

Company Law Refresher Course

Registration of Charges

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What is charge

- A **right** created by any person including a company 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.
- A charge may be fixed or floating depending upon its nature
- Essential features-
 - 1. two parties... creator and charge holder
 - 2. current or future assets and other properties
 - 3. intention is to provide security for repayment of the borrowed money together with payment of interest

Contd...

- First charge
- Second and subsequent charges
- Priority of FI in case of second and subsequent charges

Today's coverage

- **Chapter VI**
- **Sections 77 to 87**
- **The Companies (Registration of Charges) Rules, 2014**

Companies Act 2013

- (16) "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;
- Creation of charge
- Modification of charge
- Satisfaction of charge

Key Terms

- Duty of every Company
- Creating charge within or outside India
- on it's **property** or **assets** or any of its **undertakings**
- tangible or otherwise
- situated in or outside India
- to register the particulars of the charge with ROC within 30 days of creation

Governing section for registration of charges

- Section 77- **Duty to Register Charges, etc**
- Section 78 - **Application for Registration of Charge**
- Section 79 – **Applicability of Section 77 on certain matters**(creation and modification)
- Duty of Company to register charge
- If Company fails, then the person in whose favor charge is created shall register
- Charge holder shall recover fees/additional fees/ad valorem fees from the Company
- E Form CHG-1/CHG-9/CHG-

Timeline (commencement of Ordinance, 2018)

- Prior to 2nd November 2018
 - Within 30 days-Normal fees
 - Within next 300 days –additional fees
 - Beyond 300 days-Condonation plus additional fees
- On or after 2nd November 2018
 - Within 30 days-Normal fees
 - Within next 30 days –additional fees
 - Within next 60 days - additional fees plus ad valorem fees

Effect of Charge registration

- **Notice of Charge-** date of such registration-Sec 80
- 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.
- Priority at the time of liquidation
- Disclosure in Financial statement

VERIFICATION OF INSTRUMENTS-Rule 3

- property situated outside India-

certificate under the hand of :

any director or

company secretary of the company or

an authorised officer of the charge holder

some person other than the company who is interested in the mortgage / charge

- property situated in India-

certificate under the hand of :

any director or

company secretary of the company or

an authorised officer of the charge holder

Process and Compliances under Companies Act

- Notice of BM
- Hold BM-pass resolutions
- Execute documents
- File CHG-1 along with necessary attachments within 30 days
- If there is delay, then apply to CG for extension through CHG-8
- Condone delay through RD-2
- File order through INC-28
- Certificate of registration issued by ROC
- Maintain Register of Charges CHG-7 at Registered office
- Register of Charges to be preserved permanently
- Instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge

Assets on which charge can be created

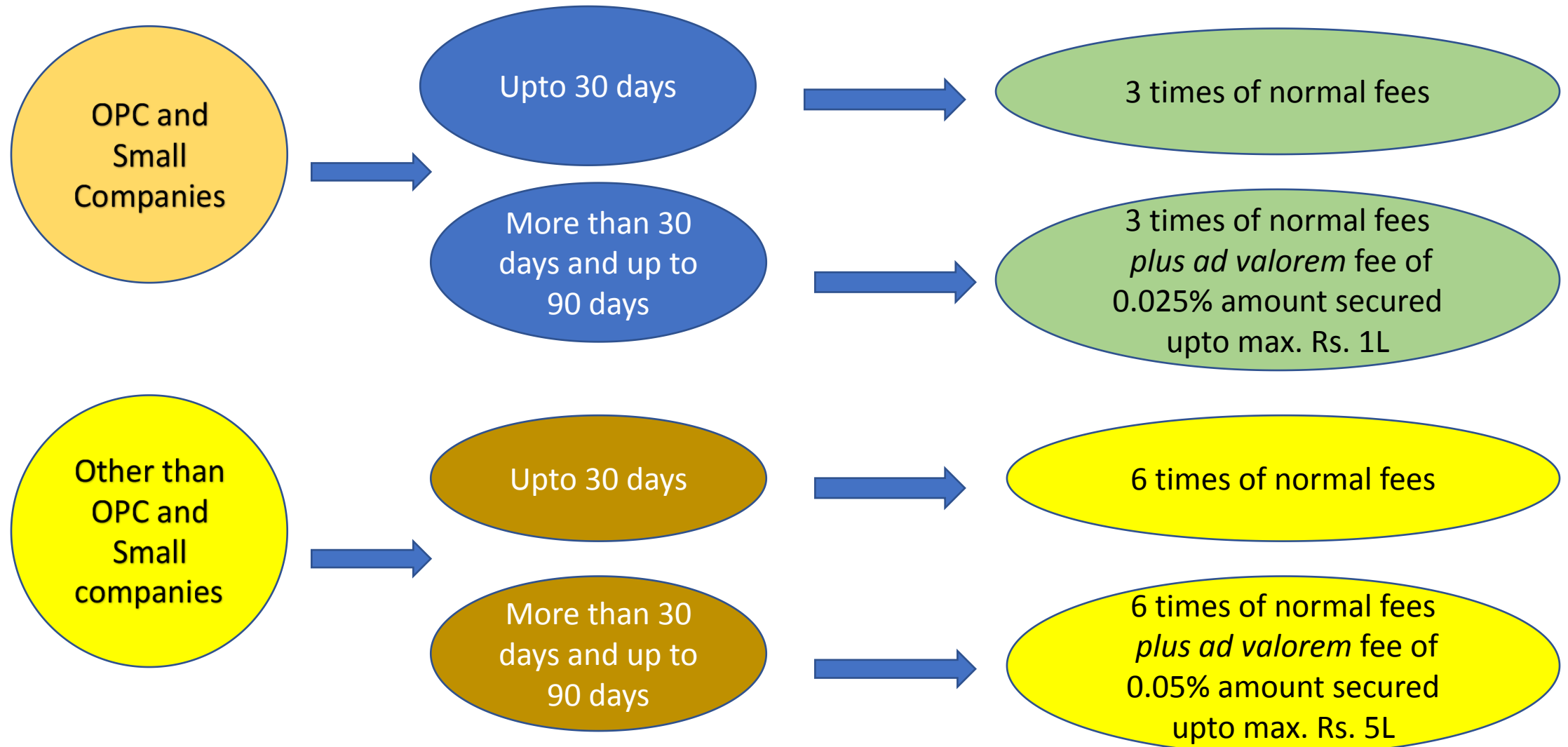
- Uncalled share capital
- Calls made but not paid
- Immovable property or any interest therein
- Movable property
- Floating charge
- Motor Vehicle (Hypothecation)
- Any property for securing the issue of secured deposits
- Solely of Property situated outside India
- Goodwill
- Patent
- Licence under a patent
- Trade mark
- Copyright
- Book debts
- Ship or any share in a ship
- Others

