1.What Is A Charge ?

A charge is 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.

2.Need For Creating A Charge On Company ’S Assets?

1. Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects.

2. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks.

3. The financial institutions/banks do not lend their monies unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest.

4. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets.

5. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/ banks etc.

3. E-Filing Under Charge Management

|  |  |  |
| --- | --- | --- |
| S.NO. | E-FORM | PURPOSE |
| 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 | Satisfaction of Charge |
| 5 | CHG-9 | Creating or modifying the charge in (for debentures including rectification) |

4.Duty To Register Charge

Primarily, under section 77 of the Companies Act, 2013 every company creating a charge shall register the particulars of charge signed Registration of Charges 3 by the company and its charge – holder together with the instruments creating. Important points in the Act relating to charge creation:

1. Any charge created within or outside India

2. Property or assets or any of the company’s undertakings

3. Whether tangible or otherwise, situated in or outside India shall be registered.

4. Hence all types of charges are required under the Act to be registered whether created within or outside India.

5. How To Calculate Normal Fee :

A nominal fee or charge is meant to be potentially less than the actual value of the item or service might normally be worth . In case of Indian company having share capital

|  |  |
| --- | --- |
| Nominal Share Capital | Fee applicable |
| Less than 1,00,000 | Rupees 200 |
| 1,00,000 to 4,99,999 | Rupees 300 |
| 5,00,000 to 24,99,999 | Rupees 400 |
| 25,00,000 to 99,99,999 | Rupees 500 |

* 1. In case of Indian company not having share capital : Rupees 200
  2. In case of foreign company : Rupees 6,000

6. Documents Required

The following documents have to be attached with the Form CHG 1:

1. Instruments of creation or modification of charges such as Sanction letter or  Loan Agreement
2. Particulars of all joint charge holders

7.Additional Fee :Charges Created/ Modified Before 2 November, 2018

|  |  |  |
| --- | --- | --- |
| S. No | Particulars | Fees |
| 1 | Within 30 days of Charges created/ modified | Normal fees |
| 2 | After 30 days but within 300 days of Charges created/ modified | Normal Fees +additional Fees |
| 3 | Charges created/ modified but not registered within 300 days as given in point  No.2 – to be registered within 6 months from  2 November,2018 | Normal Fees +Additional Fees |

8. Creation/Modification of Charge after 2 November, 2018 (Ordinance)

MCA notifies Companies (Registration Offices and Fees) Third Amendment Rules, 2019 with effect from 1st August,2019; specifies separate fee structure for filing charge documents

|  |  |  |
| --- | --- | --- |
| Sr.  No. | Particulars | Fees |
| 1 | Within 30 days of Creation/Modification of  Charge | Normal fees |
| 2 | After 30 days but within 60 days of Creation/  Modification of Charge | Normal Fees + additional Fees(6 times the normal fee) |
| 3 | After 60 days but within 120 days of date of  Creation/ Modification of Charge | Normal Fees +Additional fees +  **Ad-valorem Fees(6 times normal fees plus ad valorem fees 0.05% of amt secured by charge subject to maximum of Rs.5 lacs)** |

NOTE: CHARGE CANNOT BE REGISTERED AFTER 120 DAYS\*

9. CONSEQUENCES OF NON-REGISTRATION OF CHARGE

In case of

1. Wilful furnish of false or incorrect information
2. Knowingly suppressing any material information
3. Liable to fraud and attract action under Section 447