

PART XIII

CHARGES

Chapter 1

Registration and modification of charge

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Important Provisions at a Glance

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Sl. No.	Sections	Matters dealt with	e-Form Nos.
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1. Definition of charge

The term charge has not been defined under the Companies Act, 1956. Section 124 states that the expression "Charge" includes a mortgage. However, the language of section 125 of the Act throws light upon the scope of the word charge. The expression "so far as any security on the company's property or undertaking is conferred thereby" makes it clear that a charge is nothing but security of its property by the company in favour of a creditor with the intent of securing his debt.

2. Types of charges

Basically, there are two types of charges:—

1. *Fixed charge*: A fixed charge is a charge that without more fastens on ascertained and definite property or property capable of being ascertained and defined. A company cannot dispose the property without the consent of the charge holder.
2. *Floating charge*: A floating charge is a charge on the variable property i.e. the property which keeps on changing. A special feature of this charge is that it is not possible to identify the exact property on which the charge would operate until the crystallisation of the charge. A floating charge is a present security, which affects all the assets of the company expressed to be included in it. A floating security is not a future security; it is a present security, which presently affects all assets of the company expressed to be included in it.

These charges may be created in favour of the charge holders as per terms and conditions agreed by them, like:—

- (a) *Pari passu charge*: In *pari passu* charge, security is shared between two or more lenders in proportion of their out standings. It is created with the prior consent of the existing charge holders of the company.
- (b) *Exclusive charge*: In exclusive charge the security on the particular property is provided to a particular lender only.
- (c) *Further charges*: In such cases with the consent of the first charge holders on particular assets may be provided to the further charge holders on the basis of second charge, third charge, etc. It means in case of liquidation of assets the first charge holder shall have right to recover his amount due on

the company and any surplus remain on realisation of such properties shall be recovered by the second charge holder and so on.

3. Nature of creation of charges

For filing particular of types of charge in e-Form 8 select any one option for the type of charge: [Note: Below is the general definition for better understanding of the terms used for type of charge]

- (a) *Simple Mortgage*: is an agreement only whereby the mortgagor personally binds and agrees to repay the money borrowed to the mortgagee and agrees that in the event of failure to do so, the property may be sold and the money realized out of the sale proceeds. However it must be registered. Simple mortgage does not refer to any property transfer at all.
- (b) *Mortgage of conditional sale*: In this mortgage the mortgagor sells the property to the mortgagee on the condition that if payment of the mortgage money is defaulted on the specific date, the sale shall become absolute, or on the condition that on repayment of the mortgage money, the mortgagee transfers the property back to the mortgagor.
- (c) *Usufructuary Mortgage*: In this mortgage the mortgagor delivers possession, binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive rents and profits accruing from the property in lieu of interest. This is otherwise known as compensation mortgage and as lease with no rent and no interest payable.
- (d) *English Mortgage*: It is a transaction where the mortgagor commits himself to pay the mortgage money on a specific date and transfers the mortgaged property to the mortgagee absolutely, subject to the condition of transferring it back upon payment of the mortgaged money, as agreed. English mortgage involves a transfer of property to the mortgagee absolutely and on repayment the mortgagee is bound to transfer the property back to the mortgagor.
- (e) *Anomalous Mortgage*: This mortgage is a mixture of other types of mortgages. This is not a Simple Mortgage, a Mortgage by Condition of Sale, a Usufructuary Mortgage, an English Mortgage, or Mortgage by deposit of title deeds. This is not a regular mortgage. This is not within the limits of other mortgages.
- (f) *Hypothecation*: When a movable asset is purchased by taking a loan, giving the right to the lender to take back the asset against which loan is taken if there is any default in payment.
- (g) *Equitable Mortgage*: In Equitable Mortgage or Mortgage by deposit of title deeds, the deposit of title deeds can be done orally and the conditions of loan transactions can be recorded in writing.

If option 'others' is selected, then specify the details for the same.

REGISTRATION OF CHARGES

4. Charges requiring Registration

As per section 125(4), the following kinds of charges are mandatory and these charges need to be registered with the Registrar of Companies:—

- (a) A charge for the purpose of securing issue of debentures;
- (b) A charge on uncalled share capital;
- (c) A charge on the immovable property, wherever situated, or any interest therein;
- (d) A charge on any book debts;
- (e) A charge, not being a pledge, on any movable property;
- (f) A floating charge on the undertaking or any property of the company including stock-in-trade;
- (g) A charge on calls made but not paid. Section 14 of the Banking Regulation Act, 1949 debars a bank from creating a charge on any unpaid capital;
- (h) A charge on a ship or any share in a ship;
- (i) A charge on a goodwill, patent or on a license under a patent or on a trademark or on a copyright or license under a copyright.

5. Registration of charge in connection with the issue of debentures

Section 128 allows registration of certain particulars in case where a company issues a series of debentures and the debenture holders are entitled *pari passu* to the benefit of a charge created for the benefit of debenture holders. The company shall file following particulars with the concerned Registrar of Companies for registration of charge under section 125(4):—

- (1) The total amount secured by the whole series.
- (2) The dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined.
- (3) A general description of the property charged.
- (4) The names of the trustees, if any, for the debenture holders.
- (5) The deed containing the charge or a duly verified copy thereof.
- (6) Particulars as to the amount or rate percent of the commission discount or allowance paid or made in connection with debentures. [Section 129]

Following points shall be noted in this regard:—

- (a) Failure to file particulars of such charge with the Registrar of Companies shall not affect the validity of the debentures issued.
- (b) Debentures may itself contain a charge or give a reference as to any other instrument in this regard.
- (c) The particulars of charge as given above shall be filed together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series.
- (d) The company shall file with the Registrar, particulars of the date and amount of each issue of debentures of series, if there is more than one, but failure to file such particulars shall not affect the validity of the debentures issued.
- (e) Debentures must also be registered under the Indian Registration Act.
- (f) Section 133 requires that the company shall cause a copy of every certificate of registration given under section 132, to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

A company shall not be required to cause a certificate of registration to be endorsed on any debenture or certificate of debenture stock issued by the company, before the charge was created. [Proviso to section 133]

If any person knowingly delivers, or authorises or permits the delivery of any debenture or certificate of debenture stock which is required to be endorsed with a copy of a certificate of registration, as stated above, without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be punishable with fine which may extend to rupees ten thousand.

6. Judicial pronouncements on charges requiring registration

- (a) An assignment of book debts as security is a mortgage requiring registration. [*Ranjit Ray v D.A. David* (1935) 5 Comp Cas 281 (Cal)].
- (b) A charge on future debts can be created and such charge if not registered is void. [*Independent Automatic Sales Ltd. v Knowles & Foster* (1962) 32 Comp Cas 1090 (Ch. D)].
- (c) Absolute assignment of a future debt is not a charge and document making such assignment does not require registration. [*Ashby Warner & Co. v Simmons* (1938) 8 Comp Cas 111 (CA)].
- (d) A transaction may amount to a mortgage, but if it also satisfies all the conditions of a pledge, it does not require registration. [*T. Radhakrishnan Chettiar v Official Liquidator, Madras Peoples' Bank Ltd.* (1943) 13 Comp Cas 21 (Mad)].
- (e) Where a loan from the bank is raised by pledging fixed deposit receipts, the registration of charge is not necessary. [*Sree Menakshi Mills Ltd. v Registrar of Companies* (1966) 36 Comp Cas 961 (Mad)].

- (f) A holder of a lien is a secured creditor and if lien is statutory, his claim need not be registered under section 125. [*K. Saradambal v Jaganathan & Bros.* (1972) 42 Comp Cas 359 (Mad)].
- (g) If a decree was passed on an unregistered charge, before company was ordered to be wound up, section 125 would still apply in case the decree kept the unregistered charge alive. [*Official Liquidator v Suryakant Natvarlal Surati* (1986) 59 Comp Cas 147 (Bom)].
- (h) When a charge is created by a partnership which is later converted into a company, registration is not necessary but it is obligatory on directors to bring it to notice of Registrar. [*Maharashtra State Financial Corpn. v Official Liquidator, Sidhu Tyres (P) Ltd.* (1988) 64 Comp Cas 641 (Bom)].
- (i) An unsecured creditor could not challenge the validity of a charge or claim right over the property on the ground that he incurred the liability prior to its registration. [*C.K. Siva Sankara Panicker v Kerala Financial Corpn.* (1980) 50 Comp Cas 817 (Ker)].

7. Non-application of section 125

It has been decided by the Supreme Court in the case of *Indian Bank v Official Liquidator, Chemmeens Exports (P) Ltd.* (1998) 29 CLA 425, that section 125 applies only to a charge created by a company and not to a charge arising by operation of law, e.g., where a charge is created by an order or decree of the Court.

8. Registration of security given by way of pledge on movable property is permissible, though not mandatory

Section 125(4)(e) of the Companies Act provides that a charge, being a pledge on the movable property of a company, is not although it has been called a pledge since it is the whole tenor of the document that will decide its legal character.

The question has, therefore, been raised as to whether the Registrar should register a charge which is a pledged on the movable required to be registered with the Registrar of Companies. Pledge of any movable property does not require to be registered obviously because pledge of movable property usually means parting with the possession. [*Motilal Kejriwal v Indian Overseas Airlines Ltd.* (1960) 30 Comp Cas 390 (Cal)].

However, there have been instances in which a company or any interested person, as envisaged in section 134(1) of the Act, had approached the Registrar for registration of charges which are pledged on its movable property. In some cases, however, registration is sought on the ground that the exact legal nature of the document relating to the pledge is in doubt, property of a company, since such registration is not required under the provisions of the Companies Act and if he should so register, whether the company is under a legal obligation to register subsequently the particular, if any, relating to its modification and also send to the company later on a copy of the memorandum of satisfaction in respect of the same. It is stated in this connection that even if the pledge had been registered by the Registrar, the company would be entitled to disown responsibility, for complying with the provisions of sections 135 and 138 of the Act on the plea that the original registration of the charges constituted by the pledge was itself not warranted by the provisions of the Act. In such cases, therefore, there is a possibility of the charge appearing as subsisting even after its full satisfaction, in the Register of charges maintained by the Registrar under section 130 of the Act.

The matter has been examined and a Circular No. 8(6)/125/60-PR, dated 7th July, 1960 (DCA), issued by the Department, with particular reference to the point as to what action the Registrar should take in such cases. It is considered that the registration by the Registrar of a charge being a pledge on the movable property of a company, though not mandatory, is permissible at the instance of the company or of any interested person, provided the latter files the necessary particulars alongwith the prescribed filing fee. The Registrar should, however, point out to the party concerned that such registration is not statutorily compulsory but would be made by him "without prejudice", if the party insists on the Registrar registering the charge. The Registrar should also simultaneously advise the party seeking registration of the charge that in that case it would be in the company's own interest if particulars of any subsequent modification of the charge and of its satisfaction are duly intimated to the Registrar.

9. Prescribed forms

The new prescribed e-Form 8 & 10 *vide* Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 (Form 13 omitted) along with the instruments evidencing the charge shall be filed in on line basis to the MCA/ROC, under the digital signatures of both the company and the creditor along with the requisite fee. (See Appendix 1 & 2 for Specimen of e-Form 8 & 10)

10. Time-limit for filing of e-Form 8 & 10

E-Form 8 with complete requirement must be filed within a period of thirty days from the date of creation or modification of charge on online basis with the RoC.

