

BORROWING POWERS OF THE COMPANY**INHERENT BORROWING POWERS**

General permission to borrow	Memorandum is deemed to contain the powers to borrow money a loans, advances or credit (including power to issue securities not based on interest) from scheduled bank or financial institutions , even if such powers are not included in the memorandum.
Restriction on borrowing	Few companies are required to obtain a certificate of commencement of business , such companies cannot exercise any borrowing powers until the date they obtain a certificate of commencement of business.
Ultra-vires borrowings	<ul style="list-style-type: none"> ▪ The power to borrow money rests with the directors and they are allowed to borrow money by passing a resolution in their meeting. ▪ Company may restrict their powers to borrow by its articles, by mentioning, as such, that the borrowings exceeding a certain amount may be made only with the prior approval of members in a general meeting. ▪ If the directors exceed their authority in such case and borrow in excess of the limit, such borrowing shall be considered as ultra-vires borrowings.

FORMS OF BORROWINGS

Debentures	<ul style="list-style-type: none"> ▪ Debenture includes debenture stock, bonds, term finance certificate and any other securities, other than a share, of a company, whether constituting a charge of the assets of the company or not (Effectively, any securities other than shares shall be debentures). ▪ A public company may issue debentures to public or may issue debentures to any persons privately. ▪ The debentures carrying no interest may be issued (they participate in profits of company). ▪ Debenture-holders do not have votes in general meeting (however, they have votes according to value in meeting of creditors). ▪ Convertible debentures may carry voting rights. ▪ Debentures may be secured or unsecured
Borrowings from credit institutions	Credit institutions include the commercial banks, investment banks, non-banking finance companies, modaraba and all other business organisations providing facilities for loan against the interest or sometimes against participation in profits of the company as per agreed terms. These loans too, usually are secured against the assets of the company.
Borrowing from other sources	Other sources for obtaining loans may include the sponsors or controlling shareholders of the company. This type of financing is usually unsecured, however, it may be secured against the assets of the company.

TYPES OF SECURITY

Pledge	Contract Act defines Pledge as a 'bailment' of goods as security for the repayment of a debt or performance of a promise. Moveable assets → physical possession with lender
Mortgage	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 financial liability. Immovable assets → Transfer of title to lender

Charge	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. Any assets → The lender has right to take possession in event of company's default to pay the loan.	
	Fixed charge	Floating charge
	Created on a specific asset for a defined amount.	May be created on any class of assets meaning thereby that the asset is not fixed under the floating charge. It may be created on the entire undertaking of the company.
	The asset under fixed charge cannot be replaced or sold without prior approval of beneficiary of charge.	The assets under floating charge may be replaced by the company however overall value of class of assets charges should not reduce below an agreed amount
	Priority at the time of winding up or payment of debts with more than one charge.	Less priority at the time of winding up or payment of debts with more than one charge.

REGISTRATION OF MORTGAGES AND CHARGES

PROCEDURE FOR REGISTRATION

List and types	The following mortgages and charges shall be registered with registrar: <ul style="list-style-type: none"> ▪ for the purpose of securing any issue of debentures including redeemable capital or musharika agreements; ▪ on uncalled share capital of the company (in case company has issued partly paid shares); ▪ on any immovable property wherever situate, or any interest therein; ▪ on any receivables of the company (however the routine invoice discounting etc. is not considered as a charge); ▪ on any movable property of the company including a ship or any share in a ship; or ▪ on goodwill, on a patent or licence under patent, on a trade mark, or on a copyright or a licence under a copyright; ▪ or other interest based on hire-purchase or leasing agreement for acquisition of fixed assets; ▪ a floating charge on the undertaking or property of the company, including stock-in-trade. <p><i>Everyone buying the company's property shall be deemed to have constructive notice that the asset is subject to mortgage or charge.</i></p>
Duty of registration	It is duty of company to get the particulars registered within 21 days of creation.
Duty and rights of registration	Any interested person (lender) may also get the registration done within 21 days of creation.
Particulars to be registered	<ul style="list-style-type: none"> ▪ Particulars of mortgage/charges etc. ▪ Copy of instruments (contract documents) creating the mortgage or charge. ▪ An affidavit to the effect that the copies of the instruments are the true copies. ▪ Bank challan evidencing the payment of fee for registration.
Consequence of non-registration	<ul style="list-style-type: none"> ▪ The mortgage or charge would become void and shall not be accepted as such by the liquidator or any creditor. ▪ The debt in respect of which the mortgage or charge was created would remain unsecured and money to which was to be secured by the charge would become payable immediately.

