

06

REGISTRATION OF CHARGES



Sections

| Section Numbers | Particulars |
|-----------------|--|
| 77 | Duty to register charges, etc |
| 78 | Application for registration of charge |
| 79 | Section 77 to apply in certain matters |
| 80 | Date of notice of charge |
| 81 | Register of charges to be kept by Registrar |
| 82 | Company to report satisfaction of charge |
| 83 | Power of Registrar to make entries of satisfaction and release in absence of intimation from company |
| 84 | Intimation of appointment of receiver or manager |
| 85 | Company's register of charges. |
| 86 | Punishment for contravention |
| 87 | Rectification by Central Government in Register of charges. |



Introduction

Sections 77 to 87
+
Companies (Registration of Charges) Rules, 2014

Section 2 (16) of the Companies Act, 2013

CHARGE IS AN INTEREST OR LIEN

IT IS CREATED ON THE PROPERTY OR ASSETS OF A COMPANY OR ANY OF ITS UNDERTAKINGS OR BOTH

IT IS CREATED AS SECURITY FOR REPAYMENT OF A LOAN

CHARGE INCLUDES MORTGAGE

Whenever a company borrows money by way of loans including

- term loans or
- working capital loans

from financial institutions or banks or any other person by offering its property or assets as security or any of its undertakings, Then a charge is created on such property or assets in favour of the lender.

Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the Rules made in this regard



Types of Charge

Fixed charge

1. A 'FIXED CHARGE' is a charge on Specific assets of the borrowing company
2. Eg - Permanent nature like land and building, office premises, machinery installed by the company
3. Created by way of mortgage
4. When charge is created – charge remains FIXED.
5. Co not permitted to sell these assets WITHOUT permission of the charge holder
6. A fixed charge is vacated when the money borrowed against the assets subject to fixed charge is repaid in full

Floating charge

1. Created on assets which are of fluctuating nature or changing in nature like raw material, stock-in-trade, debtors, etc
2. Assets keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale
3. When the creditor enforces the security or the company goes into liquidation, the floating charge will become a fixed charge on all the assets available on that date and which may come into existence thereafter.



Difference between Fixed charge and Floating charge

| | Fixed Charge | Floating charge |
|------------------|---|---|
| It is created on | Specific asset like land / building /office premises / machinery, etc | Fluctuating nature like raw Material/stock in trade/ debtors, etc |

| | | |
|---|---|---|
| Are there any restrictions on borrower? | Borrower is not allowed to sell these assets except with the permission of the lender (though borrower may use the asset) | Borrower is allowed to sell these Assets without the permission of the Lender |
| Created by | Way of mortgage / deposit of title of deeds | Hypothecation / Lien |



Crystallization of floating charge

1 When the **creditor enforces the security due to the breach of terms and conditions** of floating charge or the **company goes into liquidation** the floating charge will become a fixed charge on all the assets available on that date this is called crystallization of a floating charge

2 A floating charge remains dormant until it becomes fixed or crystallises.
On crystallisation of charge, the security [ie, raw material, stock in trade, except etc] becomes fixed and is available for realisation by the lender so that the borrowed money is repaid.

3 Crystallization of floating charge may occur when **the terms and conditions off floating charge are violated or the company seizes to continue its business or the company goes into liquidation or the creditors enforce the security covered by the floating charge.**





Duty to register charges, etc (Sec 77)