The particulars of charges in connection with issue of debentures of a series shall be filed with Registrar of Companies in Form 10, along with copy of instrument creating the charge and with the required filing fees as per Schedule X to the Companies Act, 1956, within a period of thirty days after the execution of deed containing the charge or if there is no such deed, after the execution of any debentures of the series.

The concerned RoC may allow filing requisite particulars within a period of thirty days next following the expiry of initial thirty days after the date of creation or modification of charge subject to payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X of the Companies Act. However, it is expected that only one time additional filing fee shall be charged by the computer as penalty.

11. Responsibility for filing particulars for registration of charge

It shall be the duty of a company to file with the Registrar, for registration, the particulars of every charge created by the company, and of every issue of debentures of a series, requiring registration under Part V of the Companies Act.

Particulars for registration of any charge may also be filed by any person interested therein. In this connection, it may be noted that section 134(2) provides that where registration is affected on the application of some person other than the company, that person shall be entitled to recover from the company, the amount of any fees properly paid by him to the Registrar.

If particulars of charge have been sent and Registrar conveys an objection, charge is deemed to have been registered, though they have not in fact been registered. [*State Bank of India v Depro Foods Ltd.* (1988) 64 Comp Cas 375 (P&H)].

12. Effects of registration of charge

Once the particulars of charge has been registered by the Registrar of Companies, it has the following effects:—

- (a) that while dealing with the company in respect of any property subject to a registered charge, the dealer is deemed to have notice of such charge as from the date of such registration.
- (b) Where any person acquires a property or any part thereof, or any share or interest therein, which is subject to charge under section 125(4) and charge has been registered with Registrar, the acquirer shall be deemed to have notice of the charge as from the date of such registration. [Section 126]

In absence of any registration of charge u/s 125, on date of winding up order, Official Liquidator would be justified in treating such charge as ordinary creditor. [*Rajasthan Financial Corporation v Official Liquidator, Jaipur Spinning & Weaving Mills Ltd.* (In liquidation) (1997) 88 Comp Cas 192 (Raj)].

13. Consequences and penalties of non-filing/registration of particulars of charge with Registrar

It is a duty of company to file the particular of charges with the Registrar within the stipulated time for registration of particulars of charges. However, the interested parties to the charge may also file these particulars with the Registrar within the stipulated time.

Unless and until a charge is registered with the Registrar of Companies, it has no sanctity notwithstanding the fact that such charge was brought into vogue by reason of agreement inter-parties between the two creditors or by registration of guarantee bond. [*A.P. State Financial Corpn. v Mopeds India Ltd.* (2005) 124 Comp Cas 833 (AP)].

In case of non-filing and registration of these particulars the following consequences shall arise:—

- (a) all the charges covered under section 125(4) shall become void unless registered by the Registrar and when a charge becomes void under section 125, the money secured thereby shall immediately become payable by the company;
- (b) the charge will be void as against the liquidator (in the event of the company being wound up) and against the creditors, if any, so far as the company is concerned, the charge will be good and it can be enforced so long as the company does not go into liquidation;
- (c) the security becomes void but non-registration does not affect any contract or obligation of the company as to repayment of the money secured by the charge;
- (d) the company, and every officer of the company or other person who is in default, shall be punishable with fine which may extend to Rs. 5,000 for every day during which the default continues [section 142(1)]. A further fine of Rs. 10,000 may also be imposed on the company and every officer of the company who is in default of any other requirements of the Act concerning registration of a charge created by company. [Section 142(2)]

PROCEDURE FOR REGISTRATION OF CHARGE

14. Filing of particular of charges

The Ministry of Company Affairs has *vide* Notification No. GSR 56(E) dated 10th Feb., 2006 revised the existing Form No. 8, 10, 15 and 17 whereas the existing Form No.13,16, 55,56,57, 59 and 60 has been merged with the relevant e-Forms.

14.1. Attachments

All attachments and documents will need to adopt the standard format of PDF. Facilitation Center or Certified Filing Center will provide support for conversion to PDF in case of any difficulty.

If the attachments are too huge (due to constraints that are imposed by low bandwidth connectivity), it is suggested that attachment sizes are kept in the range of 1 to 2 MB per attachment.

If the company has an electronic document such as MS-Word document, it is suggested that the soft copy be brought to the facilitation center where it will be converted into a PDF format. This way of conversion to PDF will result in smaller sized files as compared to scanning paper documents.

In the case of scanned documents, large documents may be broken up into smaller parts and uploaded into the system in parts. Please divide the document into parts between 15 to 20 pages.

In the case of very large attachments to the charge documents, fill out a "Instrument of Charge" and attach this to the charge form. Also, submit a paper copy of the loan agreement or such other supporting document with the customer representative who will forward this to the ROC office. Documents in multiple parts will be acceptable.

14.2. Synopsis of charges

In case if the loan agreement runs into hundreds of pages and slows the form filing process the MCA has decided to evolve a form under the title "Synopsis of Charges" which is required to be signed by both the parties in the agreement and shall be attached to the e-Form 8 in place of loan agreement. It shall be responsibility of borrower and lender to ensure that all the important terms and conditions (specified in the loan agreement) have been incorporated in the synopsis so that the interest of the lender is protected.

14.3. Digital signature

For digital signature of e-Forms, it will need to have CLASS 2 or equivalent signatures by the company and the lender bank or institutions.

14.4. Pre-scrutiny

Sometimes pre-scrutiny failure may be encountered due to incorrect data or non-filing of mandatory fields, it is required to check again in such cases. However, services of the Facilitation Center and Certified Filing Centers have specific facilities to handle such cases may also be obtained.

14.5. Data errors in index of charges and mechanisms for corrections

It is advisable to check the index of charges available on the MCA portal, in case if the index is not proper, correction of errors can be done by the ROC only with proactive support from the Company. The

company may also ask representative of nearest facilitation center or certified filing centers to show how to check for the basic company information and the charge information. If the company notices any discrepancies in the basic data or the charge information (check for the completeness and accuracy of all subsisting charges), it must bring to the attention of the concerned ROC in writing without delay. In the case of charge documents, it is required to enclose copies of old documents as support/evidence. ROC will initiate steps to rectify such errors based on verification from documents already filed.

14.6. Submission of e-Form(s) 8/10/17 by on-line basis

If a company chooses to come to MCA facilitation center on the last day of filing with a deadline scenario i.e charge documents to be updated/satisfied on the same day and due to some data problem regarding charge documents the company is unable to file as the migrated data is not current. It may be due to:

- (a) Record not present in MCA records,
- (b) Record is under incremental scanning,
- (c) Wrong data entry.

A special facility is available to create on-the-spot back reference for charge documents, so that the company can complete e-filing. In such cases documents so filed shall be accepted by RoC concerned provisionally with a request to file copies of all missing documents, if any, along with proof of filing within a specified period.

However, it is suggested that documents be submitted well in advance so that undue hardships can be avoided due to last minute difficulties.

14.7. Interaction with ROC Office

In case any clarification is required by ROC from the company, it can be seen by the company in the "My Documents" facility of individual login ID. In the case of filings made from the facilitation center or Certified Filing Center, clarifications will be sought by post.

In case of any clarification from ROC, the company can send a written communication or email to the ROC providing necessary clarification to ROC so that ROC can process the company service request.

In the case of request for re-submission, entire documents will need to be re-submitted. No additional fees will be charged in such cases.

14.8. Payment of filing fee and mode of payment

The fees is payable on the Form depending upon the authorised capital of the company as per the provisions of Schedule X of the Companies Act, 1956 on line or off line basis as the user may choose as per procedure.

14.9. Certificate for charge registration

A certificate of charge registration will be provided by the ROC as per the Act. The Department's vide its Circular No. 14 of 1990, dated 5-9-1990 has advised to the Registrar that in case the relevant certificate of charge, etc., is not collected by the company's representative concerned within seven days thereafter, the same may be sent by post. It has been decided by the MCA to send the Charge Certificate to the Company by way of speed post directly.

14.10. Attachment with the forms

E-Form 8/10 shall be submitted alongwith following enclosures:

- (1) Instrument by which charge has been created or modified is a mandatory attachment;
- (2) Copy of the Board resolution;
- (3) Any other information can be provided as an optional attachment.

15. Instructions issued by the MCA to the Banks and financial institutions under the e-filing systems

The Ministry of Company Affairs has issued a bulletin on 4th March, 2006 and informed about the MCA 21 project relating to e-filing of documents relating to the charges.

15.1. Steps to be taken by the Banks and financial institutions

- (i) Ensure that newly notified e-forms are used henceforth. Please visit the new MCA portal www.mca.gov.in to obtain copies of the new e-forms and procedures for e-filing.
- (ii) Ensure that all e-forms that will henceforth be used for filing, are authenticated using a digital signature.
- (iii) Ensure that the authorized officers of your Bank or institution obtain Digital Signature Certificates before 30 June, 2006 for authenticating all relevant e-forms for the purposes of registration of a charge with the ROC. These may be issued either by IDRBT or any one of the authorized agencies.
- (iv) Encourage your clients to register creation/modification/satisfaction of charges in a timely manner. In particular, encourage the charges to be satisfied, as we have found a number of cases are probably closed and the same has not been done.
- (v) While Ministry has taken due care to ensure completeness and accuracy of data, it is very likely that there could be errors of omission and commission in an exercise of this enormity. Please review the existing charge data and highlight any discrepancies/errors to the concerned ROC on or before 30 June, 2006, so that the same can be corrected to ensure the reliability of data.
- (vi) Proactively support the enhancement of the Instrument of Charge mentioned under para 5(v) and enforce this as a standard across all charge transactions – this will facilitate us not only collation of data, but also explore the possibility for use of sophisticated data mining technology/tools (the current data is largely unstructured and unfit for analysis)
- (vii) Disseminate this information widely within your enterprise and facilitate quick adoption.

MODIFICATION OF CHARGES

16. Applicability of provisions relating to modification of charge

Section 135 *inter alia* provides that the provisions of Part V of the Companies Act, 1956 as to registration of charge shall apply to modification of the charge. It can, therefore, be inferred that the provisions relating to certificate of registration of charge, etc., will also apply to modification of charge. In case of modification of charge, the particulars are also required to be furnished in field 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 as applicable in e-Form 8.

Modification of charge is a stage subsequent to the creation of charge. It is quite likely that the terms and conditions or limits of charge already created/registered with the concerned Registrar of Companies are subsequently changed or modified due to further developments like creation of equitable mortgage on a subsequent date or enhancement or reduction of credit facilities, etc. It is required under section 135 of the Companies Act, 1956 to file particulars in e-Form 8 with the Registrar for registration of particulars for modification of charge.

The underlying object behind the concept of modification of charge is to keep the particulars filed with the concerned Registrar of Companies in connection with registration of charge upto date.

16.1. Change in the interest rate amount

In case of change in the rate of interest as a result of change in bank rate, does not amount to modification of charge, if the rate of interest has earlier been fixed at a certain rate over the notified bank rate. However, if the bank rate remains unchanged but the interest rate is increased then it will be considered as a modification of charge, consequently, requisite particulars will have to be filed in e-Form 8.

