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Forms Involved		Section & Rule
CHG-1	Application for registration, modification of charge(for other than debentures)	Section 77,78,79,384 & Rule 3(1)
CHG-2	Certificate of registration of charge	Sections 77(1) &78 & Rule 6(1)
CHG-3	Certificate of registration of modification of charge	Section 79(b) & Rule 6(2)
CHG-4	Particulars of satisfaction of charge	Section 82 &Rule8(1)
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CHG-6	Notice of appointment or cessation of receiver or manager	Section 84 and 384 & Rule 9
CHG-7	Register of charges	Section 85 & Rule 10(1)
CHG-8	Application to CG for extension of filing creation , modification, Satisfaction , any rectification or omission of charge	Section 77 read with Sec 87 & Rule 12(2)
CHG-9	Application for registration, modification of charge(for debentures)	71(3)-Debentures Section 77,78,79 & 384 & Rule 3

Rules

Companies (Registration of Charges) Rules, 2014

- ✓ Total 12 Rules

The provisions of **Chapter VI** shall apply mutatis mutandis(EQUALLY) to charges on properties which are created or acquired by any foreign company- Section 384

[Form No. CHG-1, Form No. CHG-2, Form No CHG-4, Form No. CHG-5, Form No CHG-6, Form No. CHG-9.] Documents filed with ROC can be inspected by public (through MCA portal) as per section 399 of the Act.

What is a Charge?

A charge is a right created by any person including a company (artificial person) referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as "the lender", which has agreed to extend financial assistance.

As Per Section 2(16) of the Companies Act, 2014 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

The following are the essential features of the charge which are as under:

1. There should be two parties to the transaction, the creator of the charge and the holder of the charge (charge holder).
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.

- ✓ A charge is a security given for securing loans or debentures by way of a mortgage on the assets of the company
- ✓ A company, like a natural person, can give security for its borrowings
- ✓ A charge may be fixed or floating depending upon its nature

."Charge" as defined in Transfer of Property Act, 1882

According to Section 100 of the Transfer of Property Act, 1882, where immovable property of one person is by act of parties or operation of law made security for the payment of money to another; and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge.

Mortgage as defined in Transfer of Property Act, 1882

According to Section 58 of the Transfer of Property Act, a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability.

The difference between a mortgage and a charge is

- ✓ In Mortgage there is a transfer of an interest in immoveable property as a security for the loan
- ✓ In Charge there is NO transfer of interest it only creates SECURITY (a RIGHT) for the purpose of repayment of an loan taken by the borrower
- ✓ Charge Can be on Movable/immovable Property
- ✓ Mortgage only on IMMOVABLE property
- ✓ The Term Charge Includes Mortgage Section 2(16).
- ✓ Charge also includes a lien and an equitable charge whether created by an instrument in writing or by the deposit of title deed.(Dublin City Distillery Co. v. Deherty, 1914 AC)

Difference between charge and pledge

A 'pledge' is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. It consists of a **delivery of goods** by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge.

Unlike a pledge, a 'charge' is not a transfer of property of one to another. It is a right created in favour of one, referred to as "the lender" in the immovable property of another, referred to as "the borrower", as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge.

Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

Kinds of Charges

A charge on the property of the company as security for debts may be of the following kinds, namely:

- Fixed or specific charge
- Floating charge.

Fixed or Specific Charge

A charge is called fixed or specific when it is created to cover assets which are **ascertained and definite** or **are capable of being ascertained and defined**, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied.

In other words, the company can deal with such property, **subject** to the charge so that the charge holder's interest in the property is not affected and the charge holder gets priority over all subsequent transferees except a bona fide transferee **for consideration** without notice of the earlier charge. In the winding-up of the company, a debenture holder secured by a specific charge will be placed in the highest ranking class of creditors.

Floating Charge

A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. "The essence of a floating charge is that the security remains dormant until it is fixed or crystallised". But a floating security is not a future security. It is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security; the holder of such charge cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor i.e. the company can deal with them without the concurrence of the mortgagee.

The advantage of a floating charge is that the company may continue to deal in any way with the property which has been charged. The company may sell, mortgage or lease such property in the ordinary course of its business if it is authorised by its memorandum of association

Crystallisation of Floating Charge

A floating charge attaches to the company's property generally remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right.

