Chapter 6: Mortgages and Charges

1 Chapter Roadmap

INTRODUCTION
borrowing powers · forms of borrowing · forms of security
(Sec. 1)
→
REGISTRATION
what, when, by whom, effect
(Sec. 2)
→
MODIFICATION, SATISFACTION & RECTIFICATION
(Sec. 3)
→
RECORDS & REGISTER
copies · register · inspection
(Sec. 4)

Theme: a company borrows using its (implied) borrowing powers and secures the loan by pledge, mortgage or charge. Most securities must be registered with the registrar within strict time limits, and every change or repayment must also be reported.

2 Borrowing Powers

Implied in MoA & AoA [Section 30]
The memorandum and articles are deemed to include power to obtain **loans, advances, finances or credit** (as defined in the Banking Companies Ordinance, 1962) and to issue other securities **not based on interest**, from a scheduled bank, a financial institution or the general public.

Restriction [Section 19]
A **public company having share capital** cannot exercise borrowing powers until its documents for **commencement of business** are accepted and registered by the registrar. The Act sets **no maximum** borrowing limit – the articles may.

Power to give security
A company having borrowing powers may also **pledge, mortgage or create a charge** on its property / assets as security.

Manner of exercise
As provided in the **articles** – e.g. in general meeting or vested in the **board** (articles may fix the board's limit). Directors may delegate to a committee or an officer.

Ultra vires the COMPANY: borrowing without, or in excess of, the powers in the **memorandum**.

Ultra vires the DIRECTORS: borrowing within the company's powers but beyond the limit fixed for the board by the **articles**.

3 Forms of Borrowing

Debentures
Any security issued to raise capital, **other than a share**, is a debenture. A public company may issue to the public or privately. May be **secured or unsecured**.

Credit institutions
Commercial & investment banks, NBFCs, modarabas and other lenders – against interest or profit participation. Usually **secured** on company assets.

Other sources
Sponsors or controlling shareholders – usually **unsecured**, but may be secured.

4 Forms of Security – Pledge vs Mortgage vs Charge

	Pledge	Mortgage	Charge
Assets	**Movable** assets	**Immovable** assets	**Any** asset
Key feature	Lender has **physical possession**	**Transfer of title** (an interest) to the lender	Lender has the **right to take possession** on the company's default
MCQ example	Pledge of shares	Title of a factory building transferred to lender	Charge over inventories; first / second charge on a building

Fixed charge
Created on **identified assets** – specific land and building, specific plant and machinery, etc.

Floating charge
Over a **class of assets that changes over time** – debtors, stock – or the entire undertaking.

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5 Charges that Must be Registered [Section 100]

(a) Mortgage / charge on any **immovable property** wherever situated, or any interest in it

(b) Mortgage / charge securing any issue of **debentures**

(c) Mortgage / charge on **book debts**

(d) **Floating charge** on the undertaking or property, incl. stock-in-trade

(e) Charge on a **ship or aircraft**, or any share in one

(f) Charge on **goodwill** or any **intellectual property**

(g) Mortgage, charge or **pledge** on any **movable property** of the company

(h) Mortgage / charge / interest under an agreement to issue **redeemable capital**

(i) Interest under a **conditional sale agreement** – lease financing, hire-purchase, sale & lease back, retention of title – for machinery, equipment or goods

Not a charge: depositing a **negotiable instrument** (e.g. promissory note) given to secure payment of book debts, to secure an advance → **not** a mortgage or charge on those book debts; no registration needed. (Lavender Ltd's COO deposits a negotiable instrument → no registration.)

Charcoal Ltd MCQ: mortgage of the company's factory building and charge over its inventory → **register both**. Pledge of a **director's own shares** is not the company's property → not registered by the company.