Charge created by the company

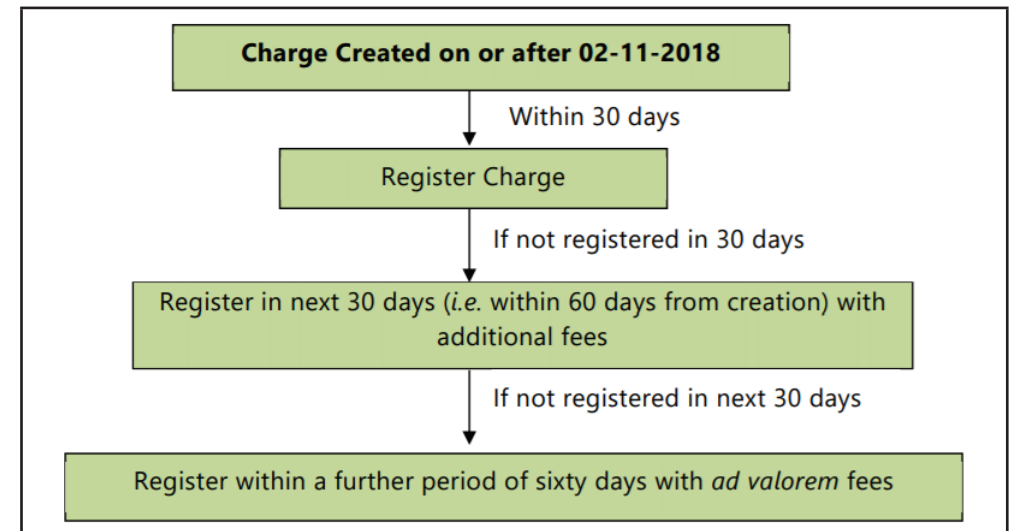
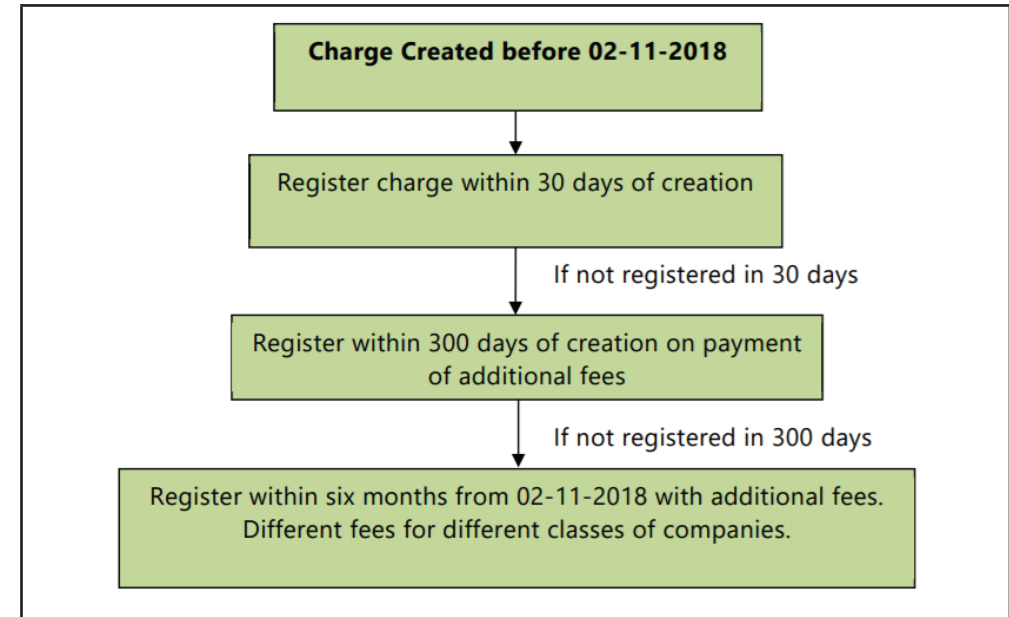
1. It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.
2. The subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.
3. Accordingly, charge may be created within India or outside India depending upon the location of the assets.
4. The property or assets charged may be tangible assets such as land and buildings, machinery or financial assets like investment in shares or debentures. It may be otherwise also, i.e. an intangible asset such as patent, copyright or trademark.

Charge created by charge-holder

In case the borrowing company creating a charge fails to register the charge within the prescribed period of 30 days, the person in whose favour the charge is created (i.e. lender) can get the charge registered

Charge created by purchaser

1. A company purchased some property in whose case a charge was already registered
2. In this case also, the company purchasing the property shall get the charge registered in its name in place of seller in the records of Registrar of Companies



Procedure for extension of time limit

Make an application (CHG -1 / CHG – 9 to ROC with declaration by Company signed by CS / Director

Declaration specifies that belated filing will not affect the concerned creditor

Application so made must satisfy the ROC the company had sufficient cause for not filing the particulars within the prescribed limit

