

PROCESS OF CONDONATION OF DELAY IN CREATION/MODIFICATION/SATISFACTION OF CHARGE

Series- 119

CHARGE:

Section 77 states that Companies are required to register ALL TYPES OF CHARGES, with ROC within 30 days of its creation.

- within or outside India,
- on its property or assets or any of its undertakings,
- whether tangible or otherwise, and
- situated in or outside India

TIME PERIOD FOR CREATION/MODIFICATION OF CHARGE:

For Creation of Charge Form CHG-1/CHG-9 will be filed with fees prescribed under Act within 30 days of Creation of Charge.

Extension of Time: Proviso to section 77(1) of CA, 2013

If Company fails to file within 30 days?

If Company fails to file CHG-1 within 30 days of creation of charge then Registrar of Companies may allow such registration to be made within a period of 300 days of such creation on payment of such additional fees as may be prescribed.

Extension of Time: Proviso 2 to section 77(1) of CA, 2013

If Company fails to file within 300 days?

If company fails to file within 300 days then company shall seek ¹extension of time in accordance with section 87 from the Central Government.

TIME PERIOD FOR SATISFACTION OF CHARGE:

A Company shall give intimation to the Registrar in the prescribed form, of the payment of satisfaction in full of any charge registered under this chapter within a period of 30 days from the date of such payment or satisfaction.

¹ Rule (4) of the Companies (Registration of Charges) Rules 2014 provides for a Condonation of delay by the Registrar. Rule (4) is reproduced under the heading "Relevant Rules issued under Companies Act, 2013".

If Company fails to file within 30 days?
If company fails to file within 30 days then company shall seek ²extension of time in accordance with section 87 from the Central Government by filing application in CHG-8.

PROCESS FOR APPROVAL OF CENTRAL GOVERNMENT

Process for Approval of ³Central Government (Regional Director) where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction.

If there is delay in filing form CHG-1 or CHG-9 and CHG-4 a petition for Condonation of delay has to be filed with concerned Regional Director, Ministry of Corporate Affairs. The due dates for filing of above forms are discussed above.

STEP -I

➤ Filing of Relevant Form (CHG-1/9/4)

The Company will file form CHG-1/9/4 with additional fees for delay in filing of form. However, a remark will appear in the challan that a delay of filing is of so many days and Condonation of delay is required.

STEP -II

➤ Holding of Board meeting and Passing of Resolution

- a) Company will call a Board Meeting as per Secretarial Standard-1 and pass a Board Resolution to authorization to any director of the Company to file petition along with relevant documents with Regional Director.
- b) Authorizing the engaging of a company secretary / chartered accountant / cost accountant in practice or some other professional and to authorizing a director/s and/or

² Rule (4) of the Companies (Registration of Charges) Rules 2014 provides for a Condonation of delay by the Registrar. Rule (4) is reproduced under the heading "Relevant Rules issued under Companies Act, 2013".

³ Power of Central Government has been delegated to **Regional Director** by circular dated: 21st May, 2014 circular No. F. No. 1/6/2014-CL.-V.



secretary to sign a petition, application, affidavit, etc., which is to be presented to the Regional Director?

STEP –III

➤ Preparation of petition:

⁴Petition will be prepare in form for filling petitions to the Central Government (Regional Director) – RD-2. Following are the points to be covered under petition.

- Detail of Petition
- Particular of petitioner
- Particular of respondent
- Jurisdiction of Regional Director
- Limitation
- ⁵Facts of the Case
- Matter not previously filed or pending with any other court
- Relief(s) Sought
- Interim order if any prayed for.

STEP –IV

➤ Documents to be enclosed with Petition:

- Form CHG-1/4/9
- Copy of Challan of the above form
- ⁶Affidavit verifying the petition
- Certified true copy of Memorandum of Association & Article of Association.
- CTC of Balance-Sheet along with all annexure as on 31.03.2014.
- True copy of Board Resolution Dated 07 /05/2015 for authorization of Director/Professional.
- Memorandum of Appearance to represent the company before RD (Authorize PCS/PCA/Advocate or Directors) [Form -2]

⁴ Format of Petition can be get at csdiveshgoyal@gmail.com and on the following Link:

⁵ Reason for the delay must be specific. Don't mention that mistake is made inadvertently. Please specify that the officer entrusted with the work left the company or some other specific reason.

⁶ Affidavit shall be drawnup in the first person and shall state the full name, age, occupation and complete residential address of the deponent and shall be signed by the deponent.

STEP -V

➤ Process of filing of Petition.

These petitions with the relevant annexure should be file with ROC in e-form CHG-8. But at present CHG-8 is physical forms so the same should be file with ROC in form GNL-2 as an attachment.

The following three forms will have to file with ROC

1. **Form GNL-2**- Company has to file GNL-2 with ROC

Attachments:-

- (i) Form CHG-8
- (ii) RD Petition + Affidavit +Memorandum of appearance (all together in one document)
- (iii) CHG-4/1/9 with Payment challan (which is filed earlier)

2. **Form RD -2**- once the GNL-2 filed, then the company has to file RD-2 form with MCA.

Attachments:-

- (i) Form CHG-8
- (ii) RD Petition + Affidavit +Memorandum of appearance (all together in one document)
- (iii) CHG-4/1/9 with Payment challan (which is filed earlier)
- (iv) GNL2+Payment challan.

STEP -VI

➤ Hearing before Regional Director.

After filing of above mentioned form Regional Director will call for hearing in the matter. In the hearing regional director will levy additional fees for Condonation of delay. Company will pay as directed by RD in miscellaneous payment with reference of Form CHG-1/4/9 SRN number.

STEP -VII

➤ Filing of copy of order with Regional Director.

Once the RD form approved or order released by the Regional Director, then the company has to file such RD order in INC-28 form within 30 days.

Attachment: - RD order.

Flow chart of the procedure under Condonation of delay:

Company will file CHG-1/4/9 relevant form with additional fees.
↓
Calling of Board Meeting for passing of following resolutions.
↓
Board Resolution for filing petition for Condonation of Delay and authorizing Practicing professional / Director to file the petition
↓
Petition shall be prepared explaining reason for delay along with affidavit verifying petition by the director, MOA, AOA, Form CHG-1 or 4, Challan paid for Form CHG-1 or 4 and Memorandum of Appearance
↓
File Form GNL-2 with petition and all other attachment
↓
File Form RD-2 with petition and all other attachments
↓
Hearing in the office of Regional Director.
↓
Order will be issued by Regional Director mentioning prescribed fees for delay
↓
After paying the fees as directed by RD in miscellaneous payment with reference of Form CHG-1 or 4 SRN number, File Form INC-28 within 30 days of passing order by paying requisite fees
↓
While filing INC-28, MCA will show a remark to file the original order with ROC.

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FEES PAYABLE

As per 2013 Act, applicable fees on CHG-1/4/9 correspond to the nominal share capital of the Company in the below manner:

NOMINAL SHARE CAPITAL::: NORMAL FEE PAYABLE

Less than 1,00,000::: Rs.200/-
1,00,000 to 4,99,999::: Rs.300/-
5,00,000 to 24,99,999::: Rs.400/-
25,00,000 to 99,99,999::: Rs.500/-
1,00,00,000 or more::: Rs.600/-

ADDITIONAL FEES

Period of Delays::: Fee applicable

Upto 30 days:::	2 times of normal fees
More than 30 days and upto 60 days:::	4 times of normal fees
More than 60 days and upto 90 days:::	6 times of normal fees
More than 90 days and upto 180 days:::	10 times of normal fees
More than 180 days:::	12 times of normal fees