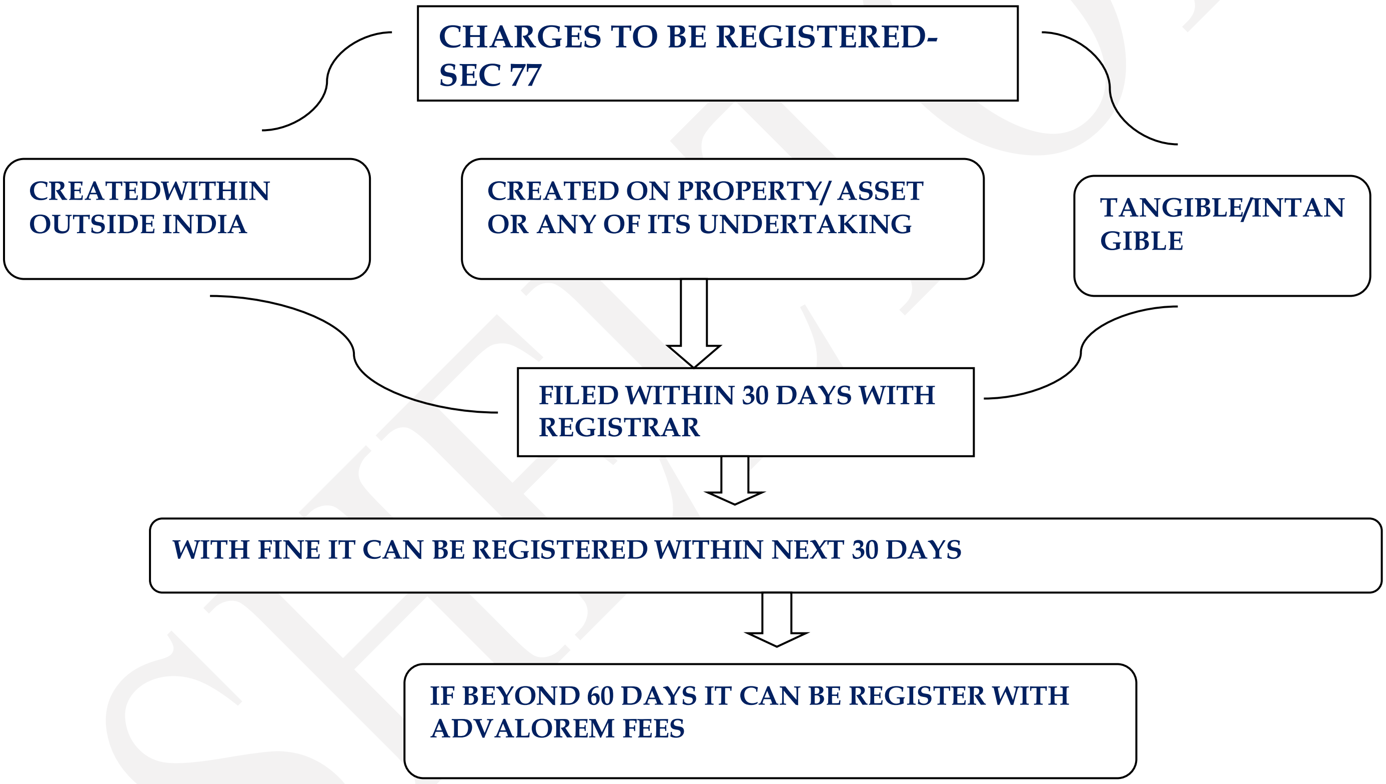
CHARGE

Section 2(16) of the Act, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage

FEATURES

- There are minimum two parties to the transaction, the creator of the charge and the charge-holder.
- The subject- matter of charge may be on current or future assets and properties of the borrower.
- The intention of the borrower to offer one or more of its specific asset or properties as security for repayment of the borrowed money

REGISTERATION OF CHARGES



- Shall not apply to charges prescribed in consultation with RBI
- Registrar will issue certificate of registration of charge
- Registrar may on application allow intimation on satisfaction within period of 300 days of payment on payment of such fees as may be prescribed

TYPES OF CHARGES

1. FIXED CHARGE
2. FLOATING CHARGE

1. A fixed charge attaches to the particular asset, and the borrower has no ability to sell or trade on that asset until the charge is lifted i.e. the agreement is completed or terminated. This is typically used on physical assets such as land or plant equipment

2. A floating charge is an equitable charge linked to all or a class of assets current and or future. A floating charge allows the borrower to continue in the normal course of business, trading with the assets or even to sell them. This can often be used by companies with low levels of capital or assets as it enables them to secure loans and trade. This form of charge is typically used for intellectual property, stocks and shares

CRYSTALLISATION OF FLOATING CHARGE

A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. 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.

SEC 78- APPLICATION FOR REGISTRATION

- ❖ it is the duty of the company to apply for registration
- ❖ if company fails, the charge holder can apply for registration and registrar shall within 14 days issue show cause notice to the company and may allow registration

SEC 87- RECTIFICATION BY CG IN REGISTER OF CHARGES

- ❖ CG may extend the time for registration of charge (Order shall not prejudice any rights of interested parties)

  - Omission to file with the registrar the particular of charges
  - Omission to register charges within time
  - Omission or misstatement /modification with respect of memorandum of satisfaction
  - Any other just and equitable ground

OTHER POINTS (NOT SECTION WISE)

- ❖ The register of charges shall be kept at registered office of the company and shall be open for inspection during business hours to members or creditors without any fees

- Registrar has the power to make entries of satisfaction and release in absence of intimation from company
- Register of charges to be kept by registrar
- Appointment of receiver or manager to manage the property subject to charge must be intimated to the registrar and the company
- Modification of charge means , if any new charge is created on existed charge or alteration of any subject matter/property/terms of conditions of charge
- Satisfaction of charge means charge is released from asset fully.

SPACE FOR NOTES