6 Time Limits for Registration

Situation	Time limit	Worked example
Charge created in Pakistan (or on property in Pakistan)	**30 days** beginning with the day **after** creation	XYZ Ltd mortgage 26 Feb 2026 → **28 March 2026** (Ex. 01) · KLM Ltd 30 June 2021 → **30 July 2021**
Created **outside** Pakistan on property **outside** Pakistan	30 days after the date the instrument could have reached Pakistan by **post** (due diligence)	New York, 26 Feb 2026 + 7 days post = 5 Mar → **4 April 2026** (Ex. 02) · UAE 30 June 2021 + 3 days → **2 August 2021**
Created **in** Pakistan on property **outside** Pakistan	Copy may be filed even if further proceedings are needed under that country's law	Orange Ltd: London showroom
Company **acquires property** already subject to a charge	Same rules apply	Jafer Ltd acquires 26 Feb 2026 → **28 March 2026** (Ex. 03)
Foreign lender, property in Pakistan	Must still register – 30 days	Eagle Ltd / Oilbird Bank charge by 12 March 2024 → **11 April 2024**

Orange Ltd: loan on 5 Sep 2025 against Quetta factory (Rs. 200m) → register by **5 October 2025**; London showroom (Rs. 150m) may be filed even though UK formalities remain.

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7 Registration – Particulars, Certificate & Effect

FILE
specified particulars + verified copy of the instrument
→
CERTIFICATE OF REGISTRATION
signed by registrar or under his official seal
→
CONSTRUCTIVE NOTICE
anyone acquiring the property is deemed to know of the charge
FROM THE DATE OF REGISTRATION

Effect of non-registration: the mortgage / charge is **void** – not accepted by the **liquidator or any creditor**. The lender becomes, in effect, an **unsecured creditor**; a bona fide purchaser without notice may override it.

But the debt survives

Non-registration does **not** affect the contract or obligation to **repay** the money. Late registration does not prejudice rights acquired in the property before it is actually registered.

8 Duty / Right as to Registration [Section 105]

Duty of the company

It is the **company's duty** to file the particulars of every mortgage / charge it creates. (Barn Swallow Ltd – first charge to Wagtail Bank and second charge to Bee-eater Bank → duty of **BSL**.)

Right of an interested person

Any person interested (e.g. the **lender**) may apply for registration and **recover the fees** properly paid from the company (ABC Bank – Ex. 04).

MCQ answer: either the borrowing company **or** the charge-holder may file – the **borrowing company bears the cost**. A charge on assets acquired by another company (Bluebird Ltd buys Peacock's assets) **continues to be valid**.

9 Modification of a Charge [Section 106]

Meaning & duty

Any change in the **terms, conditions, extent or operation** of a registered mortgage / charge. The company must send the particulars with a verified copy of the modifying instrument – the **registration rules apply** (30 days). Eagle Ltd: loan repayment period extended by the lender at its request → **modification** to be filed.

10 Satisfaction of a Charge [Section 109]

LOAN REPAID
payment / satisfaction in full
→
WITHIN 30 DAYS
company intimates the registrar
→
SHOW CAUSE NOTICE
to charge-holder – reply within a time **NOT EXCEEDING 14 DAYS**
→
NO CAUSE SHOWN
registrar accepts memorandum of satisfaction & enters it

CAUSE SHOWN
registrar notes it in the register & informs the company

No notice needed

If a **no objection certificate (NOC)** from the charge-holder is filed with the intimation.

Late filing

Particulars may be filed after 30 days with an **additional fee** and a **penalty**.

Example 05

XYZ Ltd repays ABC Bank on 24 March 2026; bank objects (processing charges due) → registrar records the objection and informs XYZ.

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11 Registrar's Own Power [Section 110]

Even without intimation from the company

On **evidence to his satisfaction**, the registrar may enter in the register and inform the parties that: the debt has been **paid or satisfied** in whole or in part; or part of the property has been **released** from the charge or has ceased to be the company's property.

Worked Practice Q – Armani Weavings Ltd (AWL) & Danny Bank (DBL)

Rs. 300m loan; 60% repaid by Dec 2021; DBL waives mark-up and 10% of the overdue amount if paid by 10 March 2023; AWL pays on **9 March 2023**.

- **(a) AWL:** intimate satisfaction to the registrar within **30 days** → Day 1 = 10 Mar … Day 30 = **8 April 2023**; registrar sends show cause notice to DBL (≤ 14 days) unless DBL's **NOC** is attached; no cause → satisfaction entered.
- **(b) Buyer CKL** (charge still not released on 15 Sep 2023): as an interested party, apply to the registrar with **evidence** that the debt is paid or the buildings are released → registrar may record it under s.110.

