



**SECP
GUIDE SERIES**

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

COMPANY MORTGAGES AND CHARGES

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This is a guide only and should be read with the relevant legislation

Introduction

Whenever, a company obtains a loan and provides its assets to the lender as a security for the repayment of loan or other obligations, this activity is called the creation of the mortgage/charge on the assets of the company. The particulars of the charge are required to be reported to the Registrar concerned in the manner provided under the Companies Ordinance, 1984 (the Ordinance) and the rules framed there-under. Part 7 (sections 121 to 136) of the Ordinance deals with the matters relating to the registration of a charge, any modification therein and satisfaction thereof.

The particulars of mortgage/charge are required to be reported to the Registrar concerned within 21 days from the date of its creation alongwith relevant documents. Similarly any modification in the particulars of the mortgage/charge is also required to be reported to the Registrar within the said period.

As soon as the loan is repaid, it is the responsibility of the company to get the mortgage/charge vacated. This process is called the satisfaction of mortgage/charge. Again, the time frame for reporting the satisfaction of mortgage/charge to the registrar is 21 days from the date of its satisfaction.

In case of omission in filing the particulars of mortgage/charge or any modification therein or satisfaction thereof within the prescribed period of 21 days, the company is required to seek leave of the Commission for getting the particulars recorded beyond the prescribed period of 21 days.

This booklet is a guide to help companies or any interested parties to file particulars of a mortgage or charge correctly and timely. For further details and legal advice, please approach your legal advisor.

CHAPTER 1

Registration of Mortgages and Charges

1. What are mortgages and charges?

As defined in section 58 of the Transfer of Property Act 1882, a **mortgage** is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability.

A charge is security for the payment of a debt or other obligation that does not pass 'title of the property' or any right to its possession to the person to whom the charge is given.

2. What mortgages and charges must be registered?

Section 121 of the Companies Ordinance lists the following mortgages and charges to be registered under the Companies Ordinance, 1984:-

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or

(A debenture is an instrument issued by a company as evidence of a debt or other obligation. It includes debenture stock, bonds and any other securities of a company, whether or not it forms a charge on the assets of the company.)

- (b) A mortgage or charge on uncalled share capital of the company; or

(Uncalled share capital is the balance owing for shares that are issued partly paid.)

- (c) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

- (d) a mortgage or charge on any book debts of the company; or

(Book debts are debts that in the ordinary course of a company's business are commonly entered in its books.)

- (e) A mortgage or charge, not being a pledge, on any movable property of the company; or
- (f) A floating charge on the undertaking or property of the company, including stock-in-trade; or
(A floating charge is a charge that does not affect the assets charged until some event crystallizes the charge fixing it to a certain point in time.

3. Which documents are required to be filed for registration of mortgage or charge?

The following documents are required to be filed for registration of a mortgage or charge:

- Form 10 containing particulars of mortgage/charges etc.
- Copy of instrument(s) creating the mortgage or charge.
- An Affidavit to the effect that the copy(ies) of the instrument(s) is/are the true copy(ies).
- Bank challan evidencing the payment of Rs. 7,500 being filing fee for submission in physical form or Rs. 5,000 for submission through eServices as the case may be.

4. How much does each registration cost?

There is a fee of Rs. 7,500 for filing each Form 10, 11, 13 and 14 with the Registrar concerned for submission in physical form or Rs. 5,000 for submission through eServices, as the case may be.

Same fee is applicable for filing of Modification in the Particulars of Mortgage or charge on Form 16 or Memorandum of satisfaction of mortgage or charge on form 17. These forms are available on SECP's web site: www.secp.gov.pk

5. What do 'instrument' and evidence' mean in this chapter?

An 'instrument' is usually a document evidencing creation of mortgage or charge which should be in legible form but it can also exist in electronic form.

'Evidence' means to provide proof of the existence of something.