16.2. Enhancement or reduction of secured borrowing

If the limit of borrowing secured by a charge duly registered with the concerned Registrar of Companies is enhanced or reduced, such a change will amount to modification. Consequently, requisite particulars shall be filed in e-Form.

16.3. Modification due to operation of law

Department has clarified *vide* Letter No. 8/42(135)/66-CL-V, dated 25-11-1966 that so long as the terms or conditions or the extent of operation of any charge is modified for whatever reason, the provisions

of section 135 would become applicable. Therefore, even in case of modification of charges without any mutual agreement between the parties thereto namely as a result of a change in law, the provisions of section 135 of the Act become attracted, consequently, requisite particulars will have to be filed in e-Form 8.

16.4. Transfer or assignment of rights by charge-holder

The Department has clarified *vide* Letter No. 8/50(135)/60-PR, dated 12-8-1960 that a transfer or an assignment of a charge by the charge holder is a case of modification of the conditions of the charge and it necessarily falls within the purview of section 135, consequently, requisite particulars will have to be filed in e-Form 8.

17. Filing of e-Form 8/10 for modification of charge

A company is obliged to file particulars for modification of charge in proper manner in e-Form together with the instruments evidencing for modification of charge alongwith the adequate filing fees, within 30 days from the date of modification in the existing charge. The following procedure has to comply with for registration of modification of charge:—

- (a) The particulars of charges alongwith copy of the instrument modifying the charge shall be filed with the Registrar of Companies in e-Form 8 with filing fee as per Schedule X within a period of 30 days of modification of charges.
- (b) E-Form 8/10 shall be digitally signed both on behalf of the company and the charge holder.
- (c) *Vide* Circular No. 3/95, dated 18-7-1995, the modification of charge will be registered by the Registrar on the spot with the above certificate by affixing the seal and signing it, in case if it is physically filed otherwise it may be collected from the RoC Office.

18. Reference of original charge registered for modification

In case of a modification of existing charges, if the company finds it cumbersome to trace charge Id of the existing charge, the company can visit the MCA portal whereby the company can view and take a printout of the index of charges. The facility center representative can provide a print out of the Index of charges upon request to easily identify the charge reference.

19. Departmental clarifications

After a company has filed particulars of the charge relating to a property in e-Form 8, occasions arose subsequently when it becomes uncertain as to whether particulars of the fresh charge in e-Form 8. Such occasions are likely to fall within one or more of the categories stated below, the mortgagee remaining the same.

(1) Problem: Additional loan is raised against re-mortgage or further charge of the Property A, the further charge not to rank *pari passu* with the prior charge.

Department's view: Section 135 of the Act does not appear to come into play here as the terms and conditions or the extent or operation of the prior charge are not modified and, therefore, particulars of the further charge only are required to be filed in Form 8.

(2) Problem: Additional loan is taken against mortgage or charge of Property B without referring to the loan already taken by charging property.

Department's View: This falls under section 125 of the Companies Act, 1956, and, as such particulars of the fresh charge in Form 8 are required to be filed.

(3) Problem: Additional loan is raised and it is stipulated that the entire amount of the loan, including the loan already raised will be secured against Property A already charged and the mortgage of charge of Property B.

Department's view: Section 125 of the Companies Act, 1956 is attracted in respect of the charge or mortgage of Property B and, as such, particulars thereof, in Form 8 are required to be filed. Since the extent of the charge against Property A is modified. **Source:** Circular No. 8(39)-125/59-PR, dated the 24th November, 1959.

(4) Problem: Under the Amended Act, the Registrar is empowered to accept documents even after expiration of the prescribed period on payment of additional fees: (a) whether this will apply to documents required to be filed before the 28th December, 1960 in case even the prescribed period expires before the date and in case it expired after the date; (b) whether under the provision, the Registrar will accept for filing particulars for registration of creation or satisfaction of charges, etc.; without the court's order.

Answer:

- (a) The answer is in the affirmative in both cases.
- (b) In cases where specific provisions in the Act like those of section 141 exist requiring an order of the court for extensions of time for filing or registering any documents, the Registrar should not accept such documents without appropriate orders of the court. To accept such documents without the court's orders by using the power under section 611 would conflict with the jurisdiction of the court. In such cases if the court has ordered an extension of the time for filing or registration, the question of the imposition of a penal fee under section 611 will not arise, though if the Registrars get an opportunity to do so they could submit to the court itself to prescribe a higher fee for the document under the powers the court has to extend the time "on such terms and conditions as seem to the court to be just and expedient", always of course keeping in mind the question whether any increase in fees would be commensurate with the cost of making the submission to the court.

SATISFACTION OF CHARGE

20. Satisfaction of charge

Satisfaction of charge is another important aspect relating to debts created by a charge. In case of a full and complete payment of the secured charge registered with the Registrar of Companies, it is required to file particulars for satisfaction of charge in e-Form 17 (earlier Forms 13 and 17) with the Registrar of Companies electronically within thirty days from the date of satisfaction or payment of full and final amount to the charge holder.

It is a duty cast on companies to intimate to the concerned Registrar of Companies about payment in full of any charge relating to the company.

21. Prescribed Form

The new prescribed e-Form 17 *vide* Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 (previously Forms 17 & 13) along with the letter from the charge holder which states that the amount due on the charge has been fully satisfied shall be filed in single copy (previously in triplicate) electronically to the ROC, under the digital signatures of both the company and the creditor, duly certified by the chartered accountant or company secretary or cost accountant in practice along with the requisite fee. (See Appendix 4 for Specimen of Form 17)

It shall be the duty of a company to file with the Registrar for registration, the particulars of satisfaction of charge by the company and of every issue of debentures of a series satisfied.

22. Attachments

Letter from the charge holder which states that the amount due on the charge has been fully satisfied shall be attached and it shall be in the standard format of PDF, Facilitation Center or Certified Filing Center will provide support for conversion to PDF in case of any difficulty.

If the company has an electronic document such as MS-Word document, it is suggested that the soft copy be brought to the facilitation center where it will be converted to PDF format. This way of conversion to PDF will result in smaller sized files as compared to scanning paper documents.

22.1. Enclosures with the E-Form 17

E-Form 17 shall be submitted along with following enclosures:

- (1) Letter from the charge holder, which states that the amount due on the charge has been fully satisfied;
- (2) Copy of the Board resolution authorising to sign the e-Form 17;
- (3) Any other information can be provided as an optional attachment.

23. Reference of original charge registered for satisfaction

For satisfaction of existing charges, if the company finds it cumbersome to trace Charge Id of the existing charge, the company can visit the MCA portal whereby the company can view and take a printout of the index of charges. The facility centre or the certified filing center representative can provide a print out of the Index of charges upon request to enable the company to easily identify the charge reference.

24. Registration of satisfaction of charge by the Registrar

If e-Form 17 is signed by both the parties and is electronically filed with Registrar the satisfaction of charge shall be registered by it and a certificate to that effect shall be given to the representative of the company or may be sent by post.

25. Company's right to receive certificate for satisfaction of charge

Section 140 provides that where the Registrar enters a memorandum of satisfaction in whole or in part, in pursuance of section 138 or 139, he shall furnish the company with a copy of the memorandum.

26. Reckoning of period of thirty days for filing of e-Form 17 for satisfaction of charge in full

Circular No. 10/91 bearing F. No. 3/23/98/CL-V, dated 26-12-1991 issued by Department of Company Affairs (now the MCA) states that satisfaction of charge under section 138 shall be filed with the Registrar of Companies within thirty days from the date of satisfaction/payment of charge. Therefore, any time involved in collecting 'No dues Letter' from the charge holders shall not be considered and allowed.

27. Satisfaction of charge not dependent upon Bank's letter of clearance, etc. if e-Form 17 has been signed by both the parties

Section 138 refers to the date of payment or satisfaction and there is no linkage to the date of bank's letter. It has been clarified by the Department *vide* Circular No. 2/96 [F. No. 14/1/95-CL-V], dated 15-4-1996 it has come to the notice that certain Registrars of Companies are insisting on a separate letter from Banks/Financial Institutions in respect of the date of satisfaction of charge even if Form 17 (now e-Form) had been signed by both the parties *i.e.*, lender and the borrower. In terms of section 138(2) of the Companies Act, 1956, the Registrar is required to send a notice to the holder of the charge as to why the satisfaction should not be recorded as intimated to the Registrar. If e-Form 17 is signed by both the parties and certified by chartered accountant or company secretary or cost accountant and is filed with Registrar, the satisfaction of charge can be registered without issuing any notice to the holder of the charge under section 138(2) of the Act.

DEPARTMENTAL CLARIFICATION

28. Where original loan is merged with fresh loan, e-Form 17 is to be filed?

Query: Which form is required to be filed with the Registrar when the original loan taken on the mortgage of machinery is merged in subsequent loan of higher amount from the same party and with a stipulation in the latter agreement that the earlier charge stood suspended/extinguished?

Answer: In cases of this type, it seems that the original charge stands suspended/extinguished consequent on its merger with the new charge. There should therefore, be no objection to permit, in such cases, the company to file e-Form 17 pursuant to section 138 provided the lender has no objection to the satisfaction of the new document as a fresh charge.

Source: Letter No. 8/15(135)/67-CL-V, dated 18th May 1965.

29. Where original loan merged in subsequent loan of higher amount e-Form 17 may be filed?

Query: Which form is required to be filed with the Registrar when the original loan taken on the mortgage of machinery is merged in subsequent loan of higher amount from the same party and with a stipulation in the latter agreement that the earlier charge stood suspended/extinguished?

Answer: In cases of this type, it seems that the original charge stands suspended/extinguished consequent on its merger with the new charge. There should, therefore, be no objection to permit, in such case, the company to file e-Form 17 pursuant to section 138. Provided the lender has no objection to the satisfaction of the new document as a fresh charge.

Source: Circular No. 2/4/60-PR, dated 15th February 1960.

30. E-Form 17 to be filed after obtaining signatures of lender company and banks/financial institutions

1. I am directed to state that in order to simplify the procedure of filing of Form 17 (now e-Form 17) and its registration, it has been decided that the said Form may be filed with the Registrar of Companies after obtaining the digital signatures of the borrower company and the Banks/Financial Institutions. This Form be filed with Registrar. It may also be noted that the said Form 17 is required to be filed within a period of thirty days of the date of satisfaction of the charge.

2. It is requested that above procedure may be brought to the notice of your constituents.

Source: Circular No. 1/96 dated 15th April, 1996.

1. It has come to the notice that certain Registrar of companies are insisting on a separate letter from Banks/Financial Institutions in respect of the date of satisfaction of charge even if Form 17 had been signed by both the parties *i.e.* lender and the borrower. In terms of section 138(2) of the Companies Act, 1956 the Registrar is required to send a notice to the holder of the charge as to why the satisfaction should not be recorded as intimated to the Registrar. If Form 17 is signed by both the parties and is filed with Registrar, the satisfaction of charge can be registered without issuing any notice to the holder of the charge under section 138(2) of the Act. As in the case of registration of charge the above-simplified procedure may be affected immediately.

Source: Circular No. 2/96 dated 15th April 1996.