12 Rectification of Register of Mortgages [Section 108]

Who & why

The company or any person interested applies to the **Commission** for:

- omission to file particulars of a charge / modification **in time**; or
- **omission or misstatement** of any particular.

Relief granted if (any one)

- **accidental**, inadvertent or other sufficient cause; or
- **not prejudicial** to creditors or shareholders; or
- otherwise **just and equitable**.

Commission may order (any one or more)

- **extension of time** for filing;
- **rectification** of the omission / misstatement;
- costs of the application.

Certified copy to the registrar within **7 days** of the order.

13 Records & Register [Sections 107 & 112]

Copies of instruments – at registered office

Every instrument **creating** a registrable mortgage / charge, and every instrument evidencing its **modification**.

Register of mortgages & charges

Maintained in the specified form; violation is an offence. An officer who authorises or permits an omitted entry is liable to penalty. Purpose: to record and monitor the company's assets and liabilities **secured** by mortgages or charges.

Who wants to inspect the register / copies?	Fee?	Example
Member or **creditor**	FREE	Afzal (creditor) refused unless he pays → he may complain; registrar may **compel immediate inspection**; secretary liable to **level 1** penalty (Ex. 06)
Any other person	FEE FIXED BY COMPANY	Aslam – employee, not member / creditor – must pay the fee (Ex. 07)

Trap: Omitting a registered charge from the **company's own register** is an offence / penalty – but it does **not** make the charge void (it is registered with the registrar).

14 Time Limits & Numbers

Requirement	Limit	Section
Register a mortgage / charge (from the day after creation; foreign property: after postal time)	**30 days**	100
Register a modification	**30 days**	106
Intimate payment / satisfaction in full	**30 days**	109
Charge-holder to show cause	**≤ 14 days**	109
Commission's rectification order to registrar	**7 days**	108

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15 Exam Question Patterns & MCQ Quick Clues

"Which security is NOT registrable?"	→	**Promissory note securing book debts**
"If a charge is not registered..."	→	**Void against liquidator & creditors**
"Who files and who pays the fee?"	→	**Company or charge-holder; company pays**
"Show cause notice is sent regardless of NOC" – true?	→	**Incorrect – NOC removes the need**
"Registrar records satisfaction without intimation only when..."	→	**He has evidence the debt is paid**
"Which is a charge and not a mortgage?"	→	**Charge over inventories**
"Quince Ltd paid final instalment on 8 Sep 2022 – intimate by..."	→	**8 October 2022**

⚠ CHAPTER 6 EXAM TRAPS

Trap: The 30 days start from the day **after** creation; for foreign property, add the **postal time first**.

Trap: A foreign lender does **not** exempt a charge on Pakistani property from registration.

Trap: Non-registration voids the **security**, not the **loan**.

Trap: Rectification relief comes from the **Commission** – not the registrar or the court.

Trap: Creditors inspect the register **free**, just like members.

CAF-04 – CHAPTER 6 IN 60 SECONDS

- **Borrowing powers** implied (s.30) · public company with share capital borrows only after commencement of business · no statutory limit.
- **Ultra vires** the company (beyond MoA) vs the directors (beyond board limit in AoA).
- **Security:** pledge (movable + possession) · mortgage (immovable + title) · charge (right to possess on default) – fixed or floating.
- **s.100:** 9 registrable charges · register within 30 days (foreign: post time + 30) · certificate · constructive notice · unregistered = void against liquidator / creditors.
- **s.105:** company's duty; lender may register and recover fees.
- **Modify** → file like registration · **satisfy** → intimate in 30 days → show cause ≤ 14 days (not if NOC).
- **Registrar** may record satisfaction on evidence · **Commission** rectifies omissions (copy in 7 days).
- **Records:** copies at registered office · register of charges · members & creditors inspect free.

16 Chapter Memory Map

Implied Borrowing Powers · Ultra Vires Borrowing · Debentures & Lenders · Pledge · Mortgage · Charge · Fixed vs Floating

9 Registrable Charges · Negotiable Instruments · 30-Day Rule · Foreign Property · Constructive Notice · Non-registration

Lender's Right & Fees · Modification · Satisfaction & NOC · Registrar's Power · Rectification by SECP · Register & Inspection