A floating charge crystallises and the security becomes fixed in the following cases:

- When the company goes into liquidation
- When the company ceases to carry on its business
- When the creditors or the debenture holders **take** **steps to enforce their security** e.g. by appointing receiver to take possession of the property charged
- On the happening of the event specified in the deed.

- **In Government Stock Investment Co. Ltd. v. Manila Railway Co. Ltd., (1897) A.C. 81,** The debentures were secured by a floating charge. Three months' interest became due but the debenture holders took **no steps** and so the charge **did not crystallize** but remained floating. The company then made a mortgage of a specific part of its property. Held, the mortgagee had priority. The security for the debentures remained merely a floating security as the debenture holders had taken no steps to enforce their security.
- **Wheatly v. Silkstone & High Moor Coal Co. Ltd., (1885) 54 L.J. Ch 78.** Unless specifically precluded, the company can create fixed charge subsequent to floating charges over the same property

Effect of Crystallisation of a Floating Charge

On crystallization, **the floating charge converts itself into a fixed charge** on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the windingup get priority over the claims of the debenture holders having floating charge.

State whether the following statement is "True" or "False"

1. The security remains dormant in case of a floating charge until it is crystallized.
2. The owner of a property secured against a floating charge can not deal with the property.
3. A charge secured against stock-in-trade is called a fixed charge

• True

• False

Correct Answer:

1. True 2. False 3.False It is a floating charge as stock keeps varying

Section 77. Duty to register charges

It shall be the **duty of every company** creating a charge **(ALL TYPES OF CHARGES)**

- Within or outside India,
- On its property or assets or any of its undertakings,
- Whether tangible or otherwise, and
- Situated in or outside India,

To register the particulars of the charge **Signed by the**

- Company and
- The charge holder together with the instruments, if any, creating such charge.

In Form No.CHG-1 for creation or modification of charge for **other than debentures**
In Form No. CHG-9 for creation or modification **for debentures**, with the Registrar
Within 30 days of its creation

ROC Can condone delay upto 300 days

- ✓ The ROC may, on an application by the company, allow such registration to be made **within a period of 300 days (30 days + additional 270 days)** of such creation on payment of such additional.
- ✓ The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company

Only Central Government can condone delay beyond 300 days

- ✓ If registration is **not made** within a period of 300 days of such creation, the company shall seek extension of time in accordance with sec 87[Application for extension in Form No. CHG-8]

Any subsequent registration of a charge **shall not prejudice** any right acquired in respect of any property before the charge is actually registered.

- ✓ Where a charge is registered with the Registrar as above,

The Registrar shall issue a certificate of registration of such charge in Form No. CHG-2 to

- The company **and**,
- To the person in whose favour the charge is created.

- ✓ **Notwithstanding** anything contained in **any other law** for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor ***unless*** it is duly registered under section 77(1) **and**
  A certificate of registration of such charge is given by the Registrar under 77(2).
- ✓ Nothing said above shall prejudice any contract or obligation for the repayment of the money **secured** by a charge.

Section87. Rectification by Central Government in register of charges.

If company fails to register the charge even within the period of 300 days as per sec77,it may seek extension of time from central government by following section 87(ROC will registrar the charge beyond 300+ days **only if charge is condoned by CG**)

Section 87(1) states that the Central Government on being satisfied that—

- The omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or
- The omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or
- The omission or misstatement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company or
- on any other grounds, it is just and equitable to grant relief,

Who should make an application to CG for condonation under section 87?

CG may on the application of

- The company or
- Any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified. **[Application for extension in Form No. CHG-8]**

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

- The order passed by the central government under section 87 shall be filled with Registrar of companies in **FORM NO -INC28**

- **Company** Within 30 days Form CHG-1 /CHG-9
- **Only ROC** After 30 days but within 300 days(in next 270 days) Form CHG-10 with CHG-1/CHG-9 as attachment
- **Only CG** Beyond 300 days Form CHG-8+INC-28 with CHG-1/CHG-9 as attachment

Charges to be registered under section 77

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1.Charges created within/outside india

2.Charge on its property or assests or undertakings

3.Whether tangible or otherwise,and situated in/outside India

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Shall be registered in FORM CHG-1(for other than debentures) CHG9 for debentures within 30 days of its creation**(**Registrar can register upto 300 days**)** Section 77

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Company failing to register under section 77 **(beyond 300+)** may seek extension from CG in form CHG-8 Section 87

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File order of the CG with ROC in form INC-28

Section78. Application for registration of charge by the charge holder when company fails.

