Section	Particulars	Notification date
77	Duty to register charges	01/04/2014
78	Application for registration of charge	01/04/2014
79	Section 77 to apply in certain matters	01/04/2014
80	Date of notice of charge	01/04/2014
81	Register of charges to be kept by Registrar(ROC)	01/04/2014
82	Company to report satisfaction of charge	01/04/2014
83	Power of Registrar to make entries of satisfaction and release in absence of intimation from Company	01/04/2014
84	Intimation of appointment of receiver or manager	01/04/2014
85	Company's register of charges	01/04/2014
86	Punishment for contravention	12/09/2013
87	Rectification by Central Government in register of charges	01/04/2014

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)
CHG-5	Memorandum of satisfaction of charge	Section 82 / 83 & Rule 8
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 Section 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

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, 2013 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

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 winding up 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 cannot 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

Charge created due to operation of law doesn't require any registration as per this chapter

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,

Asset outside India- company in India also covered

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**, duly signed by the company and the charge holder with the Registrar w**ithin 30 days** of its creation or modification

ROC can condone delay up to 300 days or 60 days as the case may be

- The ROC may, on an application by the company, allow such registration to be made in case of charges created before the commencement of the Companies (Amendment) Ordinance 2019, **within a period of 300 days (30 days + additional 270 days)** of such creation on payment of such additional.
- In case of charges created on or after the commencement of the Companies (Amendment) Ordinance 2019, within a period of sixty days of such creation **(30 days + additional 30days),** on payment of such additional fees u/s 403.

If the registration is not made within the period specified

- For charges created **before** the commencement of the Companies (Amendment) Ordinance 2019, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

- charges created **on or after** the commencement of the Companies (Amendment) Ordinance 2019, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *advalorem* fees (Random fees)

- 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. (Charge holder – creditor)

Only Central Government can condone delay beyond limits under section 77

- If registration is **not made** within a limits specified above, the company shall seek extension of time in accordance with section 460

- **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 **appointed under this act or the Insolvency and Bankruptcy Code, 2016, as the case may be** or any other creditor ***unless*** it is duly registered under

section 77(1) [in simple asset will be treated as free from charge] **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.

Sec 78. Application for registration of charge by the charge holder when company fails.

- If a **company fails to register** the charge within the period of 30days specified in section 77,
- **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 than 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 (Show cause 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 the company fails to register the charge and the registration is effected on the application of the charge-holder, such charge-holder shall be entitled to recover from the company the amount of any fees or additional fees or *advalorem* fees paid by him 'to the Registrar for the purpose of registration of charge.

X ltd Acquiring Property of Y ltd which is under charge made by Y ltd for its debt

Section79. Section 77 to apply in certain matters.

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

- A company acquiring any property subject to charge or
- Any modification in terms and conditions of any charge already registered.

- 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 – Doctrine of constructive notice.

- 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 companies' act 2013. **They are public documents.**

Register maintained by ROC on behalf of all companies which are registered under its state jurisdiction

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.

  The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 DAYS (30+270 days) of such payment or satisfaction on payment of such additional fees as may be prescribed

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**
- If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company.

No notice is required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge (Debenture trustee will be charge holder in case of debentures)

- 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.**

This section provides only for inspection purpose. If they want copy of the same then go to MCA website

Section 86. Punishment for contravention of this Chapter

Punishment for	Fine
Company and	5,00,000
Every Officer in default	50,000

If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447

Section87. Rectification by Central Government in register of charges.

The Central Government on being satisfied that —

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any such charge or modification thereof 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

Who shall 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 deem 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**

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