



LATEST STATUTORY SNAPSHOT

THURSDAY, 19 SEPTEMBER 2019



FILING OF PARTICULARS OF “CHARGE” MADE STRINGENT¹

Section 77 of the Companies Act, 2013 (the Act) has been amended vide the Companies (Amendment) Act, 2019 (the Amendment Act) making stringent the time period for registration of charge created post the date of coming into force of the said Section. Further Section 86 (Punishment for contravention) and Section 87 (Rectification by Central Government in Register of Charges) of the Act have also been amended.

The amendments to Sections 77, 86 and 87 are deemed to have come into force from 2nd November, 2018, being the date of commencement of specific provisions of Companies (Amendment) Ordinance, 2018 [reintroduced as Companies (Amendment) Ordinance 2019 and further amended as Companies (Amendment) Second Ordinance, 2019 to enable continued effect of the provisions].

The summary of the amendments is as stated hereunder:

Period for filing particulars of charge restricted & delayed filing will entail huge additional fees

A company is required to file particulars of charge created within 30 days from the date of its creation. The Amendment Act mandates that, if a company commits default to file the particulars of charge

¹ Source: Companies (Amendment) Act, 2019; Notification Dated 31st July, 2019



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within 30 days as aforesaid, then it can file the same within the 60 days from the date of creation upon payment of additional fee. If the particulars of charge are not filed even after 60 days as aforesaid, the company can make an application to the Registrar of Companies for condoning the delay in filing such particulars. The Registrar may allow the registration within a further period 60 days after payment of such *ad valorem fee* as may be prescribed.

The *ad valorem fee* with effect from 1st August, 2019 is calculated on the amount secured by the charge which is very steep, as provided vide Notification G.S.R 340(E) dated 30th April, 2019 hereunder:

Sl. No	Period of Delay	Small Companies and One Person Company	Other than Small Companies and One Person Company
1.	Upto 30 days	3 times the normal fees	6 times the normal fees
2.	More than 30 days and upto 90 days	3 times of normal fees plus an <i>ad valorem</i> fee of Rs.0.025% of the amount of charge, subject to the maximum of one lakh rupees.	6 times of normal fees, plus an <i>ad valorem</i> fee of 0.05% of the amount secured by the charge, subject to the maximum of five lakh rupees.

No registration of charges beyond 120 days

If a company fails to file the particulars of charge within the said time limits, then the company will not be able to file the particulars of charge at all. Thus, such default will effectively close the door on registration of the particulars of charges and publication of the same on the public domain. Due to such default, the following consequences will entail:

- The charge in respect of which particulars are not filed and registered will be **void against the liquidator**. This effectively means that upon commencement of liquidation of the company concerned, the charge holder who despite being a secured creditor per se will get no priority over other creditors and will be relegated to an unsecured creditor and will have to await recovery in the order of priority amongst unsecured creditors. In **Deutsche Bank v S.P.Kala & Ors [1998] 32 CLA 448 (Panaji Bench of High Court of Bombay)**, the Bombay High Court ruled that a charge not registered under Section 125 of the Companies Act, 1956 is void (against the official liquidator) and is unsecured and directed action to be taken against the erring bank officer responsible for the lapses in registration of charge and for misleading the bank and also the Court.
- The protection under third proviso to Section 77(1) i.e., the priority recognition of date creation of charge (to rank in prior vis-a-vis charges created subsequently by the company) will be available only to such particulars of charge which are filed within 120 days from the date of creation. Thus, the charge in respect of which particulars are not filed as aforesaid will lose

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its priority in ranking and also will be considered unsecured upon commencement of liquidation of the company.

- There is no mechanism under the Companies Act, 2013 now to condone delays beyond 120 days from the date of creation of charge by a company.

However, charge created by a company prior to 2nd November, 2018 can be filed within 300 days from the date of creation of charge with additional fee, if not filed earlier within the 30 days of such creation.

Furnishing of false evidence made punishable

Section 86 is amended to provide that, if any person wilfully furnishes any false or incorrect information or suppresses any material information in relation to charge required to be filed and registered, then such person will be liable for action under Section 447 for fraud.

Extension of time by condoning delay and Rectification of Register of Charges

Section 87 has been amended whereby the power of Central Government to permit condonation of delay is now restricted only in respect of omission to give intimation with respect to satisfaction of charge. Irrespective of the period of delay of the default, the Central Government can now condone the delay on the grounds of inadvertence and further also permit rectification of particulars filed with registrar with respect to modification or satisfaction of charges, subject to the condition that such delay or such misstatement or omission is not of a nature prejudicial to the position of creditors/shareholders of the company.

SECURED CREDITORS TO TAKE NOTE

Ensure that borrowing companies do not miss out on registering charge, else, it can prove disastrous when the borrower company goes into liquidation!

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