Issue certificate of registration

On registration of charge – ROC will issue certificate of registration

CHG-2 (fresh registration)

CHG-3 (modification of charge)

Verification of Instrument of Charge

A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows

Where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either

- under the seal
- under the hand of any director / CS / Auth officer of charge-holder
- Other person other than the company who is interested in the mortgage

Where the instrument or deed relates to the property situated in India (whether wholly or partly)

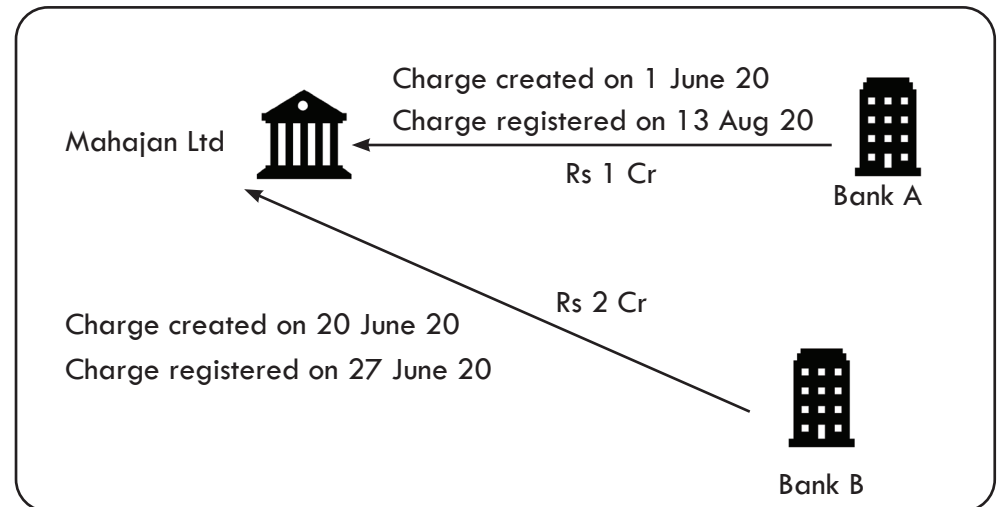
the copy shall be verified by a certificate issued under the hand of any director / CS / an authorised officer of the charge holder.



Consequences of non – registration of charge [Sec 77 (3) & (4)]

- The charge will become **VOID** against the liquidator and other creditors of the company and such charge will not be taken into consideration.
 - At the time of winding up, the creditor whose charge has not been registered will be reduced to the level of an unsecured creditor (loses the priority)
 - The debt is valid
 - Can be enforced against the company through the courts by filing a suit
 - BUT security is lost

Example



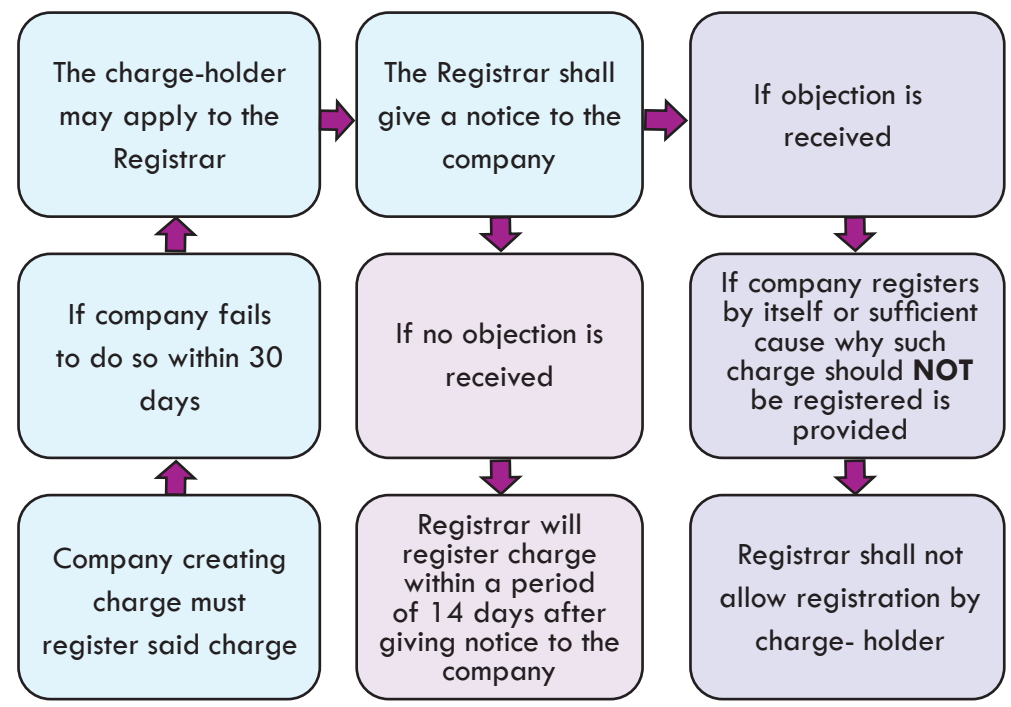
- Subsequently, Mahajan Ltd goes into liquidation and the property realises only Rs. 2 cr.
- Now, Bank B will receive its loan back fully, but Bank A will not realise anything
- Because, the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B which obtained its right before the charge in favour of Bank A was actually registered
- Thus, Bank B gets priority over Bank A even though its charge was created later

