

14. REGISTRATION OF CHARGES

Q.No.1. What is a charge under the Companies Act, 2013? (B) (NEW SM, OLD SM OLD PM)

1. **Definition [Sec 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;
2. **Meaning:** A charge is a security, given for securing loans or debentures. The security may be provided either by way of mortgage, hypothecation or pledge.
3. **Items charged:** A charge may be created on (a) Property, or (b) Assets, or (c) any of the undertakings¹.
4. **Property Charged:** The property on which charge is created may be –
 - a. Tangible assets or otherwise,
 - b. Situated in India or Outside India.
5. **Registration of Charges:** All charges created by company on its property or assets of a Company shall be registered with ROC.
6. **Types of Charge or Kinds of Charge:** Charge can be either – (a) Fixed Charge or (b) Floating Charge.
 - a) **Fixed Charge:** It is a charge created on specific property, (i.e. assets which are ascertained and definite, or are capable of being ascertained and defined at the time of creating charge.
 - b) **Floating Charge:** It is an equitable charge, which is created on a constantly changing property, i.e. stock in trade, Debtors, etc.

SIMILAR QUESTIONS:

1. **What is the concept of 'charge' under the provisions of the Companies Act, 2013?**
 - A. Refer above answer.
2. **Can a company create a charge, including a floating charge, on any of its book debts.**
 - A. Yes. Company can create a charge including a floating charge on any of its book debts.

Q.No.2. What are the differences between fixed charge & floating charge? (C) (OLD PM)

DIFFERENCES BETWEEN FIXED CHARGE & FLOATING CHARGE:

Basis	Fixed charge	Floating charge
Nature	It is a legal charge.	It is an equitable charge.
Meaning	It is a charge on specific, identifiable and existing assets.	It is a charge on present and future assets. No specific assets.
Dealing in asset charged	Company cannot deal with the assets except with the consent of the charged-holder.	Company is free to use or deal with the assets the way it likes until the charge crystallises i.e. becomes fixed.
Registration	Registration of fixed charge on movable assets is not compulsory in certain cases.	Registration of all floating charge on all kinds of assets is compulsory by law.
Priority	It has always priority over floating charge.	No such priority.
Created on	Fixed charge is generally created on fixed assets, like land & building,	Floating charge is generally created on such assets as are always circulating e.g.,

¹ Assets may belong to company or undertakings

Plant & Machinery etc.

stock, debtors etc.

Q.No.3. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the ROC? (A) (NEW SM, OLD SM, OLD PM, RTP - M17)

1. CHARGE IS REQUIRED TO BE CREATED UNDER FOLLOWING CIRCUMSTANCES:

- Company raises money through borrowings which are secured by assets of the company.
- Mortgage or hypothecation on assets of company
- Creation of right on assets of company

Note: Charge can be created on movable or immovable assets in India or otherwise.

2. DUTY OF THE COMPANY TO REGISTER CHARGES [SEC 77]:

- a) Every company creating a charge should register the charge with ROC within 30 days of its creation. This section is not applicable to such charges as may be prescribed in consultation with RBI.
- b) Charge may be created on its property or assets or any of its undertakings, whether tangible or otherwise, within India or outside India.
- c) Particulars of charge shall be signed by the Company and the charge holder (banker or Money Lender).
- d) Particulars of charge are filed in form CHG-1 (for other than debentures) or CHG—9 (for debentures).
- e) The certificate issued by ROC is conclusive evidence that the requirements of this chapter and rules have been complied with.
- f) The above provisions shall apply for modification of charges also.

3. CONDONATION OF DELAY BY REGISTRAR:

a) Late filing beyond 30 days, in case of Charges created before 02nd November, 2018:

- If the Charge is not filed within 30 days of creation with ROC then it can be filed within 300 days² of such creation on payment of Additional fees and taking approval of ROC.
- For First 30 days, normal fees shall be applicable and beyond 30 days, normal fees plus additional fees is applicable.
- Application for delay shall be filed 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 above stated provisions shall apply for modification of charges.
- If registration is not made within 300 days, it can be made within 6 months from 02nd November, 2018 on payment of additional fees.

b) Late filing beyond 30 days, in case of Charges created on or after 02nd November, 2018:

- If the charge is not filed within 30 days of creation of charge then it can be filed within 60 days³ of such creation on payment of additional fees and taking approval of ROC
- If registration of charge is not made within 60 days of creation of charge then ROC may allow further period of 60 days on application and payment of ad valorem⁴ fees.