REGISTER OF CHARGES

31. Register of charges

The Registrar of Companies is required to maintain a Register of charges, separately, in respect of each company pursuant to the provisions of section 130 of the Companies Act, 1956. The Registrar of Companies shall cause to be kept a register containing the particulars of all the charges requiring registration under Part V of the Act. Following provisions should be taken into consideration in this regard:—

- (i) *Requirement of Registrar to maintain Register of charges:* As per section 130(1) it is a duty of the Registrar of Companies to keep a Register of charges of each company containing the particulars of all the charges requiring registration under Part V of the Companies Act, 1956.
- (ii) *Obligation on company to forward necessary particulars to Registrar:* As per section 130(1A) every company is under an obligation to forward to the Registrar the particulars of the charges as are specified in sections 128 and 129 in the case of a charge to the benefit of which the holder of a series of debentures are entitled and in case of other charge particulars as given below, in such form and manner as prescribed and after payment of such fee as given in Schedule X of the Companies Act, 1956, being entered in the Register kept under sub-section (1) of section 130.

Details of particulars required to be filed with the Registrar for making entry in the Register of charges are as under:—

- (1) if the charge is created by the company, the date of its creation, and if the charge was existing on property acquired by the company, the date of the acquisition of the property;
- (2) the amount secured by the charge;
- (3) short particulars of the property charged; and
- (4) the persons entitled to the charge.

32. Physical inspection of Register of charges at the Registrar's Office u/s 130

Section 130(3) provides that the Register of charges kept in pursuance of section 130 shall be open to inspection by any person on payment of fee of rupees fifty for each inspection.

Rule 6A(3) provides for inspection facility by an index to Register of charges. Section 131 stated that the Registrar shall keep a chronological index, in the prescribed form covering the prescribed particulars of the charges registered with him. However, the system for providing inspection of charges being discontinued after successful implementation of the electronic filing system.

33. Inspection of charge online basis

Under the electronic filing system introduced by the Registrar the inspection of charges may be made on payment of required fee on the portal of the Registrar by a registered user as per procedure given on the web site www.mca.gov.in.

34. Power of Registrar to make entries of satisfaction and release in the absence of intimation from company

Under section 139 of the Companies Act, 1956 the Registrar of Companies has been given powers to enter in the Register of charges, for satisfaction of charge in whole or in part, of the fact:—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) 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;

notwithstanding the fact that no intimation has been received by him from the company of satisfaction of charge in whole or in part, or of 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.

35. Register of charges maintained by a company

Section 143 provides for the Register of charges to be maintained by a company, at its registered office. Section 143(1) says that every company shall keep at its registered office a Register of charges and enter therein all particulars of charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company. Section 136 stipulates that in the case of a series of uniform debentures, it shall be sufficient if a copy of one debenture of the series is kept at the registered office of the company. Following particulars shall be recorded in the Register of charges, to be kept by the company, in respect of each and every charge:—

- (i) a short description of the property charged;
- (ii) the amount of the charge; and
- (iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

If any officer of the company knowingly omits, or willfully authorises or permits the omission of the entries required to be made in pursuance of section 143(1), he shall be punishable with fine upto rupees five thousand.

POWERS OF CENTRAL GOVERNMENT/CLB RELATED TO CHARGE

36. Power of the Central Government to issue order for rectification of Register of charge

The Department's view is that if the instrument creating mortgage or charge on company's property or copy thereof is not filed within thirty days or the extended period of 30 days as per proviso to section 125(1), the Registrar cannot take the documents on record even on payment of additional fee as provided in section 611(2), unless the sanction of the Central Government is obtained under section 141 of the Companies Act.

37. Powers of the Company Law Board/Central Government to condone delay

Under section 141 the Central Government has been vested with power to condone delay and grant extension of time for filing the particulars of charges or for the registration of the charge or for giving of intimation of payment or satisfaction, if such delay was due to inadvertence or to some other sufficient cause.

Inadvertence would cover the cases of negligence and carelessness, when it is not actuated by any fraudulent or improper motive. Delay in filing the particulars of a charge created due to inaction could not be condoned.

The Central Government also has the power to order rectification of the Register of charges in respect of any omission or mis-statement in the register. (See Appendix 5)

The provisions of section 141(1)(a) make it clear that the power vested in the CLB (now Central Government) is a discretionary power and that discretion has to be exercised by CLB judiciously and having due regard to the facts and circumstances of each case and explanation offered by a company and

then to form an opinion on the question whether the company has made out that it could not file intimation within the stipulated time due to inadvertence or come other sufficient cause. The provisions of section 141 do not arm the CLB to go into the merits of the charge or satisfaction of the charge in part or in full. [*Mangalore Chemicals and Fertilisers Ltd. v CLB* (2004) 51 SCL 251 (Kar)].

The delay in registering a charge after the Court condoned the delay in filing the particulars will not affect the validity and the binding nature of the mortgage on the company. [*C.K. Siva Sankara Panicker v Kerala Financial Corpn.* (1980) 50 Comp Cas 817 (Ker)].

37.1. Exercise of power by the CLB/Central Government on application/petition

The Company Law Board/Central Government will exercise above power on application made to it by the company or any other person interested alongwith the prescribed fee. If the Central Government consider and it thinks just and expedient after being satisfied that any or more of the under mentioned omissions or mis-statements was/were accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief from:—

- (a) omission to file with the Registrar of Companies the particulars of any charge created by the company in e-Form 8;
- (b) omission to file with the Registrar of Companies the particulars of any charge subject to which any property has been acquired by the company in Form 8;
- (c) omission to file with the Registrar the particulars of any modification of any charge registered with the Registrar of Companies in e-Form 8;
- (d) omission to file with the Registrar the particulars of any issue of debentures of a series in e-Form 10;
- (e) omission to register any charge within thirty days of creation/modification of the charge or within such time (maximum 30 days) as extended by the Registrar of Companies in e-Form 8;
- (f) omission to give intimation to the Registrar of the payment or satisfaction of a charge within the thirty days after the date of satisfaction or payment in full in e-Form 17; and
- (g) omission or mis-statement of any particulars with respect to any such charge, modification or issuance of debentures of a series or with respect to any memorandum of satisfaction or other entry made pursuant to provisions of the Companies Act.

37.2. Order by CLB/Central Government as to costs of application

Section 141(2) says that the Central Government may make such order as to the costs of an application made under section 141(1) as it thinks fit.

37.3. Effect of the order issued for extension of time by CLB/Central Government

Where the Central Government extends the time for the registration/modification or satisfaction of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

Where during pendency of winding up petition, a provisional liquidator is appointed, it is a material consideration in deciding whether extension of time for registration should be granted.

38. Is delay to be condoned where charge holder waives its charge on the assets of the company?

Where after making an inadvertent default in filing the particulars of charges in respect of a certain loan from a bank, the company should apply to the Central Government u/s 141 if the lending bank subsequent to the fact coming to the notice of the Registrar, waives its claim of the charge on the assets of the company even then the company should apply to the Central Government under section 141 of the Act.

Under section 138 and 141 a person other than the company, could be proceeded against only if that person was in charge of and responsible to the company for the conduct of its business. Secondly, the substance of the allegation should fulfill the requirements of the ingredients of the provision for being proceeded against the person accused. [*K.P.G. Nair v Jindal Menthol India Ltd.* (2000) (6) Scale 578].

Appendix 1

Specimen of e-Form 8

Particulars for creation or modification of charges
(Other than those related to debentures) including particulars of modification of charges by asset reconstruction companies in terms of Securitisation Act and Securitisation and Reconstructions of Financial Assets and Enforcement of Securities Interest (SARFASI) Act, 2002
[Pursuant to sections 125, 127, 132 and 135 and Pursuant to section 600 read with 125, 127, 132 and 135 of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (a) This time is for Creation of charge ☒ Modification of charge ☐
- (b) Whether charge is modified in favor of Asset Reconstruction Company (ARC) Yes ☐ No ☒
- (c) Whether the charge holder is authorised to sign the charge as per the charge agreement Yes ☒ No ☐
- (d) Charge identification (ID) of the charge to be modified
2. (a). *Corporate identity number (CIN) or foreign company registration number of the company
- (b) Global location number (GLN) of company
3. (a) Name of company
- (b) Address of the registered office or of the principal place of business in India of the company
4. (a) *Type of charge
- | | |
|---|--|
| ☐ Uncalled share capital | ☐ Calls made but not paid |
| ☒ Immovable property | ☐ Ships |
| ☐ Any interest in immovable property | ☐ Goodwill |
| ☒ Book debts | ☐ Patent, Licences under a patent |
| | ☐ Trade Marks |
- ☐ Movable property ☐ Copy rights or licences
- ☐ Floating charge
- ☐ Others
- (b) If others, specify

5. (a) * Whether consortium finance is involved ☐ Yes ☒ No

(b) * Whether joint charge involved ☐ Yes ☒ No

6. (b) *Number of charge holder(s)

7. Particulars of the charge holder(s)

CIN	XXXXXXXXXXXXXXXXXXXXXXX
*Name	IDBI BANK LTD.
*Address	Line I ALANKAR CHAMBERS
	Line II TITA BHAWAN SQUARE, A.B.ROAD
*City	INDORE
*State	MADHYA PRADESH
*ISO Country Code	INDIA
*Pin code	452001
*email ID	indore@idbi.com

8. *Nature or description of the instrument creating charge (copy to be attached)

— AGREEMENT FOR HYPOTHECATION OF STOCK AND BOOK DEBTS.
— MEMORANDUM OF ENTRY FOR EQUITABLE MORTGAGE
— LOAN AGREEMENT

9. *Date of the instrument creating or modifying charge (DD/MM/YYYY)

10. (a) *Whether charge created or modified outside India ☐ Yes ☒ No

(b) In case of charge created or modified outside India on the property situated outside India, the date of receipt of the document in India (DD/MM/YYYY)

11. *Amount secured by the charge in Rs.

(In case the amount is in foreign currency, rupee equivalent to be stated)

12. Brief of the principle terms and conditions and extent and operation of the charge

(a) *Rate of interest

(b) *Terms of repayment

(c) *Margin

(d) *Extent and operation of charge

(e) Others

13. In case of acquisition of property, subjected to charge, furnish the details relating to the existing charge on the property so acquired:—

(a) Date of instrument creating or evidencing the charge (DD/MM/YYYY)

(b) Description of the instrument creating or evidencing the charge

(c) Date of acquisition of the property (DD/MM/YYYY)

(d) Amount of the charge (in Rs.)

(e) Particulars of the property charged

14. * Short particulars of the property charged (including location of the property)

HYPOTHECATION OF ENTIRE STOCK OF RAW MATERIAL, STOCK IN TRADE, BOOK DEBTS AND MOVABLE ASSETS AND EQUITABLE MORTGAGE ON THE OFFICE BUILDING SITUATED AT H.N.123 M.G.ROAD, INDORE (M.P.) ADMEASURING ABOUT 1,000 SQT.

