

CHARGES

❖ Applicable provisions:

Chapter VI Registration of Charges, Section 77 to 87 read with The Companies (Registration of Charges) Rules, 2014 of the Companies Act, 2013

❖ Definition of Charge

Sec 2 (16) Defines Charge as “an interest or lien created on the property or assets of the Company or any of it undertaking or both as security and includes a “**mortgage**”.

In other words, charge is a security created over the assets or properties or any of its undertakings of the company in favour of banks, financial institutions or any other lender who has agreed to extend financial assistance to the company .

❖ Duty to Register or modify charges

It shall be the duty of “**Every Company**” creating a charge within or outside India on Company’s property or assets or any of its undertakings, whether tangible or otherwise situated in or outside India to register the charge in Form **CHG-1** (other than debentures) or **CHG-9** (for debentures including rectification)

The form shall be signed by the **company and the charge - holder** together with the instruments, if any, creating such charge, with the Registrar within a period of **30 days of the date of creation or modification** of charge.

❖ Satisfaction of Charge

Satisfaction of Charge means payment has been made and satisfied in full against the charge registered with the Registrar of Companies and nothing is due towards that charge.

Satisfaction of charge shall be filed with the Registrar in Form CHG-4.

❖ Timelines for filing the forms with Registrar of companies for creation/modification and satisfaction of charge

<u>Creation/Modification of Charge</u>	
Time period	Fees
✓ Within 30 days of the date of creation or modification	Normal fees
✓ Within 60(30+30) days of the date of creation or modification	Normal fees + Additional fees
✓ Within 120 (30 + 30 + 60) days of the date of creation or modification	Normal fees + Additional fees+ <u>Ad valorem fees</u>

<u>Satisfaction of Charge</u>	
Time period	Fees
✓ Within 30 days of the date satisfaction	Normal fees
✓ Within 300 (30+270) days of the date of satisfaction	Normal fees + Additional fees

VS ASSOCIATES

COMPANY SECRETARIES

✓ After 300 days of the date of satisfaction	Petition for Condonation of Satisfaction of charge is to be filed with the Regional Director (RD) in Form CHG-8
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Note: - Ad valorem fees refer to the fees charged by way of a specified percentage of the loan amount which differs according to the class of the company, calculated as per the table below:

<u>Ad valorem fees</u>			
<u>S. No.</u>	<u>Period of delay</u>	<u>Small Companies and One Person Company</u>	<u>Other than Small Companies and One Person Company</u>
1	Up to 30 days	3 times of normal fees	6 times of normal fees
2	More than 30 days and up to 90 days	3 times of normal fees plus an ad valorem fee of 0.025 per cent. of the amount secured by the charge, subject to the maximum of one lakh rupees.	6 times of normal fees, plus an ad valorem fee of 0.05 per cent. of the amount secured by the charge, subject to the maximum of five lakh rupees

❖ **Consequences of Non-Creation of Charge**

Non registration of charge shall not prejudice any contract or obligation for the repayment of the money secured

However, where no charge is created by a company with the Registrar of Companies and a certificate of registration of charge is not issued to the Company, the same cannot be taken into consideration by the liquidator or any other creditor.

❖ **Punishment for contravention of provisions related to charge Under Companies Act, 2013**

The penalty of an amount not below 1 lakh and not above 10 lakh and Every officer in default should be punishable with imprisonment towards the extent of 6 months or fine not below 25 thousand extending to 1 lakh or both.

Further, willful furnishing of false or improper information or knowing suppression of material information must be liable as:

- For the amount of fraud of at least 10 lakh or 1% of turnover, the individual must be punishable with imprisonment not below 6 months extending till 10 years and a fine of not below amount involved in fraud extending 3 times of such amount for fraud. Though, if the fraud includes public interest, terms of imprisonment will not be below 3 years
- In additional cases, a guilty individual must be punishable with imprisonment up to 5 years or fine up to 50 lakh rupees or both.

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