² 300 days is including initial time limit of 30 days (30+270 days)

³ 60 days is including initial time limit of 30 days (30+30days)

⁴ Ad valorem means in proportion to value.

SIMILAR QUESTIONS:

1. State the particulars to be filed with the ROC in case of debentures secured by a charge on certain assets of the Company.
 2. A Company made a default in providing particulars of a charge created on the assets of the Company filing with the ROC. Explain the provisions with regard to the condonation of such delay by ROC.
(A) (NEW SM, OLD SM) (N16 - 4M)
- A. Refer point 2 and 3 in the above answer
3. State the time limit for registration of charges and also state the power of ROC to condone the same?
- A. Refer point 2 and 3 in the above answer

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 2, 3, 4 and 5)

Q.No.4. State the effects of non-registration of charges? Or what are the consequences of Non-registration of charges? (C) (NEW SM, OLD SM)

Effect of Non-registration of charges:

1. The charge not registered with ROC, will become void as against the Liquidator and against the Creditors. It is treated as unsecured debt.
2. During Liquidation proceedings, the charge holder assumes the status of an unsecured creditor against the liquidator and creditors
3. The debt becomes payable immediately.
4. Although the security becomes void by non registration, it does not affect the contract or obligation of the company to repay the money thereby secured.
5. **Contravention of any provisions of this chapter [Punishment for default (Sec 87)]:**
 - The Company shall be punishable with minimum fine of Rs. 1,00,000 and maximum fine of Rs. 10,00,000
 - Every defaulting officer of the company shall be punishable with –
 - i. **Imprisonment** up to 6 months or
 - ii. **Fine:** Minimum Rs. 25,000 & Maximum Rs. 1,00,000, or
 - iii. Both
 - If any Willful furnishing of false or incorrect information or knowingly suppressing any material information pertaining to registration of charges then such person shall be punishable to fraud u/s 447.

SIMILAR QUESTION:

1. Define the term the charge and also explain what is punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013? (N 14 - 4M)
- A. Refer meaning of charge in Q.No.1 and above answer.
2. Is registration of charge compulsory? If not, what are the consequences / effects of non- registration? (OLD PM)

Q.No.5. Discuss the recourse available to the charge holder according to the Companies Act, 2013 for non registration of charge created by the Company. (B) (NEW SM, OLD SM, OLD PM)

REGISTRATION BY CHARGE HOLDER [SEC 78]:

1. **Application by Charge Holder:** If Company fails to register the charge within the period specified u/s 77, the charge holder may apply to the ROC for registration of charge within the period of 30 days.
2. **Action by ROC:**
 - a) The Registrar shall give notice (SCN) of such application to the Company.

- b) In response to the notice, the company itself may register the charge, or can show sufficient cause that the charge should not be registered.
- c) In case of no response from the company within 14 days, the ROC may allow registration on payment of fees.
3. **Recovery of Fees:** The charge holder is entitled to recover from the company, the amount of fees or additional fees paid by him to the ROC for the purpose of such registration.

**Q.No.6. Explain briefly the provisions relating to "Modification of charge". (B)
(NEW SM, OLD PM)**

MODIFICATION OF CHARGE:

1. Charge stands modified when there is change in terms and conditions of charge.

Some examples of modification are as under:

- *Where the modification is in pursuance of an agreement for increase or decrease the limits:*
- *Change in rate of interest which may be by mutual agreement or by operation of law.*
- *Pari Passu charge created on assets which are already charged.*
- *Change in rate of interest (other than bank rate);*
- *Change in repayment schedule of loan; (this is not applicable for working loans which are repayable on demand) and*
- *Partial release of the charge on a particular asset or property.*
- *Assignment of rights of charge holder to third party.*

2. **Provisions contained in Sec 79 of the Companies Act, 2013:**

- a) If there are changes in terms or conditions or the extent of operation of any charge registered u/s 77 of the Act are modified, it is the duty of the Company to send to the ROC the particulars of such modifications and get such modifications registered.
- b) The provisions applicable to the registration of a charge u/s 77 shall apply to modification of the charge."