15. (a) * Whether any of the property or interest therein under reference is not registered in the name of the company ☐ Yes ☒ No

(b) If yes, in whose name it is registered

Note.—If more than one charge holder involved, details of extent of charge, particular of the property charged, amount secured to be provided in attachment

16. Date of latest modification prior to the present modification (DD/MM/YYYY)

17. Particulars of the present modification

Attachments

1.	Instrument of creation or modification of charge.	Attach	
2.	Instrument evidencing creation or modification of charge in case of acquisition of property which is already subject to charge.		
3.	Particulars of all charge holders		
4.	Optional attachment(s) - if any		

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated *

26/12/2006

(DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary (In case of an Indian company) or an authorised representative (in case of foreign company)

XYZ

Designation

DIRECTOR

Director identification number of the director or membership number of the secretary

00012345

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I/We am/are duly authorised to sign this form.

To be digitally signed by

* Designation

* Charge holder

To be digitally signed by

* Designation

* ARC or Assignee

For office use only

It is certified that the above document for charge creation or modification (other than those related to debentures) is hereby registered

Digital signature of the authorising officer

Annexure 1 to Appendix 1

Specimen of Board Resolution for authority to make borrowing

RESOLVED THAT Shri ABC, Managing Director of the Company be and is hereby authorised to submit proposal and application to the IDBI Bank Ltd. Indore Branch, Indore (hereinafter referred to as "the Bank) for the purpose of sanctioning term loan of Rs. 10.00 Lacs (Rupees Ten Lakhs only) for the purpose of purchasing of the Machinery and balancing equipments.

RESOLVED THAT Shri ABC, Managing Director of the Company be and is hereby authorised to do all such acts, deeds, matters and things on behalf of the Company as he may in his absolute discretion deem fit, necessary and expedient and as may be required by the Bank to avail the above said credit facilities for and on behalf of the Company.

RESOLVED THAT Shri ABC, Managing Director be and is hereby authorised to accept the terms and conditions of the sanction as may be issued by the Bank to grant the above said credit facilities of Rs. 10.00 Lakhs (Rupees Ten Lakhs only)

RESOLVED THAT Shri ABC, Managing Director of the Company be and are hereby authorised to convey to the Bank acceptance on behalf of the Company for the such terms and conditions as may be communicated to the Company and to agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to from time to time and to execute such deeds, documents, demand promissory notes and other writings as may be necessary for this purpose.

RESOLVED THAT the draft of the Loan agreement be and is hereby approved and Shri ABC, Managing Director and/or Shri VB, Director of the Company be and are hereby severally authorised to sign and execute all such documents for providing security on the movable and immovable assets of the company including both present and future for and on behalf of the Company.

RESOLVED THAT the Common Seal of the Company be affixed to the Agreement as per the standard form with such modifications as may be agreed to between the Bank and the Company in presence of the above said directors and Shri RKK, the authorised signatory shall sign the same in token thereof.

RESOLVED THAT Shri ABC, Managing Director of the Company be and is hereby authorised to file e-Form 8 with the Registrar of Companies/MCA.

RESOLVED THAT the Bank be furnished a certified copy of the above said resolution to the bank under to act upon it, under the hand of the Chairman.

Appendix 2

Specimen of Form 10

Particulars for registration of charges for debentures

[Pursuant to sections 125, 127, 128, 129, 130, 132, 134 and 135 and pursuant to section 600 read with sections 125, 127, 128, 129, 130, 132, 134 and 135 of the Companies Act, 1956]

Note.—All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) or foreign company registration number of the company	XXXXXXXXXXXXXX
(b) Global location number (GLN) of company	
2. (a) Name of company	XYZ LIMITED
(b) Address of the registered office or of the principal place of business in India of the company	406, SILVER ARK PLAZA 20A, NEW PALASIYA INDORE (M.P) 452001

3. * This form is for ☒ Creation of charge ☐ Modification of charge

4. *Number of trustee(s) of debenture holders 1

Particulars of trustee(s) of debenture holder

CIN	XXXXXXXXXXXXXXXXXXXXXX
*Name	IDBI ASSETS MANAGEMENT COMPANY LTD.
*Address	IDBI TOWERS
Line I	
Line II	CUFFE PARADE
*City	MUMBAI
*State	MAHARASHTRA
*Country	INDIA
*Pin code	452001
*e-mail ID	saurabh@idbi.com

5. *Date of creation of charge 30/12/2006 (DD/MM/YYYY)

6. *Whether the charge is for ☒ Entire series of debentures ☐ Any issue in a series of debentures

7. (a)* Whether the series of debentures are registered with the Registrar of Companies (RoC) ☐ Yes ☒ No

(b) If yes, (i) The total amount secured by the whole series (in Rs.)

(ii) Date of registration of series (DD/MM/YYYY)

8. (b) *Date of present issue of series 30/12/2006 (DD/MM/YYYY)

(a) *Amount of present issue of series (in Rs.) 5000000

9. *Date of resolution authorising the issue of the series 28/12/2006

10. (a) *Description of the property charged indicating whether it is a charge on

☒ Immovable properties ☒ Plant & machinery ☒ Furniture & Fixture

- ☒ Stock in trade ☒ Book debts ☐ Vehicles
☐ Shares & debentures ☐ Fixed deposits ☐ Intangible assets
☐ Uncalled share capital ☐ Others

(b) If others, specify

(c) *Particulars of the property charged (including location of the property)

LAND, BUILDING AND PLANT AND MACHINERIES SITUATED AT 123, INDUSTRIAL AREA, SANWER ROAD, INDORE (M.P.)

11. *Brief of the principal terms and conditions, (including rate of interest, date of redemption and creation of debenture redemption reserve) extent and operation of charge

— RATE OF INTEREST 8% P.A. PAYABLE, HALF YEARLY ON 1ST JULY AND 1ST JANUARY, EVERY YEAR.
 — REPAYABLE IN 7 YEARS, I.E. ON 31ST DECEMBER, 2013.

12. *Particulars as to amount or rate percent of the commission, allowances or discount (if any) paid, or made either directly or indirectly by the company to any person(s) in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return.

No

Modification of charges

13. * Charge identification (ID) number of the charge to be modified

14. (a) * Description of the instrument modifying the charge

(b) * Date of instrument modifying the charge (DD/MM/YYYY)

(c) * Is modification of charge done outside India ☐ Yes ☐ No

(d) Date of receipt of instrument modifying the charge (DD/MM/YYYY)

15. *Particulars of the present modification

Attachments

1.	Copy of the resolution authorising the issue of the debenture series	Attach	
2.	Instrument of creation or modification of charge.	Attach	
3.	Optional attachment(s) — if any	Attach	Copy of Board resolution

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated * 28/12/2006

(DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary (In case of an Indian company) or an authorised representative (in case of a foreign company) XYZ

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I am duly authorised to sign this form.

ABC

To be digitally signed by

Trustee of debenture holder

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of ABC Private Limited and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice)

D.K.Jain

For office use only

It is certified that the above document for charge creation or modification of debentures is hereby registered

Digital signature of the authorising officer

Appendix 3**Specimen of Board resolutions for borrowings and creation of charge****I. Authority to make borrowing from Bank**

RESOLVED THAT Shri AB, Managing Director of the Company be and are hereby authorised to submit proposal and application to the Punjab National Bank, Kanthal Branch, Ujjain (hereinafter referred to as "the Bank") for the purpose of sanctioning the following credit facilities:

Nature of facilities	Cash Credit Facilities	Rs. in Lacs
	(Hypothecation of Goods & Book Debts)	Rs. 18.00
Term Loan		
	(For purchasing of the Balancing equipments & Machineries)	Rs. 10.00
Total		Rs. 28.00

for the purpose of the working capital requirements of the Company and purchasing of the Machinery and balancing equipments.

RESOLVED THAT Shri AB, Managing Director of the Company be and is hereby authorised to do all such acts, deeds, matters and things on behalf of the Company as he may in his absolute discretion deem fit, necessary and expedient and as may be required by the Punjab National Bank, Kanthal Branch, Ujjain to avail the above said credit facilities for and on behalf of the Company.

RESOLVED THAT Shri AB, Managing Director be and is hereby authorised to accept the terms and conditions of the sanction as may be issued by the Bank to grant the above said credit facilities of Rs.28.00 Lakhs Rupees Twenty Eight Lakhs only)

RESOLVED THAT Shri AB, Managing Director of the Company be and are hereby authorised to convey to the Punjab National Bank acceptance on behalf of the Company for the such terms and conditions as may be communicated to the Company and to agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to from time to time and to execute such deeds, documents, demand promissory notes and other writings as may be necessary for this purpose.

RESOLVED THAT the draft of the Loan agreement be and is hereby approved and Shri AB, Managing Director and/or Shri VB, Director of the Company be and are hereby severally authorised to sign and execute all such documents for providing security on the movable and immovable assets of the company including both present and future for and on behalf of the Company.

RESOLVED THAT the Common Seal of the Company be affixed to the Agreement as per the standard form with such modifications as may be agreed to between PNB and the Company in presence of the above said directors and Shri RKK, the Authorised Signatory shall sign the same in token thereof.

RESOLVED THAT the Bank be furnished a certified copy of the above said resolution to the bank under to act upon it, under the hand of the Chairman.

II. Authority to take loan for purchasing a car

RESOLVED THAT the Company be and is hereby authorised to take a loan upto Rs. 3,38,000 (Rs. Three Lacs Thirty Eight Thousand Only) from ICICI Ltd., Mumbai on the following terms and conditions:

- (a) The loan shall be used for the purpose of vehicle, which is to be used by the officers of the Company and not for commercial purpose.
- (b) The loan will be repayable in monthly installments for the tenure not exceeding 36 (Thirty-Six) months.
- (c) The commercial rate of interest of 11.9 % or such other rate that ICICI Ltd., specify from time to time will be charged.
- (d) That the vehicle will be hypothecated in favour of ICICI Ltd., and ICICI Ltd., will have first and exclusive charge on the vehicle financed.

RESOLVED THAT the Board authorises Shri AB, Managing Director to make, enter into, execute and deliver to ICICI Ltd., all documents including the loan agreements, promissory notes, power of attorney, issue of post-dated cheques, etc.

RESOLVED THAT the Common Seal of the Company be affixed in the presence of Shri AB, Managing Director on such documents as ICICI Ltd., may require.

III. Authority to borrow from financial institution

RESOLVED

- (1) That the Company do accept the offer of SIDBI to grant to the Company term loan not exceeding Rs. 80.00 Lakhs (Rupees Eighty Lakhs only) under Direct Credit Scheme (hereinafter referred to as "the said loan") subject to such modifications as might be agreed by SIDBI on the terms and conditions contained in the Letter of Intent No. 3125 DCS/SPIPL dated March 10th 2006 received from SIDBI (a copy whereof duly signed by the Chairman for the purpose of identification has been circulated to the Board and placed on the table at the meeting).
- (2) That the following Directors viz. Smt. VS, Smt. SJ and/or Shri AB be and are hereby authorized severally to convey to SIDBI acceptance on behalf of the Company of the said offer for financial assistance on the terms and conditions contained in their letter of intent referred to above and agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to SIDBI from time to time and to execute such deeds, documents, Demand Promissory Notes and other writings as may be necessary or required for this purpose.
- (3) That the Company do borrow from SIDBI the said loan not exceeding Rs. 80.00 Lakhs (Rupees Eighty Lakhs only) on the terms and conditions set out in the standard form of agreement for loan provided by SIDBI (hereinafter referred to as "the Loan Agreement") in addition to the special terms and conditions mentioned in the Letter of Intent No. 3125 DCS/SPIPL dated 10th March, 2006 received from SIDBI (copies whereof duly signed by the Chairman of the Board for purposes of identification have been circulated to the Board/placed on the table at the meeting) and also avail of interim disbursement(s) from time to time as may be allowed by SIDBI.

