/ 91-CL.V; Circular No.5/91 dated 26-2-1991)

# Punishment for fraud

Any person who is found guilty of fraud involving > Rs. 10 lacs or 1% of turnover of the company whichever is lower shall be punishable with –

- minimum 6 months imprisonment and
- maximum 10 years imprisonment
- If public interest involved 3 years+ imprisonment

**AND**

- shall be liable to fine of the amount of fraud
- Up to thrice the amount of fraud.

# Punishment for mild fraud

- Where the fraud involves < Rs. 10 lacs or 1% of the turnover of the company whichever is lower

AND

- Does not involve public interest
- Such fraud shall be punishable with imprisonment with:
  - Maximum up to 5 years imprisonment or
  - Maximum fine of Rs. 50,000/- or both



# Punishment for false statement

- Includes omission of material fact
- In following documents –
  - Return
  - Report
  - Certificate
  - Financial statement
  - Prospectus
  - Statement or other document

# Punishment for false evidence

- If any person intentionally gives false evidence –upon examination on oath or solemn affirmation
- Through an affidavit, deposition, or about winding up or any matter arising under the act
- Shall be punishable with imprisonment from 3 years to 7 years AND
- Fine up to Rs. 10 lacs

# Online system of filing (I)

- Comprehensive Form CHG I with attachments.
- Few old forms become redundant.
- Charge ID is required for modification.
- DSC of director needs to be registered.
- He should not be director of any defaulting company. (w.e.f. 01/06/2011)
- DSC of bank/FI official is mandatory.
- DSC of professional is mandatory.

# Basic requirements of Online system of filing

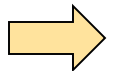
- Computer processor with Windows 2000 or above
- JAVA runtime environment (JRE) – JDK1.6u30
- Adobe Reader version 11 or above
- Internet Explorer version 9, Firefox version 24, Chrome version 33
- Internet connection

# Registration

- Registration certificate is generated immediately by straight through process (STP) from MCA w.e.f. 29/05/2011
- Certificate digitally signed by the ROC is issued vide circular dated 21/06/2011
- Communication is sent through e-mail.

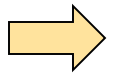
# Effects of non-registration

- Charge becomes void against liquidator.
- Charge becomes ineffective against creditor.
- Charge created later may get priority over the unregistered charge.
- Penalty – Min Rs. 1 lac up to Rs. 10 lacs to company and every officer in default punishable with imprisonment upto 6 months or fine with min Rs. 25 thousand upto Rs. 1 lac or both.



# Effects of non-registration

- Non registration of charge makes void the security and not the debt.
- Company can not contend that the chargee has no right to enforce the security, so long as it is a going concern.
- Provisions of extension of time for registration would protect unsecured creditors and judicial authority should not extend time when the company goes into liquidation unless exceptional circumstances like fraud.



# Inspection

- On the master data of MCA one can find “index of charges”.
- Public can have access to all the form CHG-I, CHG-4 registered with the MCA by taking search/ inspection.
- Creditors should take on record search report prepared by a CS professional with a reasonable interval to protect its interest.



# Questions from audience

# Questions - I

- If a lien mark is placed on the fixed deposit of a company, is it registrable?
- If wife of a director has pledged her Stridhan for the corporate loan, is it registrable?
- If a person, not associated with the company offers his personal immovable property as security. Is it registrable?
- XYZ Ltd. has given (corporate) guarantee to MI Ltd. Is it registrable?
- On registration of company under Part XXI does the company require to register the charge?

# Questions - II

- Is inland or foreign Letter of credit (LC) registrable?
- What if the company changes its name during the pendency of case with RD?
- Is there any exemption to OPCs, chit fund, nidhi companies for registration of charge?
- If a loan is given to a partnership firm or LLP against security of company, is it registrable?

# Questions - III

- Is the charge on property situated in India of a foreign company registrable?
- Is the charge on property situated outside India of a foreign company registrable?
- Is a charge registrable on property outside India of a company registered in India?
- Is a charge registrable on property situated at Jammu, of a company registered in India?

# Questions - IV

- Can mere an acknowledgement of debt or promissory note become a document for charge registration?
- Can a supplemental deed or letter of continuity become an instrument of charge?
- Is it required to renew charge every year, where there is no change in credit limit?
- Can a charge be registered in favour of a person other than bank or financial institution?



**Thank you!**