3. **Provisions contained in the Companies (Registration of Charges) Rules, 2014:**

- a) If the particulars of modification of charge is registered u/s 79, the Registrar shall issue a certificate of modification of charge.
- b) The certificate issued by the Registrar shall be conclusive evidence that the requirements of the provisions 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.

SIMILAR QUESTIONS:

1. ***While sanctioning working limit, the rate of interest has been fixed at a specified percentage above the bank rate as notified by RBI.
But there was a change in the interest rate due to RBI notification later. The bank insisted on filing a return of modification of charges. Is the stand of bank correct?***
- A. ***No. Change in the interest rate fixed by RBI does not amount to a modification of charge in terms of conditions of the charge u/s 79.***
2. ***Explain the difference between Modification of charge and satisfaction of charge?***
- A. ***Refer the above answer and Q.No.10***

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 7)

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Q.No.7. Explain briefly the provisions relating to "Satisfaction of charge". (A)
(NEW SM, OLDSM, OLD PM)

COMPANY TO REPORT SATISFACTION OF CHARGE [SEC 82]:

1. Intimation regarding satisfaction of charge:

- a) A Company shall give intimation of the payment or satisfaction in full of any charge earlier registered, to the ROC
- b) Intimation shall be given in **Form No. CHG-4**
- c) Intimation shall be given within a period of 30 days from the date of such payment or satisfaction.
- d) On an application by the company or charge holder, ROC may allow such intimation of satisfaction to be made within a period of 300 days of such satisfaction on payment of additional fees.

2. Notice to the holder of charge by ROC:

- a) On receipt of intimation, The ROC shall send a notice to the charge- holder, to show cause within 14 days as to why payment or satisfaction in full should not be recorded as intimated.
- b) **If no cause is shown by the charge holder**, the ROC shall -
 - Order that a "Memorandum of satisfaction" shall be entered in the register of charges kept by him u/s 81 and
 - Inform the Company through a Certificate of Registration of Satisfaction of charge in **Form No. CHG-5**.

Note: However, Notice is not required to be sent if the intimation to the ROC in this regard is in the specified form and signed by the holder of Charge.

- c) **If any cause is shown by the charge holder**, the Registrar shall
 - Record a note to that effect in the register of charges and
 - Inform the Company.

SIMILAR QUESTION:

1. If a registration charge is not registered, the debt is not recoverable.

A. Statement is incorrect. Debt can be recovered as unsecured debt.

Q.No.8. What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013? (B) (NEW SM)

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

1. Power of ROC:

- a) ROC is entitled to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
- b) Evidence may be given to ROC's satisfaction with respect to any registered charge, that
 - the debt secured by charge has been paid or satisfied in whole or in part or
 - the 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.

- c) Even if no intimation has been received by him from the company, the ROC may enter in the register of charges
- a memorandum of satisfaction in whole or in part; or
 - 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.
2. **Information to affected parties:** ROC shall inform the affected parties within 30 days of making the entry in the register of charges.
3. **Issue of Certificate:** ROC shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

ADDITIONAL QUESTION BANK – FOR STUDENTS SELF STUDY

Q.No.9. 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? (A) (NEW SM-TYK)

CHARGE [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’.

Punishment for contravention [Sec 86] – If a company makes any default with respect to the registration of charges covered under Chapter VI, -

- a) Company is punishable with penalty ranging from Rs. 1 lakh to Rs. 10 lakhs.
- b) Every defaulting officer is punishable with
- imprisonment maximum up to 6 months or
 - fine with minimum of Rs. 25,000 and maximum of Rs. 1 lakh, or
 - Both.
- c) Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

Q.No.10. What is the necessity of creating a charge? (B) (NEW SM, OLD SM OLD PM)

Necessity of creating a charge

- When the Company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions.
- Banks/ financial institutions need a surety regarding the repayment of their funds. Therefore, they create a mortgage or hypothecation on the assets for 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 information in public domain as to how much Company has borrowed against its assets and from whom.