- (4) That the aforesaid Letter of Intent/standard form of Loan Agreement be and is hereby approved and the following Directors viz. Smt. VS, Smt. SJ and/or Shri AB be and are hereby severally authorized to accept on behalf of the Company such modifications therein as may be acceptable to SIDBI and finalize the same.
- (5) That the Common Seal of the Company be affixed to the stamped engrossment(s) in duplicate of the Loan Agreement as per the standard form with such modifications as may be agreed to between SIDBI and the Company in the presence of any two of the following Directors viz. Smt. RS, Smt. VS, Smt. SJ and/or Shri AB who shall sign the same in token thereof and Shri AL, Authorized Person who shall sign/countersign the same in token thereof.
- (6) That the Company shall execute the Loan Agreement relating to the above facilities within a period stipulated by SIDBI on the condition that till such an Agreement is executed, there is no binding obligation or commitment on the part of SIDBI to advance any money or incur any obligation there under.
- (7) That the standard form of the Deed(s) of Hypothecation, Undertaking for Overrun, Undertaking regarding non-disposal of shareholdings, Undertaking for non-withdrawal of unsecured loan and other undertakings duly initialled by the Chairman for the purposes of identification and placed before the meeting be and are hereby approved and that Smt. VS and Smt. SJ, Directors of the Company be and are hereby severally authorized to finalize and execute on behalf of the Company the said documents and also to approve and finalize such other deeds documents and writings as may be required by SIDBI in connection with the aforesaid loan.
- (8) That the Common Seal of the Company be affixed to the stamped engrossment(s) of the Deed of Hypothecation, Demand Promissory Note and such other documents as may be required to be executed under the Common Seal of the Company in favour of SIDBI to secure the aforesaid formalities in the presence of any two of the following Directors viz. Smt. VS, Smt. SJ and/or Shri AB who shall sign the same in token thereof and Shri AL, Authorized Person who shall sign/countersign the same in token thereof.
- (9) The Company do create a mortgage by way of constructive delivery of title deeds in favour of SIDBI by depositing with SIDBI all documents of title, evidences, deeds and writings (hereinafter called "the said title deeds") in order to create a security on the Company's immovable properties bearing plot No.15-D, Industrial Area, Maxi Road, situate at Village Taluka of Ujjain District and at 7/9-C, belongs to SP Ujjain, situated at Industrial Area, Ujjain Road, Dewas, situate at Village Taluka Dewas district together with all buildings and structures thereon and all plant and machinery, attached to the earth or permanently fastened to anything attached to the earth (hereinafter referred to as "the said immovable properties") to secure the due repayment and discharge by the Company to SIDBI of the above financial assistance together with interest, further interest, liquidated damages, costs, charges, expenses and all other monies payable under the Loan Agreement(s)/Letter(s) of Intent/terms of sanction as amended from time to time.
- (10) The following directors viz. Smt. VS, Smt. SJ and/or Shri AB be and are hereby authorized severally to deliver to and deposit/by constructive delivery the said title deeds for the aforesaid purpose with SIDBI and to state on behalf of the Company that the said title deeds so deposited were the only documents of title in the possession, power and control of the Company and that
- (11) The Company has a clear and marketable title to the said immovable properties and that the security in favour of SIDBI shall ensure in respect of the Company's immovable properties, both present and future and also to give a declaration on oath to the satisfaction of SIDBI.
- (12) The following directors, viz. Smt. VS, Smt. SJ and/or Shri AB be and are hereby authorized severally to approve and finalize such other deeds and documents as may be required by SIDBI in connection with the financial assistance and that the Common Seal of the Company be affixed thereto in the presence of Smt. VS and/or Smt. SJ, Directors of the Company who shall sign the same in token thereof and Shri AL, Authorized Person who shall sign/countersign the same in

token thereof and in the event of the affixation of the Common Seal not being required, the same be executed severally by the directors aforementioned.

- (13) The Company does file the requisite particulars of charge/modification of charge in connection with the creation of aforesaid securities and mortgage by deposit/constructive delivery of title deeds in favour of SIDBI with the Registrar of Companies within the time prescribed by law therefore.
- (14) That viz. Smt. VS and Smt. SJ, Directors of the Company be and are hereby severally authorised to accept amendments to such executed Loan Agreement, Deed of Hypothecation and any other documents as and when become necessary and to sign letter(s) of undertakings, declarations, agreements and other papers which the Company may be required to sign for availing of the aforesaid loan and, if so required, the Common Seal of the Company be affixed thereto in the presence of any two of the aforesaid Directors, who shall sign the same in token thereof and Shri AL who shall sign/countersign the same in token thereof as required by the Articles of Association of the Company.
- (15) That the any director of the company be and hereby severally authorised to accept, confirm and sign the balance confirmations, acknowledgment(s) of debt and securities and such other letters which the company may be required to sign from time to time in connection with the aforesaid facilities.
- (16) Copies of the foregoing resolutions certified to be true copies by the Director of the Company be furnished to SIDBI and they be requested to act thereon.

IV. Creation of charge related to debentures

RESOLVED THAT the Board of Directors be and is hereby authorised to secure by a first fixed and specific charge on the company's immovable properties, plant and machinery (erected or in course of erection), cars and vehicles, furniture and fittings, and a floating charge on the whole of the undertaking and the assets of the company for the purpose of issuing debentures providing for payment of principal sum of Rs. 75 lakhs with interest of 10% per annum, that such debentures be issued in such form and be secured in such manner and be issued to such persons and on such terms as the Directors think fit and proper.

V. Modification of charge related to debentures

RESOLVED THAT the Trustees of the Debenture Stock, 2001-02 be and are hereby authorised to execute the supplemental trust deed in terms of the draft placed before and approved by this meeting and for the purposes of identification signed by the Chairman thereof; the intention of such supplemental deed being to authorise the extension of the scope of the existing prior charge in favour of the State Bank of India on certain assets of the company to include the company's stocks of *hemp*, *bimil*, *mesta* and other materials, such extended charge ranking in priority to or *pari passu* with the floating charge thereon created in favour of the abovementioned trustees by virtue of the trust deed executed on the 29th day of June, 2003.

Appendix 4

Specimen of e-Form 17

Particulars for satisfaction of charges

[Pursuant to section 138 and pursuant to section 600 of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) or foreign company registration number of the company
- (b) Global location number (GLN) of company

2. (a) Name of company XYZ LIMITED
- (b) Address of the registered office or of the principal place of business in India of the company 123, M.G. ROAD,
INDORE (M.P.) 452001
3. * Charge creation identification (ID) number xxxxxxxx

(a) *Particulars of the charge holder

CIN	xxxxxxxxxxxxxxxxxxxxxx
Name	IDBI BANK LTD.
Address	ALANKAR POINT, GITA BHAWAN SQUARE, A.B.ROAD, INDORE

(b) Particulars of creation of original charge and subsequent modifications

- (i) Charge creation date 01/01/2002 (DD/MM/YYYY)
- (ii) Charge last modified date (DD/MM/YYYY)
- (iii) Final amount secured (in Rs.) 2500000
4. *Date of satisfaction of charge in full 30/12/2006 (DD/MM/YYYY)

Attachments

1.	Letter of charge holder stating that the amount has been satisfied.	Attach	
2.	Optional attachment(s) - if any	Attach	Copy of Board resolution

Declaration

To the best of our knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated * 30/12/2006 (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary (In case of an Indian company) or an authorised representative (in case of foreign company) XYZ

Declaration

I am duly authorised to sign this form.

To be digitally signed by

Charge holder (financial institution or bank or debenture holder, etc.) ABC

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of ABC Private Limited and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice) D.K.Jain

For office use only

It is certified that the above document for charge satisfaction is hereby registered

Digital signature of the authorising officer

Appendix 5

**Specimen of application to the Central Government for extension of time
for filing of particulars of charges**

BEFORE THE CLB/CENTRAL GOVERNMENT

IN THE MATTER OF SECTION 141 OF THE COMPANIES ACT, 1956 (1 OF 1956)

AND

IN THE MATTER OF XYZ POLYMERS PVT. LTD.

(constituted under the Companies Act, 1956 and & having its Regd. Office at
16, BHAKTAWAR MARG, UJJAIN),

The Applicant

AND

**IN THE MATTER OF THE REGISTRAR OF COMPANIES, MADHYA PRADESH &
CHHATISGARH**

Application under section 141 of the Companies Act, 1956 for registration of particulars of creation of
charge & extension of time for filing of particulars thereof.

Index

<i>S. No.</i>	<i>Marking of Annexure</i>	<i>Particulars</i>	<i>Page No. From- To</i>
1.	A-1	Certificate of Incorporation	
2.	A-2	Certified copy of the Memorandum and Articles of Association	
3.	A-3	Certified copy of the Board resolution dated 1 st April, 2003 for authorizing to borrow.	
4.	A-4	Copy of the sanction letter of the United Western Bank Ltd.	
5.	A-5	Certified copies of the various agreements executed for creation of charge in favour of the Bank.	
6.	A-6	Certified copy of the Form 8 filed with the Registrar	
7.	A-7	Certified copy of the letter No.125/127/135/10779/ROC/03 given by the Registrar of Companies, advised to comply with the requirement of provisions of section 141 of the Companies Act.	
8.	A-8	Certified copy of the Board resolution for authorising to file application u/s 141 and representative to appear before the Central Government.	
9.	Affidavit	Affidavit to verify the application.	
10.	Memorandum of Appearance	Memorandum of appearance by Shri D.K. Jain, Company Secretary to appear before the Central Government.	
11.	DD	Demand draft in favour of the Pay and Accounts Office, Department of Company Affairs, for Rs.500 being the fee for application.	

For, XYZ Polymers Pvt. Ltd.

RG
DIRECTOR

Date: XX.XX.XXXX

Place: Ujjain

BEFORE THE CLB/CENTRAL GOVERNMENT
IN THE MATTER OF SECTION 141 OF THE COMPANIES ACT, 1956 (1 OF 1956)

AND

IN THE MATTER OF XYZ POLYMERS PVT. LTD.

(constituted under the Companies Act, 1956 and & having its Regd. Office at
16, BHAKTAWAR MARG, UJJAIN),

The Applicant

AND

**IN THE MATTER OF THE REGISTRAR OF COMPANIES,
MADHYA PRADESH & CHHATISGARH**

Petitioner above named most respectfully **SHOWETH**

That the applicant, M/s XYZ POLYMERS PRIVATE LIMITED (hereinafter referred to as "the Company") was incorporated on dated xx.xx.xxxx as a Private Company under Companies Act, 1956 for which a Certificate of Incorporation No. 10-XXXXXX was issued by the Registrar of Companies, Madhya Pradesh on xx.xx xxxx (Certified copy of the Certificate of Incorporation enclosed as Annexure A-1)

That the lending Bank, the United Western Bank Limited is a company constituted under Companies Act, 1956 (hereafter referred to as "The Bank") and having its Registered Office at 172/4 Raviwar Peth, Satara-415001 (MS) and having a Branch at Ujjain (M.P.) and is engaged in the business of Banking activities.