6. Which form should be used?

Different forms are required to be used for different purposes as per details given hereunder. The form numbers in this table correspond to the relevant sections of the Companies Ordinance, 1984 and rules contained in the Companies (General Provisions and Forms) Rules, 1985:-

Form	Description	Section
Form No. 10	Particulars of mortgages, charges, etc.	121, 129 and 463
Form No. 11	Particulars of mortgage or charge subject to which property has been acquired	122 and 463
Form No. 13	Registration of entire series of debentures / redeemable capital	123, 124 and 463
Form No. 14	Particulars of an issue of redeemable capital / debentures in a series when more than one issue in the series is made.	123 and 463
Form No. 16	Particulars of modification of mortgage, charge, etc.	129(3) and 463
Form No. 17	Memorandum of complete satisfaction of mortgage, charge, etc.	132 and 463

- Select the correct form, fill it and send to the concerned Registration office. Act as quickly as possible, you have only 21 days from the date of creation of the mortgage or charge to get the correct particulars of the Mortgage/Charge registered.
- Attach the copy(ies) of the instrument(s) creating or evidencing the mortgage/charge with the form, if there is an instrument, as there usually will be.
- Copy(ies) of the instrument(s) shall be verified by an Affidavit to the effect that the same are true copies of the original.
- Make sure the details on the form are correct and match the instrument. If the registrar finds errors, he will convey the deficiencies to the company. The company has to make good the deficiencies within the 21-days time limit.

- Please ensure this information is complete and accurate.
- Make sure that the company name and number are correct.
- Make sure that the creation date and description of the charge agree with the instrument.
- Make sure that the amount secured accurately reflects what is stated in the instrument.
- Make sure that the name of the mortgagee/chargee matches with the instrument, ('Mortgagee/Chargee' means the person to whom property is mortgaged/charged').
- Make sure that the short particulars of the property mortgaged/charged in Form 10 accurately reflect what is stated in the instrument.
- For mortgaged land it is desirable that you give the complete address of the Property.
- Ensure that charging clauses are always inserted, including reference to fixed and floating charges.
- Sign and date the form.
- Complete the forms legibly using black ink or, preferably, type the form.
- The forms are scanned and reproduced electronically by the Registrar so that the public can inspect them. The Registrar may refuse documents that are not suitable for scanning and reproduction.

Please note if you omit or mis-state any detail in the documents registered, then you should apply to the Commission to correct it under section 131 of the Ordinance.

7. What happens when the documents for registration reaches registrar concerned?

If the document is acceptable, the registrar concerned takes details from it and records the particulars in the register and issue the certificate of registration of mortgage or charge,.

8. What if registrar concerned has any query on the documents?

Registrar will communicate queries to the company. If the documents need to be corrected, it must be done within 21 days from the date of creation, modification or satisfaction etc. of charge, as the case may be.

9. What if the charge is not registered in time?

If a charge is not registered in time, then it is void against the liquidator or administrator and any creditor of the company. This means that the debt for which the charge was given will remain payable, but it will be unsecured.

If a company fails to deliver a charge, and no interested party has registered it, then the company and every officer of the company who is in default are liable to a fine. If the default continues, they are liable to a daily default fine.

10. Can a charge be registered after the expiry of 21 days from the date of its creation?

Only the Commission can grant an extension of time for registration of a charge that was not received in time. The normal time limit is 21 days from the date of creation of the charge.

11. What must I do if my company acquires property that is already charged?

If the charge is of a type which the company would have had to register if it had created the charge itself, then it must notify the fact that it has acquired this property. To do this the company must complete and send Form 11 with the registrar concerned, with a certified copy of any instrument that created or evidenced the charge.

This must be done within 21 days after the company completed the acquisition of the property. If the charged property is outside Pakistan and the charge was created outside Pakistan, the 21 days runs from date when the copy instrument could have been received in Pakistan in the normal course of post, assuming that it had been dispatched with due Diligence.

12. **What are the rights of the mortgagee/charge?**

If the company does not send the particulars of charge for registration, then the chargee (the person to whom property is charged) – or some other interested person may file the required documents. In certain circumstance a chargee can appoint a receiver or manager, or ask the court to appoint a receiver or manager, over the property charged – for example, if the company defaults in payment of the debt secured by the charge. The chargee must notify the appointment with the registrar concerned within 15 days using form 18. Registrar will then enter this in the register of charges.