Q.No.11. Whether Doctrine of Constructive Notice apply to charges? (C) (NEW SM, OLD SM)

Date of Notice of Charge:

Any person acquiring any assets or property on which a charge subsists, is deemed to have notice of charge from the date of such registration. They become public documents, Doctrine of Constructive notice applies.

Q.No.12. Explain the provisions of the companies act, 2013 relating to rectification by central government in register of charges. (NEW SM)

Condonation of Delay by Central Government [Sec.87]:

1. Central Government has power to grant extension of time for giving of any intimation to the ROC with respect to payment or satisfaction of charge within the specified time.
2. If C.G. is satisfied that the omission to do so within the prescribed time –
 - Is accidental; or
 - Is due to inadvertence; or
 - Is not of a nature, as to prejudice the position of creditors/ shareholders,
3. It may be noted that the C.G. may grant extension, on the application of the company or any person interested, and on such terms and conditions as the C.G. deems just and expedient.
4. For this purpose, an application shall be made to the C.G., by (i) the company or (ii) any interested person in Form CHG-8

QUESTIONS FOR ACADEMIC INTEREST – FOR STUDENTS SELF STUDY

Q.No.13. Write a short note on Floating Charge. (B)

(OLD SM)

Floating Charge:

- a) Such a charge is available only to companies as borrower.
- b) A floating charge does not attach to any definite property but covers the property of a circulating and fluctuating nature such as stock-in-trade, debtors, etc.
- c) It attaches to the property charged in the varying conditions which happens from time to time.
- d) Such a charge remains dormant until the Person in whose favour charge is created takes steps to crystallize the floating charge.
- e) A floating charge on crystallization becomes a fixed charge.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1.)

Q.No.14. Write a short note on fixed charge.

(C) (OLD SM, OLD PM)

Fixed Charge:

- a) Fixed charge is also known as specific charge.
- b) Such a charge is against a specific clearly identifiable and defined property.
- c) The property under charge is identified at the time of creation of charge.
- d) The nature and identity of the property does not change during the existence of the charge.
- e) The company can transfer the property charged but the charge holder or mortgagee must be paid first.

Q.No.15. What is crystallization of floating charge? And state the circumstances under which floating charge becomes fixed charge. (A) (OLD PM, M12 - 4M)

MEANING:

- When the charge holder takes steps to enforce his charge, a floating charge becomes a fixed charge on the assets covered by that charge.
- Until a floating charge becomes a fixed charge, the company is free to deal with the property charged in any manner it deems fit.

- But once the floating charge crystallizes, the company cannot dispose of the charged assets without paying off the charge holder. Otherwise, the charge holder can recover his dues from the proceeds.

A floating charge crystallizes or becomes fixed in following situations:

- Where the company ceases to carry on the business, whether the principal money has become payable or not, unless the debenture or trust deed contains the stipulation to the contrary.
- On commencement of winding up of the company.
- If a debenture holder, appoints receiver or makes an application to the Court for appointment of receiver.
- On happening of event specified in the deed.

Effect of Crystallization:

- On crystallization, the floating charge converts itself into a fixed charge.
- It acquires priority over any subsequent equitable charge and other unsecured creditors.
- However, preferential creditors get priority over the debenture holders having floating charge.

SIMILAR QUESTION:

1. *The Company has defaulted in payment of interest or repayment of principal to charge holder. What are the consequences under the terms of the charge?*
 - A. *Floating charge crystallizes and the charge holder brings an action to enforce his security.*

Q.No.16. Register of charges to be kept by the ROC (Sec 81) (C)

(NEW SM, OLD SM)

REGISTER OF CHARGES TO BE KEPT BY REGISTRAR [SEC 81]:

1. In respect of every Company, ROC shall keep a register containing particulars of the charges registered in such form and in such manner as may be prescribed.
2. Such a register is open to inspection by any person on payment of such fees as may be prescribed for each inspection.
3. The particulars of charges maintained on the MCA website are deemed to be the register of charges for the purposes of section 81 of the Act.