 **Application for registration of charge by charge-holder (Sec 78)**

- On failure of company to register the charge < 30 days
- Aggrieved party may apply to ROC
- ROC to issue notice to the company
- ROC may allow the company to do registration
- < 14 days of date of notice after giving notice to the company on payment of fees, unless
 - Co itself registers the charge
 - Shows sufficient cause why such charge should not be registered

Recovery of Fees

In case, registration is effected on application made by the holder of charge, such person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.



 **Acquisition of property subject to charge and modification of charge (Sec 79)**

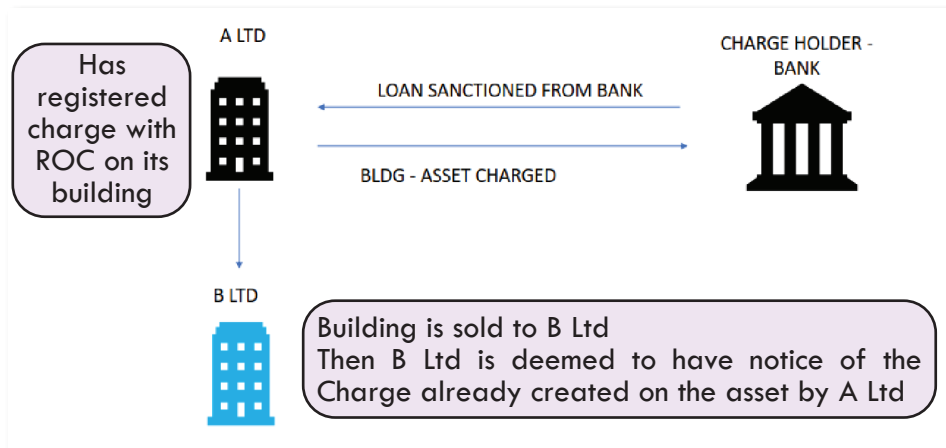
- Company acquiring any Property subject to Charge [Section 79 (a)]**
 - In case of a property where charge is already registered and
 - if it is sold with the permission of the holder of charge,
 - it shall be the duty of the company acquiring it to get the charge registered in accordance with Section 77
- Modification of Charge when there is Change in T&C [Section 79(b)]**

Any modification in charge to be registered by the company in accordance with Section 77

Change means ANY change in terms and conditions
- The Registrar shall issue a certificate of modification of charge in Form CHG-3**

Some other examples of 'modification' are as under:

1. where the charge is modified by **varying any terms and conditions** of the existing charge through an agreement;
2. where the modification is in pursuance of an agreement for **enhancing or decreasing the limits**;
3. where the modification is by **ceding a pari passu** charge;
4. where there is **change in rate of interest** (other than bank rate);
5. where there is **change in repayment schedule of loan**; (not applicable in case of working loans which are repayable on demand); and
6. where there is **partial release of the charge** on a particular asset or property.



