

## REGISTRATION OF CHARGES

Ministry of Corporate Affairs has made Several Amendments in The Companies Act, 2013 vide it's The Companies (Amendment) Ordinance, 2018 dated November 2<sup>nd</sup>, 2018 which was replaced by The Companies (Amendment) Bill, 2019 dated January 4<sup>th</sup>, 2019 however the same was pending in the council of the states for the approval. The said bill could not be taken up for consideration and passing in the Council of State, in order to give continued effect to the provisions of The Companies (Amendment) Ordinance, 2018, The Companies (Amendment) Ordinance, 2019 was promulgated on January, 12<sup>th</sup>, 2019.

Further the House of Parliament was not in the session therefore Hon'ble President of India in pursuance of power conferred by clause (1) of Article 123 of constitution of India has promulgated an ordinance named as The Companies (Amendment) Second Ordinance, 2019 in order to give continue effect of the provisions of The Companies (Amendment) Ordinance, 2018 which was replaced by The Companies (Amendment) Ordinance, 2019, and The Companies (Amendment) Ordinance, 2019 shall cease to operate from the 13<sup>th</sup> day of March, 2019.

Out of those several amendments made through as The Companies (Amendment) Second Ordinance, 2019, substitution of first and second proviso to the sub section (1) of section 77 is a major amendment, by which the Ministry of Corporate Affairs has replaced the time period for registration of creation of charge/ modification of charge with shorter time period, whose effective date and compliances with respect to such amendment have been briefed below:

### **EFFECTIVE DATE**

It shall be deemed to have come into force on the 2<sup>nd</sup> Day of November, 2018.

### **SUBSTITUTION OF THE FIRST AND SECOND PROVISO TO THE SUB SECTION (1) OF SECTION (77) OF THE COMPANIES ACT, 2013**

In sub section (1) of Section 77, first and second proviso is substituted, namely:-

“Provided that the Registrar may, on an application by the company, allow such registration to be made

(a) In case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019, within a period of three hundred days of such creation; or

(b) In case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified-

(a) In clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Second Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) In clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed”.

It means that Companies (Amendment) Second Ordinance, 2019 has replaced the time period for registration of creation of charge / Modification of Charge with shorter time period, the implication of this replacement have been described below:

**Time Period for Registration of Creation of charge/ Modification of charge:**

1. **Before Ordinance:** Pursuant to Section 77 of The Companies, Act 2013 , Companies have to create charge with the Registrar within 30 days of creation of Charge.

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of Three Hundred Days of such creation on payment of such additional fees as may be prescribed.

**Condonation of Delay:** If the registration is not made within a period of three hundred days of such creation, the company may seek extension of time in accordance with section 87 of the Act.

2. **After Commencement of ordinance**

<b>Charges created before the commencement of the this Ordinance</b>	<b>Charges created after the commencement of the this Ordinance</b>
<p>1. Basic time period for the registration of charge is 30 days from date of creation of charge.</p> <p>2. If the registration is not register within the above specified time period then the registrar may allow further 270 days after such 30 days on payment of additional fees i.e. 30 days + further 270 days = total 300 days from the date of creation of charge</p> <p>3. In case of failure to register within the above specified time period then the registration of the charge shall be made within six months from the date of commencement of Companies (Amendment) Second Ordinance, 2019 on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies.</p>	<p>1. Basic time period for the registration of charge is 30 days from date of creation of charge.</p> <p>2. If the registration is not made within the above specified time period then the registrar may allow further 30 days after such 30 days. i.e. 30 days + further 30 days = total 60 days from the date of creation.</p> <p>3. In case of failure to register within the additional time of 30 days then the Registrar may, on an application, allow such registration to be made within a <b>further</b> period of 60 Days for which an advalorem fee shall be levied. i.e 30days + further 30 days+ 60 days with advalorem fees = total 120 days from the date of creation</p>

**Condonation of Delay:** There is no clarity that after the expiry of above specified time period whether the companies may seek extension of time for the registration of the charges in accordance with the provisions of the Act or not. However the provisions related to condonation of delay as per section 87 of the act is deleted from this section. Thus, one can opine that as per Companies (Amendment) Second Ordinance there is no way for Condonation of delay for the registration of creation of charge / modification of charge under companies act on or after November 2<sup>nd</sup>, 2018.

**Who can register the Creation of Charge Modification of charge:** If the company fails to register the particulars of the charge with the Registrar within the period of Sixty Days of its creation or modification, the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the charge-holder, in Form CHG- 1 or Form CHG-9, as the case may be, duly signed along with fee

[http://www.mca.gov.in/Ministry/pdf/NotificationCA02019\\_15012019.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationCA02019_15012019.pdf)

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