Q.No.17. Write about register of charges? Discuss the related provisions. [By the Company] (C)

(NEW SM, OLD SM)

COMPANY'S REGISTER OF CHARGES [SEC 85]:

1. **Maintenance of register of charges:**
 - a) Every Company shall keep at its registered office, a register of charges in such form and in such manner as may be prescribed,
 - i) Which shall include therein all charges and floating charges affecting any property or assets of the Company or any of its undertakings,
 - ii) Indicating in each case such particulars as may be prescribed.
 - b) However, 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.
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.

PROVISIONS CONTAINED IN THE COMPANIES RULES, 2014 RELATING TO THE COMPANY'S REGISTER OF CHARGES:

1. Every Company shall keep a register of charges at its registered office.
 - i) Enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the Company and
 - ii) 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. 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. **Authenticity of Register:** Entries in the register shall be authenticated by a director or the secretary of the Company or any other person authorized by the Board for the purpose.
4. **Period of maintenance:**
 - a) The register of charges is maintained permanently.
 - b) Instrument creating a charge or modification of charges shall be preserved for a period of 8 years from the date of satisfaction of charge by the Company.

SIMILAR QUESTION:

1. **Write short notes on maintenance of registers / records and inspection of register of charges?**

A. Refer the above answer.

Q.No.18. Write about a) Second Charge b) Pari Passu (B)

- a) **Second Charge:** 'Second Charge' on asset means if the asset charged is sold, the amount realised will be first used to clear outstanding amount payable to first charge holder.
If any amount is left, it will be paid to second charge holder. If any amount it still left after clearing outstanding of second charge holder, the amount will be paid to third charge holder and so on.
- b) **Pari Passu:** Assume that 'Pari Passu' charge on fixed assets is created in favour of IDBI and IFCI and the amount payable to them is in ratio of 60:40.
If the Company goes in liquidation, the fixed assets will be sold and IDBI and IFCI will get the amount of proceeds in the ratio of 60:40 of their outstanding.

Q.No.19. What are the differences between Charge and Mortgage? (A)

Matter	Charge	Mortgage
Creation	Charge can be created either through the act of parties or by operation of law.	Mortgage is created by the act of the parties.
Registration	A charge created by operation of law does not require registration. However, a charge created by act of parties requires registration.	Mortgage requires registration under the Transfer of Properties Act, 1882.
Term	May be for perpetuity.	Requires fixed term.
Nature	It does not involve transfer of an interest in property. It only gives a right to receive payment out of a particular property.	Mortgage involves transfer of an interest in specific immovable property.
Personal liability	No personal liability is created. But where a charge is the result of a contract, there may be a personal remedy.	Personal liability is created unless excluded by express contract in case of the simple mortgage.
Good against	Good against subsequent transferees with notice.	Good against subsequent transferees with or without notice.

PRACTICAL QUESTIONS

Q.No.1. Charge can be created only on assets which are in possession of the Company on the date of creation of charge. Comment.

The given statement is Incorrect. Charge can also be created even on assets which will come into Company's possession at any future date e.g. future debts, current assets etc. This is called floating charge.

Characteristics of a floating charge:

- It is a charge on a class of assets of the Company, both present and future. It does not mean only those assets which were in existence when the charge was created.
- The class of assets charged is one which in the ordinary course of business, is changing from time to time.
- Until some steps are taken to enforce the charge by the creditors, the Company may continue to deal with the assets charged in the ordinary course of business.
- The possession of assets charged is not given to the charge holder. (i.e. creditors).

Q.No.2. If the charge is not registered, the debt is not recoverable. Comment?

(M13 - 3M)

The given statement is Incorrect. As per the sec 77 of the Companies Act, 2013, if any charge required to be registered is not so registered, it is void as against subsequent encumbrances as well as against the liquidator and creditors.

This does not mean that the debt is not recoverable. So long as the Company does not go into liquidation, the mortgage or charge is good and may be enforced.

Q.No.3. 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?
(NEW SM, RTP - M18 (NEW), M17)

Provision: Date of notice of charge [Sec 80 of the Companies Act, 2013]:

Analysis: Where any charge on any property or assets of a Company or any of its undertakings is registered u/s 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.