On ceasing to act, a receiver or manager must notify the registrar concerned within 30 days using Form 19. Registrar will then enter the fact in the register of charges.

CHAPTER 2

Modification of Mortgages and Charges

1. What is modification in a mortgage or a charge?

Modification is change in the mortgage or charges i.e. change in:-

- Amount of mortgage / charge (enhancement or reduction in amount).
- Change in particulars of property (excluding or including certain property or asset).
- Variation in the rate of markup or interest.
- Extension of time for repayment on period of maturity (Rescheduling) or change in other terms and conditions.

2. Which documents are required to be filed for modification in a mortgage or charge?

The following documents are required to be filed for modification in a mortgage or charge:-

- Form 16 containing particulars of modification in mortgage/charge etc.
- Copy of instrument modifying the mortgage or charge.
- Affidavit that the copy(ies) of the instrument is/are true copy(ies).
- Bank challan evidencing the payment of Rs. 7,500 being filing fee for submission in physical form or Rs. 5,000 for submission through eServices, as the case may be.

3. Whether partial payment is treated as partial satisfaction or modification of a mortgage or charge?

Partial payment is modification of a mortgage or charge and cannot be treated as satisfaction.

CHAPTER 3

Satisfaction of Mortgages and Charges

1. What should the company do when the charge is paid off (or 'satisfied')?

On the one hand it is in the company's own interest and on the other hand it is the requirement of law that the company should inform the registrar concerned that the charge has been fully satisfied so that the stake holders i.e. investors and lenders should know that all of the debt has been paid off. The particulars of satisfaction of mortgage/charge shall be submitted to the registrar concerned on prescribed form 17 within 21 days from the date of satisfaction/repayment.

2. What if charged property ceases to be charged or to belong to the company?

As stated above, the company needs to inform registrar concerned as soon the property has been released from a mortgage/charge. If the charge property is acquired by a company, it is the responsibility of the company to report the particulars on prescribed form 11.

3. Is there a fee for registering Form 17?

Yes, a fee of Rs. 7,500 being the filing fee for submission in physical form or Rs. 5,000 for submission through eServices, as the case may be, shall be deposited. In case of submission in physical form, the original challan evidencing the payment of fee is to be annexed with Form 17.

CHAPTER 4

Rectification of Mortgages and Charges

1. What are the grounds of rectification of register of mortgages or charges?

The following are grounds of rectification of register of mortgages or charges:-

- Omission to file particulars of charge within 21 days from the date of creation of charge.
- Failure to file particulars of modification of charge within 21 days from the date of modification.
- Omission to intimate payment or satisfaction within 21 days.
- Omission in compliance with observation within 21 days from the date of creation, modification, satisfaction etc. of charge.
- Omission or misstatement in the particulars.

2. Who is empowered to order for rectification of register of mortgages or charges?

The Commission is empowered to order for rectification of register of mortgages or charges.

3. Which documents should be enclosed with the application for rectification to be filed before the Commission?

The following documents should be enclosed with the petition for rectification to be filed before the Commission.

- Copy of Form 10, 11, 13, 16 or 17; as case may be.
- Copy of instrument for creating, modifying, satisfying charge etc.

- Observation memorandum, if any, issued by the registrar concerned.
- Affidavit verifying that the contents of application are true.
- Bank challan evidencing the payment of Rs. 7,500 being the application fee.

4. **Which documents should be filed with the registrar concerned after passing of order by the Commission?**

The following documents should be filed with the registrar concerned after passing of order by the Commission.

- Form 10, 11, 13, 16 or 17, as the case may be.
- Copy(s) of the instrument(s) relating to creation, modification, or a confirmation letter from the Bank for the satisfaction of charge.
- Copy of order of the Commission.
- Affidavit that the copies of the instruments are true copies.
- Bank challan evidencing the payment of Rs. 7,500 being filing fee for submission in physical form or Rs. 5,000 for submission through eServices, as the case may be.

