

I. CHANGES RELATED TO CHARGES AND THEIR REGISTRATION :

Section 77 of the 1956 Act specifies certain charges which require registration with the Registrars of Companies (ROC) for such charges not to be considered void against the liquidator or any creditors of the company. A charge in the nature of pledge of a movable property was a notable exception from such registration requirement. However, the 2013 Act does not provide the kinds of charges which require registration, but defines a charge in an inclusive manner to include any interest or lien created on the property or assets of a company or any of its undertakings as security and includes a mortgagee. Under the new law it has been made mandatory to register all charges with the ROC, which would now also include charge created by way of pledge of shares.

Duty to register charges [Sec 77]:

Primarily, under section 77 of the Companies Act, 2013 every company creating a charge shall register the particulars of charge signed Registration of Charges by the company and its charge - holder together with the instruments creating.

Important points in the Act relating to charge creation:

- Any charge created within or outside India
- On property or assets or any of the company's undertakings
- Whether tangible or otherwise, situated in or outside India shall be registered.

Hence all types of charges are required under the Act to be registered whether created within or outside India, whereas under the 1956 Act, only registrable charges on company assets/undertaking were registrable.

Time limit for registration of a Charge [Section 77(1)]

A charge created by a company is required to be registered with the Registrar within thirty days of its creation in such form and on payment of such fees as may be prescribed. According to Companies (Registration of Charges) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge is Form No. CHG-1 (for other than Debentures) or Form No. CHG-9 (for debentures including rectification).

- Condonation of delay by Registrar: The Registrar may on an application by the company allow registration of charge within three hundred days of creation or modification of charge on payment of additional fee. 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 thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee. The application for delay shall be made in Form No. CHG-10 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.

- Condonation of delay by the Central Government: If company fails to register the charge even within this period of three hundred days, it may seek extension of time in accordance with Section 87 from the Central Government. The same has been discussed later in this chapter.

Application for registration of charge by the charge-holder [Section 78]

According to Section 78 where a company fails to register the charge within the period specified above, 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 in Form 4 Registration of Charges No. CHG-1 or Form No. CHG-9, as the case may be, duly signed along with fee. The registrar may, on such application, give notice to the company about such application. The company may either itself register the charge or show sufficient cause why such charge should not be registered. On failure on part of the company, the Registrar may allow registration of such charge within fourteen days after giving notice to the company.

Where registration is affected 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 fee or additional fees paid by him to the Registrar for the purpose of registration of charge.

Inspection of company's register of charges [Section 85(2)]

Under the 2013 Act, the reasonable restrictions on right to inspection can be imposed by articles. Further, there is no requirement under the 2013 Act that, inspection of register of charges to be allowed for at least 2 hours in each day.

Whereas, under the 1956 Act, the reasonable restrictions on right to inspection of register of charges could be imposed by company in general meeting. However, inspection was to be allowed for at least 2 hours in each day.