Thus the sec clarifies that if a person acquires a property, assets, undertakings 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.

Conclusion: Thus, the contention of NRT Ltd. is correct.

Q.No.4. XYZ limited realized on 3rd November, 2016 that particulars of charge created on 11th September, 2016 in favour of a bank were not filed with the ROC for registration. What procedure should the Company follow to get the charge registered with the ROC?

Provision: According to Proviso's to Sec 77(1) of Companies Act, 2013

- The Registrar may, on an application by the Company, allow such registration to be made within a period of 300 days of such creation on payment of such additional fees as may be prescribed.

- b) However, if registration is not made within a period of 300 days of such creation, the Company shall seek extension of time in accordance with sec 87.

Analysis and Conclusion: Taking advantage of this proviso, XYZ 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.

Q.No.5. ABC Limited realised on 2nd May, 2017 that particulars of charge created on 12th March, 2017 in favour of a Bank were not filed with the ROC for Registration, what procedure should the Company follow to get the charge registered with the ROC?

Would the procedure be different if the charge was created on 12th Feb, 2017 instead of 12th March, 2017? Explain with reference to the relevant provisions of the Companies Act, 2013

(MTP -N18 (N&O) (OLD PM)

(Or)

A charge requiring registration with Registrar of Companies was created on 1st February, 2017 by XYZ Limited. The Secretary of the Company realised on 15th March, 2017 that the charge was not filed with the Registrar. State the steps to be taken by the Secretary to get the charge registered with the Registrar.

(OLD PM, N16 - 4M) (Or)

MNC Limited realized on 2nd May, 2017 that particulars of charge created on 12th March, 2017 in favour of a Bank were not filed with ROC 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.

(NEW SM) (RTP -M18 NEW) (For student's self-study)

Provision: Proviso's to Sec 77(1) of Companies Act, 2013

- a) The Registrar may, on an application by the Company, allow such registration to be made within a period of 300 days of such creation on payment of such additional fees as may be prescribed.
- b) However, if registration is not made within a period of 300 days of such creation, the Company shall seek extension of time in accordance with sec 87.

Analysis: Taking advantage of this provision, ABC Ltd., 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.

Conclusion: In both the case the ROC may allow registration.

Q.No.6. Rose Ltd., raised a loan from a State financial institution by creating hypothecation of book debts and also future debts of the company. Incidentally, the charge was not registered with the ROC concerned. State financial institution demanded a certificate of Registration of charge for the amount of loan so granted by it. The directors of the company replied to the State financial institution that the charge need not be registered for hypothecation of book debts, Is the action of the directors valid? Give reasons.

Contention of directors is wrong. As per the Companies Act,2013., every Company should registrar charges with Registrar within 30 days from creation of charge in Form CHG-1 and obtain certificate registration. Accordingly, hypothecation of book debts and also future of debt of company should be registered.

Q.No.7. While sanctioning working capital limit, the rate of interest fixed by at a specified percentage above the bank rate as notified by RBI. There was a change in the interest rate due to RBI notification issued later. The bank insisted on filing a return of modification of charges. Is the stand the bank correct? Discuss with reasons?

Where under the relevant mortgage deed or agreement the term as to the rate of interest on the on a charge has been fixed at a specified percentage above the bank rate as notified by the RBI, a change in the rate of interest payable on the charge arising out of variation of the bank rate would not amount to a change in term of the charge. Hence, in such a case, there is no requirement to file modification of charge.

SECTION NUMBERS

CONCEPT	SECTION NO.
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Punishment for contravention under this chapter	86
Rectification by CG (<i>power delegated to RD</i>) in register of charges	87

PENALTY

DEFAULT	PERSON LIABLE	PENALTY
Punishment for contravention of any of the provisions relating to charges [Sec 86]	Company	Fine of not be less than Rs.1 lakh but which may extend upto Rs.10 lakhs
	Every officer of the Company who is in default	<ul style="list-style-type: none"> • Imprisonment for a term which may extend upto 6 months or • Fine of not be less than Rs. 25,000 but which may extend upto Rs.1 lakh • Both.

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To **MASTER MINDS**, Guntur

THE END