Failure to register charge by Company

Section 78

- Person in whose favor the charge is created may apply to the ROC for registration of the charge
- 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

Delay in filing charge with effect from 02nd November 2018-CHG-8



Implication of non-registration of charge

- Void against the liquidator
- Void against any creditor
- No effect on any contract or obligation for the repayment of the money secured by a charge.
- For contravention: Fine – Minimum Rs. 1L which may extend up to Rs. 10L
- Every officer in default - imprisonment up to 6 months or with fine of Rs, 25K which may extend up to Rs. 1L , or with both.
- No effect on liability in respect of any offence under this Chapter
- For willful suppression- liable for action under section 447

Satisfaction of charge-Section 82

- Within 30 days
- Within next 270 days with additional fees
- **Intimation to charge holder about satisfaction and reply to be filed in 14 days**
- **Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company**
- **Register of Charges**
- **Form CHG-4**
- **Attachment-No due Certificate**
- **Issue of Certificate**
- **Index of charges**

Appointment of Receiver or Manager-

Section 84

- Intimation of appointment to Company and ROC - CHG-6
- Intimation of cessation to Company and ROC - CHG-6

Impact under IBC

- Secured may creditor relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator or
- realise its security interest
- No right during moratorium period of CIRP
- Registration under National e-Governance Services Ltd. (NeSL)
- **Any party connected to a Debt viz., Creditor (Either Financial Creditor or Operational Creditor), Debtor (or his authorized representative like Auditor), Co-Applicant, Co-borrower, Guarantor, can furnish the information to an IU.**

Impact on liquidation

Line for payment

- Secured creditors with a fixed charge
- Preferential creditors including staff due arrears of wages
- Secured creditors with a floating charge
- Unsecured creditors, such as suppliers, customers

GIST OF FORMS/CERTIFICATES UNDER CHARGE MANAGEMENT

GIST OF E-FILING UNDER CHARGE MANAGEMENT

<i>S.No.</i>	<i>E-Form</i>	<i>Purpose</i>
1	CHG-1	Creating or modifying the charge (for other than Debentures)
2	CHG-2	Certificate of registration
3	CHG-3	Certificate of modification of charge
4	CHG-4	Intimation of the satisfaction to the Registrar
5	CHG-5	Memorandum of satisfaction of charge
6	CHG-6	Notice of appointment or cessation of receiver or manager
7	CHG-7	Register of charges
8	CHG-8	Application for condonation of delay shall be filed with the Central Government
9	CHG-9	Creating or modifying the charge in (for debentures including rectification)
10	CHG-10	Application for delay to the registrar

Rectification

- rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge can be done by filing CHG-8

- EXTENSION
CHG-8

Points to ponder

- Corporate guarantee?
- Rectification by Central Government in Register of Charges-Sec 87
- Charge related forms not under CFSS
- COVID Situation
- ROLE of CA

THANK YOU

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