 **Acquisition of property subject to charge and modification of charge (Sec 79)**

- All charges registered with the registrar are public documents
- Any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA Portal and find out if there is any charge created on that asset

Example

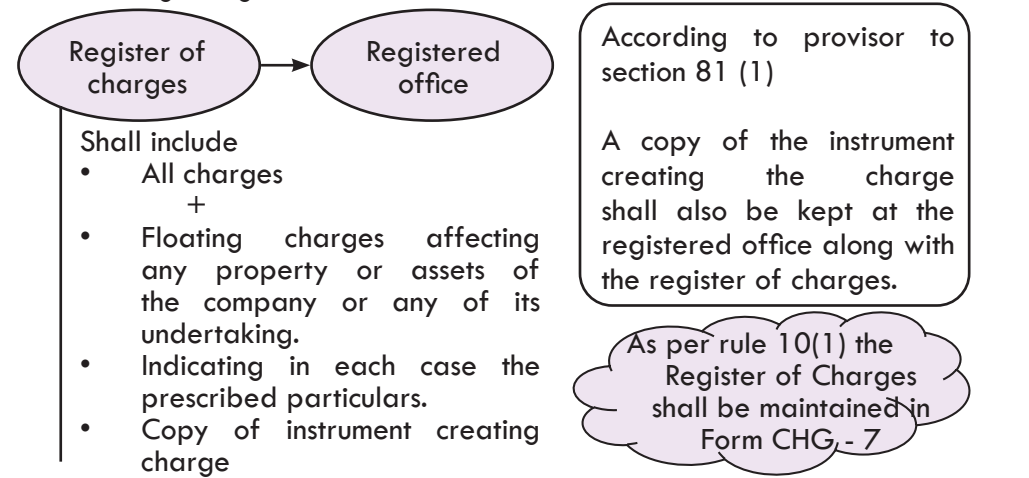
- Vishnu Marketing Limited obtained a term loan of Rs 50 lacs from Beta Commercial Bank Limited by creating a charge on one of its office buildings and
- the charge was duly registered.
- Later on, if the building is sold to Neeraj, he is deemed to have notice of such charge.
- In other words, it is presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan.
- He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage



Register of charges (Sec 81 & 85)

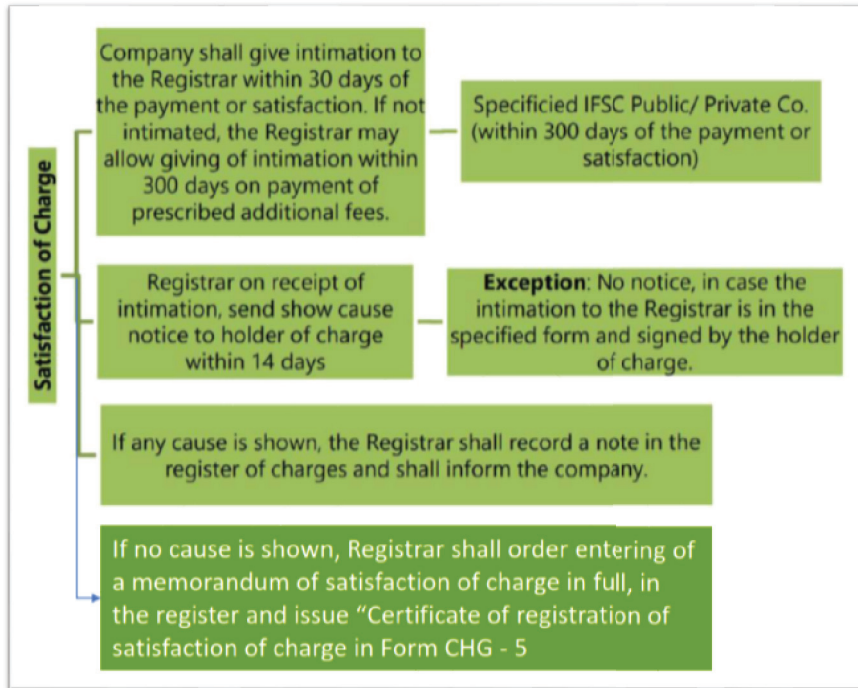
Section 81 of the Companies Act, 2013 contains provisions regarding registration of charges to be kept by a company