That the main objects of the company for which the company was formed are set out in the Clause III (A) of the Memorandum of Association of the company. (Certified amended copy of the Memorandum & Articles enclosed as Annexure A-2) and the main objects reproduced herein below:

(1) To carry on the business of manufacturers of and dealers in rubber plastics tubes and tires and films and molded goods of all kinds and for all purposes and in bottles, containers, tubes, wrapping materials, foams, rubber and plastics products, transmission belts and conveyors and similar industrial articles, pipes, tubes hoses, rubber containers and rubber lined vessels, tanks, equipments, pipes, and similar equipments electric products and part thereof trial rubber products and parts, types, insulating materials and all other blown, moulded".

That the Authorised Share Capital of the company is Rs. 25, 00,000 (Rupees Twenty Five Lacs) only, divided into 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs.10 (Rupees Ten) each and issued subscribed and paid up Share Capital of the Company is Rs. 18,32,300 only (Rs. Eighteen Lacs Thirty Two Thousand Three Hundred) divided into 1,83,230 (One Lac Eighty Three Thousand Two Hundred Thirty) Equity Shares of Rs. 10 (Rs. Ten) each fully paid up.

That the company is engaged in the business of manufacturing and trading of the disposal containers and cups at its Plant situated at 12 D/F, Industrial Area, Maxi Road, Ujjain (M.P.).

The Petitioner declares that the subject matter of the application is within the jurisdiction of the Company Law Board/Central Government, Ministry of Company Affairs, Government of India, (hereafter referred as 'the Central Government').

That the Board of directors of the company passed necessary resolution as required u/s 292 of the Companies Act, 1956 on dated XX.XX.XXXX to accept the terms and conditions and authorised its directors to execute necessary document to provide security to the Bank for the aforesaid credit facilities. (Copy of the resolution enclosed as Annexure-A3)

That the company had for the purpose of its business, approached to the United Western Bank Ltd., Ujjain Branch, Ujjain for Working Capital Cash Credit Facilities of Rs. 5,00,000 (Rs. Five Lakhs Only) which was considered and sanction by the Bankers to the company wide their sanction letter No. IFD/NGP/99/2356, dated xx.xx.xxxx. (Copy of the sanction letter enclosed as Annexure A-4)

That the applicant company executed several documents on xx.xx.xxxx as per the terms and conditions of the sanction letter, dated xx.xx.xxxx (Certified copies of the agreement enclosed as Annexure A-5)

That in accordance with the provisions of section 125 of the Companies Act, 1956 the particulars of the aforesaid charge were required to be filed with the Registrar of Companies, Madhya Pradesh at Gwalior, within a period of 30 days from the creation of charges in favour of the Bank, which could not be filed inadvertently and by oversight in e-Form 8.

That the Board of directors of the company at their meeting on xx.xx.xxxx passed necessary resolution for filling the application before the Central Government and Shri Dilip Kumar Jain, Company Secretary of Indore and/or Shri Nilesh G. Shah, Company Secretary of Mumbai for filling of application and to represent the company before the Regional Director for hearing of the application. (Copy of the resolution enclosed as Annexure A-8).

That the applicant filed e-Form 8 alongwith the documents for creation of charge were filed with the Registrar of Companies, Madhya Pradesh, Gwalior, with adequate filing fee for the registration of particular of charges on dated xx.xx.xxxx which was received by the Registrar and issued official receipt for payment of fee *vide* receipt No. xxxxxxxx dated xx.xx.xxxx (Copy of the e-Form 8 enclosed as annexure A-7).

That the Registrar of Companies, Madhya Pradesh, *vide* letter No. S125/127/135/10779/ROC/886 dated xx.xx.xxxx had advised to compliance of section 141 of the Companies Act, 1956.

The applicant submits that the mistake was due to oversight and none of the parties have '*mala fide*' intention in non-filing the particular of charges.

The applicant further submit that no one would be prejudiced if the registration of particulars of property of charge is permitted by the Central Government and that the applicant company is carrying on business as of the day of filing this application and no proceeding to wind up the company have commenced or are pending against the company.

The applicant declares that the Central Government has jurisdiction to grant extension for filing of particulars for registration of the charge created in favour of the Bank in exercise of the powers conferred on it by section 141 of the Act.

The applicant further declares that it has not filed any petition/application regarding the matter in respect of which this application has been made.

PRAYS:

The Petitioner therefore prays that:

- (1) An extension of time be granted for filing of the particular of registration of charges till xx.xx.xxxx, i.e. on the date on which the particulars of modification of charges were actually filed with the Registrar of Companies, Madhya Pradesh.
- (2) Such further or other order be made and/or directions be given as may be deem fit and proper.

Particulars of fees:

- | | | |
|----------------------------|---|------------------------|
| (1) Branch of the Bank | : | Ujjain Branch, Ujjain |
| (2) Name of issuing Bank | : | State Bank of Patiala |
| (3) Demand Draft No & Date | : | xxxxxxx Dt. xx.xx.xxxx |
| (4) Amount | : | Rs. 500 (Five Hundred) |

For, XYZ Polymers Pvt. Ltd.
RGA
DIRECTOR

Date: XX.XX.XXXX

Place: Ujjain

Annexure to the Application
(HEADING AS PER APPLICATION)

Affidavit

(Affidavit verifying application)

I, RGA S/o Shri VGA, aged about 38 years, resident of 27, Sethi Nagar, Ujjain (M.P.), by occupation business do solemnly affirm and say as follows:

I am a director of the company M/s XYZ Polymers Pvt. Ltd. The applicant in the petition above mentioned and am fully authorised by the Board of directors to make this affidavit on its behalf.

The statement made in paragraph 1 to 20 are based on information derived from the records of the company and I believe them to be true and statement made are true with the best of my knowledge and belief.

I, solemnly affirm that this declaration is true; that it conceals nothing and that no party of it is false.

For XYZ POLYMERS PVT. LTD.

RGA

DIRECTOR

Solemnly affirmed before me this day of, of of this year

(PUBLIC NOTARY)

Annexure to the Application

(Heading as per Application)

Memorandum of Appearance

Dear Sir,

Please take note that we are duly authorised to enter appearance and do hereby enter appearance on behalf of XYZ POLYMERS PVT. LTD., applicant in the above mentioned application.

A copy of the resolution passed by the Board of directors at their meeting held on xx.xx.xxxx authorising us to act for every purpose connected with the proceeding for the said party is enclosed, duly signed by me for identification.

Dilip Kumar Jain

Anish Gupta

Thisday of

Annexure to the Application

Specimen of the Board resolution to give authority for obtaining loan facilities

The Chairman appraised that the United Western Bank Ltd., on the request of the company have agreed to grant Working Capital Facilities of Rs. 5.00 Lacs under the Cash Credit Limit for IB/BD/BP Facilities. He further placed before the Board a copy of the sanction letter dated xx.xx.xxxx received from the Bank.

The Chairman requested the Board to pass necessary resolution for approval of the borrowings and authorise to executed necessary documents for that purpose.

The Board considered and after due discussion passed the following resolution unanimously:

RESOLVED THAT the consent of the Board of directors be and is hereby accorded to avail the Working Capital Facilities by way of Cash Credit Limit of Rs. 5.00 Lacs for the IB/BD/BP facilities on such terms and conditions as mentioned in the sanction letter dated xx.xx.xxxx.

- (1) That the company do accept the offer of the United Western Bank Ltd. to grant the company Cash Credit Limit of Rs. 5.00 Lakhs (Rupees Five lakhs only).
- (2) That Shri SVY and/or Shri RGA, directors of the company be and are hereby severally authorised to convey the United Western Bank Ltd. acceptance on behalf of the company of the said offer for financial assistance on the terms and conditions as may be communicated to the company and agree to such changes and modifications in the said terms and conditions as may be suggested and acceptable to from time to time and to execute such deeds, documents, demand draft, promissory notes and other writings as may be necessary for this purpose.
- (3) That the draft of the loan agreement be and is hereby approved and all the directors of the company be and are hereby severally authorised to sign and accept on behalf of the company.

- (4) That all the directors of the company be and are hereby severally authorised to accept such amendments to such executed loan agreement, deed of hypothecation and any other documents as and when become necessary and to sign letter(s) of undertaking, declarations, agreements and other papers which the company may be required to sign for availing of the aforesaid loan and, if so required, the common seal of the company be affixed thereto in presence of the above said directors who shall sign the same.

Annexure to the Application

Specimen of the Board resolution for authority to file application

The Chairman appraised that inadvertently the company could not file the particular of charges for the Working Capital Limit of Rs. 5.00 Lacs obtained in xx.xx.xxxx from the United Western Bank Ltd. to the Registrar of Companies, Madhya Pradesh, Gwalior as required u/s 125 of the Companies Act, 1956, therefore the company shall require to approach to the CLB/Central Government for extension of the time for registration of charges as per provisions of section 141 of the Companies Act, 1956. He submitted the following resolution which was considered and passed unanimously after due discussion:

RESOLVED THAT an application be made to the CLB/Central Government, Department of Company Affairs, under section 141 of the Companies Act, 1956 for seeking extension of time for filing particulars of charges with Registrar of Companies and that Shri RGA, the director of the company be and is hereby authorised to verify and to sign the application and to appoint authorised representatives to appear before the Regional Director for and on behalf of the company.

RESOLVED FURTHER THAT Shri D.K. Jain and/or Shri Anish Gupta, Practising Company Secretaries be and are hereby severally authorised to appear before the CLB/Central Government in connection with the application under section 141 of the Companies Act, 1956 and to amend/correct/alter/add to the application as may required by the CLB/Central Government and to obtain true copy of the order and to do all such acts and things as may be necessary for this purpose.

RESOLVED FURTHER THAT Shri RGA, the director of the company be and is hereby authorised to issue requisite Memorandum of Appearance to the Company Secretary.

Chapter 2

Appointment or Cessation of Receiver or Manager

Synopsis

1. Filing of Form for appointment or cessation of manager or receiver
2. Responsibility for filing e-Form 15
3. Time limit for filing of e-Form 15
4. Enclosures
5. Reference of charge ID
6. Digital signature
7. Data errors in index of charges and mechanisms for corrections
8. Interaction with ROC Office
9. Payment of filing fee and mode of payment
10. Records
11. Entry for appointment of receiver/manager in the Register of charges
12. Penalty

Appendix 1 Specimen of e-Form 15

Appendix 2 Specimen of E-Form 36

1. Filing of Form for appointment or cessation of manager or receiver

The new prescribed e-Form 15 *vide* Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006 (previously Forms 13, 15 and 16) alongwith the instruments evidencing the information for appointment or cessation of receiver or manager shall be filed in on electronic filing system to the MCA/ROC, under the digital signatures of manager or receiver. (See Appendix 1 for Specimen of e-Form 15).

