

Amendments to Companies Act, 2013 - Impact on Creation of Charge

Consequent to the Presidential Ordinance amending the Companies Act, 2013 yet again, one of the main amendments in the area of charge filings is causing ripples in the BNB sector. The major change that is being effected is that, the filing of particulars of charge created after the coming into force of the said ordinance (i.e., on or after 02nd November, 2018) should be done within 30 days from the date of creation. In default, the particulars of charge can be filed within 60 days from the date of creation with additional fee. If the particulars of charge is not filed within 60 days as aforesaid, the company is required to make an application to the Registrar for condonation of delay by paying ad valorem fee (to be prescribed). It should be noted that the power vested with the Registrar to permit condonation is discretionary.

If a company fails to file the particulars of charges either within the first 30 days of creation or within 31st day to 60th day with additional fee or fails to seek condonation of delay from the Registrar for delayed filing within 61st day to 120th day from the date of creation, the company will not be able to file the particulars of charge at all with the MCA. Thus such default will effectively close the door on the particulars of charges getting on to the public domain. Further the following consequences will entail:

- a) The charge in respect of which such particulars are not filed and registered will be void against the liquidator.
- b) 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 its priority.

Further a new Section 87 has been inserted in the place of existing Section which restricts the power of Central Government (delegated to Regional Director, MCA) for condoning delays only on omission to file particulars of satisfaction of charge under Sections 82 or 83.

However, charge created by a company prior to 02nd 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.