If a **company fails to register** the charge within the period specified in section 77 (30/300 days),**without prejudice** to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created(charge holder) may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in **Form No. CHG-1(for other debentures)** or **Form No. CHG-9(for debentures),** duly signed along with fee and the Registrar may, on such application, **within a period of 14 days** after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should **not** be registered, allow such registration on payment of such fees

- Where registration is effected on application of the person in whose favour the charge is created, **that person shall be entitled to recover from the company** the amount of any fees or additional fees **paid by him to the Registrar** for the purpose of registration of charge.

Section79. Section 77 to apply in certain matters.

Acquiring Property under charge and modification of charge

Section 79 of the Act makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

Sec 79 provides that the provisions of Sec 77 relating to registration of charge shall apply to

- A company acquiring any property **subject to a charge** within the meaning of that section or
- Any modification in the terms or conditions or the extent or operation of any charge registered under that section.

- The provisions relating to condonation of delay shall apply, mutatis mutandis, to the registration of charge on any property acquired subject to such charge and modification of charge under section 79 of the Act.
- [Form No. CHG-1/ Form No. CHG-9(for debentures) for creation or modification of charge-] [Certificate of registration on modification of charge in Form No. CHG-3]

Section80. Date of notice of charge.

- ✓ Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein **shall be deemed to have notice** of the charge from the date of such registration.

If any person acquires a property, assets or undertakings for which a charge **is already registered**, it would be deemed that he has complete knowledge of charge from the date the charge is registered

Section81. Register of charges to be kept by ROC.

- ✓ The ROC shall, in respect of **every company**, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.
- ✓ A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

Rule 7

- ➢ The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of Section 81 of the Act.
- ➢ The register shall be open to inspection by any person on payment of fee.

Section82. Company to report satisfaction of charge.

- A company shall give intimation to the Registrar in the FORM No CHG-4, for the payment or satisfaction in full of any charge registered under this Chapter within a period of 30 days from the date of such payment or satisfaction and the provisions of sec77(1) shall, as far as may be, apply to an intimation given under this section.
- The Registrar shall, on receipt of intimation under ABOVE cause a notice to be sent to the **holder of the charge** calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar, and if no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges kept by him under section 81 and shall inform the company that he has done so: [Memorandum of satisfaction of Charge in Form No. CHG-5]

- Nothing in this section shall be deemed to affect the powers of the Registrar to make an entry in the register of charges under section 83 or otherwise than on receipt of an intimation from the company.

Section 83. Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

- That the debt for which the charge was given has been paid or satisfied in whole or in part; or
- That part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, enter in the register of charges a memorandum of satisfaction 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, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

- The Registrar shall inform the affected parties **within thirty days** of making the entry in the register of charges kept under section 81.

Section 84. Intimation of appointment of receiver or manager.

If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a

period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges

- ✓ Any person appointed under **ABOVE** shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the Registrar shall register such notice.
- ✓ Notice of **appointment** or **cessation** of receiver or manager in **Form No. CHG-6**

Section 85. Company's register of charges.

- ✓ Every company shall keep at its registered office a register of charges in Form No. CHG-7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.
- ✓ **A copy of the instrument** creating the charge shall also be kept at the **registered office of the company** along with the register of charges.

The register of charges and instrument of charges, kept under above shall be open for inspection **during business hours**—

- By any member or creditor without any payment of fees; or
- By any other person on payment of such fees as may be prescribed, **subject to such reasonable restrictions** as the company may, **by its articles, impose.**

Section 86. Punishment for contravention of this Chapter

Punishment for	Fine	Imprisonment	BOTH
Company and	Not less than 1,00,000/- May extend to 10,00,000/-	-	-
Every Officer in default	Not less than 25,000/- May extend to 1,00,000/- Or	May extend to 6 months Or	✓

Thanks & All the Best ☺