2. Responsibility for filing e-Form 15

It shall be the duty of the person obtaining the order for making the appointment of receiver or manager and in case of cessation of the office by the receiver or manager, to file and get registered with the Registrar the re-appointment or cessation of receiver or manager under section 137 of the Companies Act, 1956. In case such appointment is made by any person under any power vested to him by the instrument creating charge, then Form for appointment of receiver or manager shall be filed by that person.

3. Time limit for filing of e-Form 15

E-Form 15 with complete requirement together with e-Form 36 is required to be filed electronically within a period of thirty days from the date of passing of order or making of the appointment by a person vested with power under the instrument. (Appendix 2)

4. Enclosures

The following documents shall be enclosed with e-Form 15:—

- (a) Copy of the court order is compulsory to be attached, in case where the appointment/cessation is in pursuant to the court order;
- (b) Certified copy of the instrument dealing with the appointment;
- (c) Any other information can be provided as an optional attachment.

5. Reference of charge ID

In the field of Charge ID in the column 8(i)(a) of Form 15 it is required to enter the annexure number referring to the attachment that provides the charge details against which the appointment has been made.

6. Digital signature

E-Form 15 shall be digitally signed by the person securing the appointment and in case of cessation of appointment by the receiver or manager itself.

Considering the difficulty that is experienced by the companies and lending banks and institutions, the MCA/RoC will accept the filing of e-Forms with physical signatures only up to 30th June, 2006. Company and its directors will be solely responsible for the filings. Such filings must be supported by the scanned copy of the physical documents that will come as an attachment to the e-Form.

7. Data errors in index of charges and mechanisms for corrections

It is advisable to check the index of charges available on the MCA portal, in case if the index is not proper, correction of errors can be done by the ROC only with proactive support from the Company. Therefore, the company must verify the data before 31st December, 2006 and bring any data discrepancy to the attention of the ROC in writing, with supporting documentary evidence and due declarations about the accuracy of the data.

The company may also ask representative of nearest facilitation center to show how to check for the basic company information and the charge information. If the company notices any discrepancies in the basic data or the charge information (check for the completeness and accuracy of all subsisting charges), it must bring to the attention of the concerned ROC in writing without delay. In the case of charge documents, it is required to enclose copies of old documents as support/evidence. ROC will initiate steps to rectify such errors based on verification from documents already filed.

8. Interaction with ROC Office

In case any clarification is required by ROC from the company, it can be seen by the company in the "My Documents" facility of individual login ID. In the case of filings made from the facilitation center or certified filing centers, clarifications will be sought by post.

In case of any clarification from ROC, the company can send a written communication or email to the ROC providing necessary clarification to ROC so that ROC can process the company service request.

In the case of request for re-submission, entire documents will need to be re-submitted. No additional fees will be charged in such cases.

9. Payment of filing fee and mode of payment

The fees is payable on the Form depending upon the authorised capital of the company as per the provisions of Schedule X of the Companies Act, 1956. The fees shall be paid as per procedure given in relevant of Part of the book.

10. Records

- (i) Copy of the form for appointment and court orders for appointment of receiver or manager and copy of the orders of the Court for cessation of the office of receiver or manager.
- (ii) Copy of e-Form 36 in case of cessation of the office of the receiver or manager.
- (iii) Register of charges
- (iv) Certified copy of the instrument dealing with the appointment
- (v) Copy of the e-Forms 8 earlier (previously form 8 & 13) filed by the company on the basis of which the appointment of receiver or manager have been made.
- (vi) Copy of the evidence for payment of filing fee.

11. Entry for appointment of receiver/manager in the Register of charges:

Section 137 provides certain provisions in this regard and the same are stated hereunder:—

- (1) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property of a company, or if any person appoints such receiver or person under any powers contained in any instrument, he shall, within thirty days from the date of the passing of the order or of the making of the appointment under the said powers, give notice in e-Form 15 of the fact alongwith filing fee as per Schedule X of the Companies Act, 1956 to the Registrar.

- (2) Where any person so appointed under the powers contained in any instrument ceases to act as such, he shall give to the Registrar notice in e-Form alongwith prescribed fee, of such cessation and the Registrar shall enter the notice in the Register of charges.
- (3) Any person who make default in complying with such provisions as given above, shall be punishable with fine which may extend to rupees five hundred for every day during which such default continues.
- (4) The particulars of charge as given above shall be filed together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series.
- (5) The company shall file with the Registrar, particulars of the date and amount of each issue of debentures of series, if there is more than one, but failure to file such particulars shall not affect the validity of the debentures issued.
- (6) Debentures must also be registered under the Indian Registration Act.
- (7) Section 133 requires that the company shall cause a copy of every certificate of registration given under section 132, to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

A company shall not be required to cause a certificate of registration to be endorsed on any debenture or certificate of debenture stock issued by the company, before the charge was created. [Proviso to section 133]

If any person knowingly delivers, or authorises or permits the delivery of any debenture or certificate of debenture stock which is required to be endorsed with a copy of a certificate of registration, as stated above, without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be punishable with fine which may extend to rupees ten thousand.

12. Penalty

The person who makes the default in complying with the provisions of section 137 shall be punishable with fine, which may extend to Rs. 500 for every day during which the default continues.

Appendix 1

Specimen of e-Form 15

Appointment or cessation of receiver or manager

[Pursuant to section 137 and pursuant to section 600 of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) or foreign company registration number of the company

XXXXXXXXXXXXXXXXXX

- (b) Global location number (GLN) of company

--
2. (a) Name of the company

XYZ LIMITED

- (b) Address of the registered office or of the principal place of business in India of the company

123, M.G. ROAD, INDORE (M.P.) 452001

3. * Type of notice ☒ Appointment ☐ Cessation
4. Particulars of receiver or manager
 - (a) * Income-tax permanent account number (PAN)

ABTPJ1234J

 - (b) *Name

ABHA JAISWAL

(c) *Address	Line I	132 MAHAVIR NAGAR
	Line II	
(d) *City		INDORE
(e) *State		MADHYA PRADESH
(f) *Country		INDIA
(g) *Pin code		452018

5. Date of appointment 30/12/2006 (DD/MM/YYYY)

6. Date of cessation (DD/MM/YYYY)

7. *Number of charges 1

8. Particulars of charges(s)

(i) (a) *Charge identification (ID) number XXXXXXXXXX

(b) Whether the appointment of cessation is:

☐ Pursuant to an order of the court ☒ Pursuant to any instrument

(c) If in pursuance to an order of court, furnish the following details

(i) Court reference

(ii) Date of court order (DD/MM/YYYY)

(d) If in pursuance to an instrument, furnish the following details

(i) Description of the instrument Agreement for hypothecation of stock and book debts.

(ii) Date of instrument 01/01/2005 (DD/MM/YYYY)

(e) State whether the appointment relates to:

☐ (i) Whole of the property of the company

☒ (ii) Specified property of the company, if so, specify

Entire stock of raw material, finished goods and stock in process kept at 123, M.G. Road, Indore and book debts of the company.

(f) State whether the appointment relates to:

☐ (i) Income arising from the whole of the property of the company

☒ (ii) Income arising from the specified property of the company, if so, specify

Entire stock of raw material, finished goods and stock in process kept at 123, M.G. Road, Indore and book debts of the company.

(ii) (a) *Charge identification (ID) number

(b) Whether the appointment of cessation is:

☒ Pursuant to an order of the court ☐ Pursuant to any instrument

(c) If in pursuance to an order of court, furnish the following details

(i) Court reference

(ii) Date of court order (DD/MM/YYYY)

(d) If in pursuance to an instrument, furnish the following details

(i) Description of the instrument

(ii) Date of instrument (DD/MM/YYYY)

(e) State whether the appointment relates to:

☐ (i) Whole of the property of the company

☐ (ii) Specified property of the company, if so, specify

Entire stock of raw material, finished goods and stock in process kept at 123, M.G. Road, Indore and book debts of the company.

(f) State whether the appointment relates to:

☐ (i) Income arising from the whole of the property of the company

☐ (ii) Income arising from the specified property of the company, if so, specify

(iii) (a) *Charge identification (ID) number

(b) Whether the appointment of cessation is:

☒ Pursuant to an order of the court ☐ Pursuant to any instrument

(c) If in pursuance to an order of court, furnish the following details

(i) Court reference

(ii) Date of court order (DD/MM/YYYY)

(d) If in pursuance to an instrument, furnish the following details

(i) Description of the instrument

(ii) Date of instrument (DD/MM/YYYY)

(e) State whether the appointment relates to:

☐ (i) Whole of the property of the company

☐ (ii) Specified property of the company, if so, specify

Entire stock of raw material, finished goods and stock in process kept at 123, M.G. Road, Indore and book debts of the company.

(f) State whether the appointment relates to:

☐ (i) Income arising from the whole of the property of the company

☐ (ii) Income arising from the specified property of the company, if so, specify

9. Service request number (SRN) of related Form 36

xxxxxxxxxxxx

Attachments

1.	Copy of court order.	Attach	
2.	Optional attachment(s) - if any	Attach	

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I am duly authorised to sign and submit this form.

To be digitally signed by

Person securing the appointment (In case of appointment) or receiver or
manager (in case of cessation)

ABHA JAISWAL

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 2

Specimen of E-Form 36**Receiver's or manager's abstract of receipt and payments**

[Pursuant to section 424 read with 421 and pursuant to section 600 of the Companies Act, 1956]

Note - All fields marked in * are to be mandatorily filled

1. (a) *Corporate identity number (CIN) or foreign company registration number of company	xxxxxxxx
(b) Global location number (GLN) of company	
2. (a) Name of the company	XYZ LIMITED
(b) Address of the registered office or of the principal place of business in India of the company	123, M.G.ROAD INDORE (M.P.) 452001
3. Particulars of receiver or manager	
(a) *Income-tax permanent account number (PAN)	ABTPJ1234J
(b) Name	ABHA JAISWAL
(c) *Address Line I Line II	
(d) *City	INDORE
(e) *State	MADHYA PRADESH
(f) *Country	INDIA
(g) *Pin code	452018
4. *Charge identification (ID) number	
5. *Instrument or court order details	
(a) Description of the instrument or court order.	
(b) Date of the instrument or court order (DD/MM/YYYY)	
6. Abstract period	
(a) *From 01/09/2006	(DD/MM/YYYY)
(b) *To 31/12/2006	(DD/MM/YYYY)
7. *Number of receipts	3
8. *Number of payments	4
9. *Abstract (please proceed to next page for it)	

<i>Receipts</i>			<i>Payments</i>		
<i>S.No.</i>	<i>Description</i>	<i>Amount (in Rs.)</i>	<i>S.No.</i>	<i>Description</i>	<i>Amount (in Rs.)</i>
	Brought forward	5,00,000			
1.	Sales of stock	12,00,000	1.	MPFC	19,10,000
2.	Sales of raw material	1,50,000	2.	Legal expenses	5,000
3.	Debtors realisation	1,50,000	3.	Advertisement	19,000
4.			4.	Stamp duty	10,000
Carried forward 20,00,000			Carried forward 19,44,000		

Attachments

1.	Optional attachment(s) - if any	

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I am duly authorised to sign and submit this form.

To be digitally signed by ABHA JAISWAL

Receiver or manager

For office use only:

This e-Form is hereby registered

Digital signature of the authorising officer