Please note that particulars of mortgages or charges or modification or satisfaction thereof are required to be registered within 21 days. Mere filing within 21 days may cause certain difficulties leading to filing petition before the Commission for extension in time. It would be advisable if the documents are filed much earlier so that these may be registered.

CHAPTER 5

Further information:

1. **Who should respond to the query made by the company about the registration?**

The officers sitting in the CROs shall willingly answer general queries regarding the procedure but note legal points, which should be referred to your legal advisor.

The telephone number of all the Company Registration Office concerned given in the list at the end of this booklet.

2. **What are the modes of submission of statutory returns?**

There are two modes of filing statutory returns with the registrar concerned:

- i. **In physical form**

- **Personally:** You may visit the CRO and deliver the documents by hand. The authorized staff of the Registrar concerned shall acknowledge the receipt of documents if delivered to him by hand.
- **By post:** You may post the return through registered mail or courier at the postal addresses of CROs (as given at the end of this guide booklet).

- ii. **Electronically using e.Services portal of SECP**

3. **From where format of returns/forms be obtained?**

For submission in physical form

In case of physical submission, there are three sources of getting statutory returns/Forms:

- You may refer to the Rules and find the relevant statutory form.

- You may download these formats from the Commission's website at the link <http://www.secp.gov.pk/forms.asp> which is the quickest and easiest way to get the forms. By using the downloaded forms, additional space can also be created in the fields available for information, according to your requirements.
- You may visit the regional offices of the Commission (Company Registration Offices) personally and get the forms.

For Online submission:

In case of online submission, the statutory returns/ forms on the prescribed format containing the existing information shall automatically appear in the eServices portal. Detailed procedure is explained at Q. No. 7 of this guide below.

4. What is filing fee of forms/returns?

The filing fee of various returns/forms is prescribed in **6th Schedule** to the Ordinance, which may be accessed at Commission's website. For detailed information regarding fees schedule, (both online/physical) kindly visit the link <http://www.secp.gov.pk/notification/pdf/2010/SixthSchedule26-10-2010.pdf>

5. Who is competent to sign/authenticate the return/forms?

As provided under the Companies Ordinance, 1984, Chief Executive, Director and the Company Secretary are authorized to sign the returns/forms.

6. How to pay filing fee?

The filing fee can be paid /deposited through challans in any of the designated branches of MCB Bank Limited.

Online:

In case of online submission, challans are auto generated. Procedure is explained above at Q. No. 7 of this guide.

Physical:

In case of physical submission, challans in the physical form are available at all the designated branches of MCB Bank Limited.

7. How statutory returns can be filed through eServices?

Below is the procedure for filing statutory returns through eServices:

(1) Log on to eServices

- **In case the company has obtained eServices Login name and Password:**

Connect to eServices <https://eservices.secp.gov.pk/eServices>, and log on to your account using your eServices Login name and Password provided by SECP. Procedure for obtaining Login name and Password has been provided in subsequent process.

Important Note: PLEASE NOTE THAT "SIGN UP" LINK ON eServices WEBPAGE, IS FOR NEW INCORPORATION PROCESS ONLY AND NOT FOR ALREADY INCORPORATED COMPANIES.

- **In case the company has not obtained eServices Login name and Password, please follow the procedure as under:**
 - a. Apply for an eServices Login name and Password by writing a letter, on the company letterhead, duly signed by the Chief Executive alongwith the either of the Company Secretary, Chief Financial Officer, or one of the Directors of the company, with a copy of their CNIC, to be addressed to the following address:

Director (MIS),
Registration Department,
Securities and Exchange Commission of Pakistan,
NIC Building, Jinnah Avenue,
Islamabad,
Pakistan
email: ibtasam.moatisim@secp.gov.pk
Phone: +92-51-9207091-3 (Ext: 280)

- b. Mention the email address on which the eServices Login name and Password will be dispatched. Please, only provide POP3 email address such as abc@comsats.com; free email address such as hotmail, gmail, or yahoo is not acceptable.
- c. SECP will confirm the validity of the email address. After validation the eServices Login name and Password will be emailed to the specified email address.