Section 81 (1) states that the ROC shall keep a register containing particulars of the charges registered





Company to report satisfaction of charge (Sec 82)



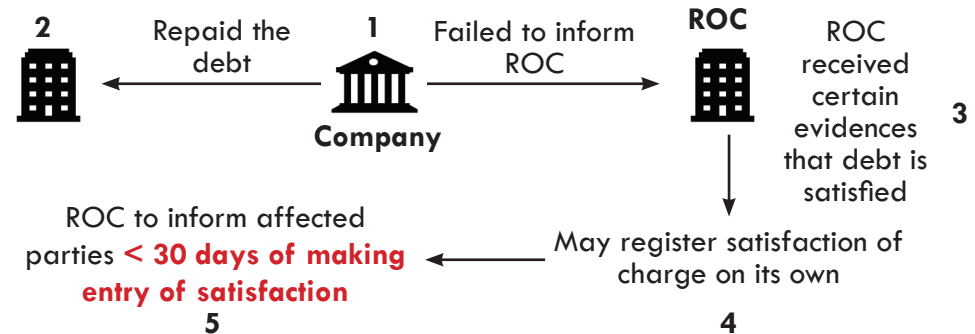
Power of registrar to make entries of satisfaction and release in absence of intimation from company (Sec 83)

ROC may, on evidence being given to his satisfaction with respect to any registered charge that

- The debt for which the charge has been paid or satisfied in whole or in part
- Part of the property / undertaking charged has been released or ceased to form part of property / undertaking, it may enter in register of charges:
 - Memorandum of satisfaction
 - Facts that part of the property / undertaking has been released or ceased to form part

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company

ROC shall inform the affected parties within 30 days of making the entry in the register of charges.

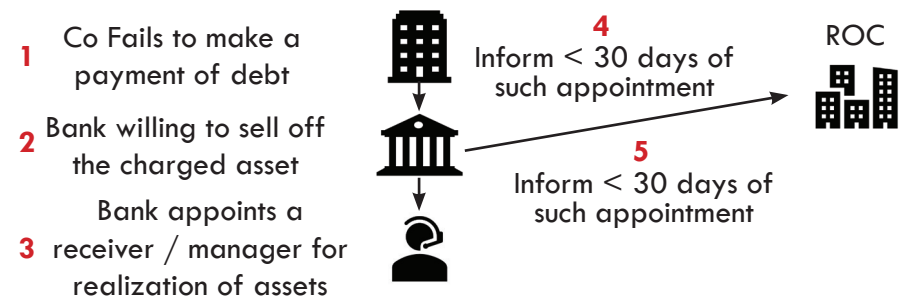


In case registrar enters a memorandum of satisfaction of charge, he shall issue a certificate of registration of satisfaction of charge in form **CHG - 5**



Intimation of appointment of receiver or manager (Sec 84)

- If any person obtains an order for the appointment of receiver or a person to manage the property which is subject to a charge, or
- If any person appoints such receiver or person under any power contained in any instrument, he shall give notice of such appointment to company and ROC along with instrument < 30 days from the date of passing the order
- And ROC will register the charges





Punishment for contravention section 86

- ❑ If any company is in default in complying with any of the provisions of this chapter,
 - Company liable to penalty of = 5,00,000
 - Every officer of the company who is in default = 50,000

- ❑ Punishment of fraud also becomes applicable in certain cases. Accordingly if a person willfully furnishes:
 - any false information or,
 - Knowingly suppresses any material information;Which is required to be registered under section 77, he shall be liable for action u/s 447



Rectification by central government in register of charges (Sec 87)

Rectification in register of charges

Section 87 and rule 12 empowers the CG to order rectification of register of charges in the following cases of default

1. When there was **omission** in giving intimation to the ROC with respect to **payment or satisfaction of charge within the specified time**

2. when there was **omission or mis-statement** of **any particulars in filing previously made to the registrar.**

3. Such filing may relate to any charge or any modification for charge or with respect to any memorandum of satisfaction or other entry made under section 82 or section 83

Before directing the CG needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it **did not prejudice** the position of creditors or shareholders

Application for rectification to be filed in Form **CHG-8**