Special provision	Created outside Pakistan on Property outside Pakistan	Created in Pakistan on Property outside Pakistan
		The period of 21 days shall start when documents should reach Pakistan in ordinary course.

RELEVANT DEFINITIONS

Redeemable Capital	The term redeemable capital includes finance obtained on the basis of: <ul style="list-style-type: none"> ▪ Participation terms certificate (a name for participatory redeemable capital explained below). ▪ musharika certificate, terms finance certificate (TFC) or ▪ any other security or obligation not based on interest.
Participatory Redeemable Capital	It means such redeemable capital as is entitled to participate in the profit and loss of a company.
Musharika agreement	Musharika Agreement is a term used as equivalent of partnership/participatory redeemable capital in Islamic banking.

PAYMENT OR SATISFACTION OF MORTGAGES AND CHARGES

Time period	The particulars of satisfaction of mortgage/charge shall be submitted to the registrar concerned on prescribed form within 21 days from the date of satisfaction/repayment.
Duty of company	It is the duty of the company to inform the registrar regarding satisfaction of mortgage or charge as discussed above.
Verification	The registrar shall register the satisfaction of mortgage or charge only after verifying from the interested person (the lender) regarding the repayment of the loan and shall grant him a time of 14 days to file any objection to the satisfaction of mortgage or charge.
Post verification action	If no objection is filed by the lender, the registrar shall register the satisfaction of the mortgage or charge as requested by company, otherwise he shall communicate the company regarding objection raised by the lender.
Power of registrar	The registrar is entitled, even if no information is received from company , to enter the satisfaction of mortgage or charge if he is aware that a particular mortgage or charge has been repaid or the property subject to the charge no longer the property or part of the undertaking of the company.

RIGHT OF INSPECTION

Records to be kept by Company	<ul style="list-style-type: none"> ▪ The copies of the instruments creating charges or relating to the registration of charges or any rectifications therein at its registered office. ▪ A register regarding the mortgages or charges created by it. This register contains fullest information as to identify the property mortgaged or charged as well as the terms and conditions and the beneficiary of the charge.
Where to keep?	At its registered office.
Who can inspect?	Any creditor or member of the company can inspect the above records free of cost at all reasonable times. The register of the mortgages or charges as above is also open to inspection of any person other than members or creditors against payment of fee .

TEST YOUR KNOWLEDGE	7.1
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		True / False
1.	No company can exercise any borrowing powers until the date it obtains a certificate of commencement of business	
2.	Company may restrict their powers to borrow by its articles of association.	
3.	A public company may issue debentures to any person privately.	
4.	Holders of debentures are allowed to cast votes in the meetings of the company (general meetings)	
5.	Fixed charge is created on unspecified asset for a defined amount	

TEST YOUR KNOWLEDGE	7.2
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		True / False
1.	It is duty of the interested person (usually lender) to get the mortgage or charge registered with the registrar	
2.	The cost of registering mortgage or charge shall be borne by the interested person	
3.	Every person buying any property of the company shall be deemed to have constructive notice of the fact that the asset is subject to mortgage or charge.	
4.	If mortgage or charge not registered within due time the respective debt remains unsecured and money to be secured by it becomes immediately payable.	
5.	Registrar is not entitled to enter the satisfaction of mortgage or charge until he receives information from the company for the same	

End of Chapter