(2) **Enter Information**

- A successful logon to eServices by entering Login name and password will display a list of available processes
- Click **Filing of Statutory Returns**
- List of forms containing all the statutory returns will appear
- Click the relevant form (**Form 10 to 17**, as the case may be)
- Enter required information on the page
- Click the **Continue** button, the process document listing page shall be displayed, containing the following links:

a. Update Form

- Click link if you want to update the data.
- After updating data, click continue button
- Process document listing page will be displayed

b. View Form

- Click link.
- The form on the prescribed format shall be automatically generated based on your input.
- View Form.
- If data displayed in the form is correct, click the back button on the screen
- Process document listing page will be displayed

c. Fill New Attachment Form

- Click link and an attachment form window will be displayed.
- Attach document, if any.
- Click **Save Form** button.

Please note that only PDF format is allowed for attachment. Size of the file must not exceed 2 MB.

- Process document listing page will be displayed.

d. Fill New Bank Challan

- Click link – auto filled bank challan will be displayed.
- Click **Print Form** button at the bottom of the page and four copies namely original, bank copy, SECP copy and depositor copy will be printed.
- After printing, click **Save Form** button at the bottom of the page.
- Process document listing page will be displayed.

e. Sign Forms

- **Procedure for obtaining Digital Signatures:**

Any return/form filed through e-services shall be authenticated by companies by affixing electronic signatures.

Detailed procedure for obtaining digital signatures from National Institutional of Facilitation Technologies (NIFT) for SECP eServices is available at the following link of NIFT website: <https://secp.niftetrust.com/>.

- Click on **Sign Forms** link.
- Digital signature pad window will appear.
Select all the form(s)/Attachment(s) available for signature by clicking the check boxes.
- Select the required signature from the drop down menu
- Click **Sign** button (After signing, submit to SECP button will be enabled.)
- Click **Submit to SECP** button.
- All the documents will be automatically submitted to the SECP.
- Please note down the Tracking Number, appearing on the screen.
- Deposit fee through the challan printed during the process, in the selected branch of MCB.
- The bank shall retain the SECP and bank copies and return remaining two copies (original and customer copy) to the customer

If the documents are sent by post or courier, the same can be addressed to one of the following Company Registration Offices (CROs), having jurisdiction on your company.

- Company Registration Office,
State Life Building, 7-Blue Area, Islamabad.
Phone No.: 051-9208740 Fax No: 051-9208740
Email: croislamabad@secp.gov.pk
- Company Registration Office,
4th Floor, SLIC Building No.2,
Wallace Road, Karachi.
Phone No: 021-99213272 Fax No. 021-99213278
Email: crokarachi@secp.gov.pk
- Company Registration Office,

3rd & 4th Floor, Associated House,
7-Egerton Road, Lahore
Phone No. 042-99204962 – 6 Fax No: 042-99202044
Email: crolahore@secp.gov.pk

- Company Registration Office,
63-A, 2nd Floor,
Nawa-e-Waqt Building,
Adbali Road, Multan.
Phone No: 061-9200530/9200920 Fax No: 061-9200920
Email: cromultan.eservices@secp.govpk
- Company Registration Office,
356-A, Ikram Plaza, Small D ground.
Peoples Colony No. 1, Faisalabad.
Phone No: 041-9220284 Fax No: 041-9220152
Email: crofaisalabad@secp.gov.pk
- Company Registration Office,
1st Floor, State Life Building, The Mall,
Peshawar Cantt.
Phone No: 091-9213178, Fax No: 091-9213686
Email: cropeshawar@secp.gov.pk /
saeedullah.khan@secp.gov.pk
- Company Registration Office,
382/3, (IDBP House), Shahrah-e-Hali,
Quetta Cantt.
Phone No: 081-2844136 Fax No: 081-2899134
Email: croquette@secp.gov.pk
- Company Registration Office,
28 - D , Hamdard Housing Society,
Airport Road, Sukkur,
Phone No: 071-5630517 Fax No: 071-5633757
Email: croskr@hotmail.com