

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XXVI

Nidhis

In exercise of the powers conferred under sub-section (1) of section 406 read with sub-sections (1) and (2) of 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

- 1.** These Rules may be called Nidhi Rules, 2013.
- 2.** They shall come into force on the date of their publication in the Official Gazette.
- 3.** These rules shall apply to:
 - (a) Every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of section 620A of the Companies Act, 1956.
 - (b) Every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-section (1) of section 620A of the Companies Act, 1956.
 - (c) Every company incorporated as a Nidhi pursuant to the provisions of section 406 of the Act (hereinafter referred to as Nidhi).
- 4.** In these rules:-
 - (i) "Act" means the Companies Act, 2013.
 - (ii) "Doubtful Asset" means a borrowal account which has remained a non-performing asset for more than two years but less than three years.

(iii) "financial year" means financial year as defined in sub-section (41) of section 2 of the Act.

(iv) "Loss Asset" means a borrowal account which has remained a non-performing asset for more than three years or where in the opinion of the Board, a shortfall in the recovery of the loan account is expected because the documents executed may become invalid if subjected to legal process or for any other reason.

(v) "Member" means a member as defined in sub-section (55) of section 2 of the Act.

(vi) "Net Owned Funds" means the aggregate of paid up equity capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet:

Provided that:

(a) A reserve shall be considered as a "free reserve" if it is available for distribution as dividend.

(b) The amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

(vii) "Non-Performing Asset" means a borrowal account in respect of which interest income and/or instalment of loan towards repayment of principal amount has remained unrealised for 12 months.

(viii) "Standard Asset" means the asset in respect of which no default in repayment of principal or payment of interest has occurred or is perceived and which has not shown signs of any problem relating to repayment of principal sum or interest nor does it carry more than normal risk attached to the business.

(ix) "Sub-Standard Asset" means a borrowal account which is a non performing asset:

Provided that reschedulement or renegotiation or rephasing of the loan instalment or interest payment would not change the classification of an asset unless the borrowal account has satisfactorily performed for at least twelve months after such reschedulement or renegotiation or rephasing.

5. Incorporation and incidental matters

(i) For the purposes of sub-section (71) of section 2 of the Act, a Nidhi to be incorporated under the Act shall be a public company and must have a minimum paid up equity share capital of ten lakh rupees.

(ii) On and after the commencement of the Act, no Nidhi shall issue preference shares. If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(iii) No Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

(iv) Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

(v) In respect of companies covered under clauses (a) and (b) of rule 3 formed before the commencement of this Act, they shall, within a period of two years from the date of commencement of these rules, change their name in accordance with sub-rule (iv) above and the provisions of the Act.

6. (i) Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has:

(a) Not less than two hundred members.

(b) Net Owned Funds of ten lakh rupees or more.

(c) Unencumbered Term Deposits of not less than ten per cent. of the outstanding deposits as specified in rule 15.

(d) Ratio of Net Owned Funds to Deposits of not more than 1:20.

(ii) Within 90 days from the close of the first financial year after its incorporation and where applicable, the second financial year, the Nidhi shall file a Return of statutory compliances in **Form No. 26.1** along with such fee as provided in Annexure 'B' with the Registrar duly certified by a company secretary in practice or chartered accountant or cost accountant.

(iii) If a Nidhi is not in compliance with clauses (a) or (d) of sub-rule (i) above, it shall within 30 days from the close of the first financial year, apply to the Regional Director in **Form No. 26.2** along with fee specified in Annexure 'B' for extension of time and the Regional Director may consider the application and pass orders within 30 days of receipt of the application.

(iv) If the failure to comply with sub-rule (i) of this Rule extends beyond the second financial year, the Nidhi shall not accept any further deposits from the commencement of the second financial year until clauses (a) and (d) of sub-rule (i) of this rule are complied with, besides being liable for penal consequences as provided in the Act.

7. General restrictions/prohibitions

No Nidhi shall-

(i) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate.

(ii) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.

(iii) open any current account with its members;

(iv) acquire another company by purchase of securities or control the composition of the Board of directors of any other company in any manner whatsoever or enter into any arrangement for the change of its

management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Central Government.

Explanation: For the purposes of this sub-rule, "control" means control as defined in sub-section (27) of section 2 of the Act and "Central Government" means the Regional Director having jurisdiction over the Nidhi.

(v) carry on any business other than the business of borrowing or lending in its own name.

Provided that Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% of the gross income of the Nidhi at any point of time during a financial year.

(vi) accept deposits from or lend to any person, other than its members.

(vii) pledge any of the assets lodged by its members as security.

(viii) take deposits from or lend money to any body corporate.

(ix) enter into any partnership arrangement in its borrowing or lending activities.

(x) issue or cause to be issued any advertisement in any form for soliciting deposit.

Provided that private circulation of the details of fixed deposit schemes among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.

(xi) pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans.

8. Share capital and allotment:

(i) Every Nidhi shall issue equity shares of the nominal value of not less than ten rupees each.

(ii) No service charge shall be levied for issue of shares.

(iii) A Nidhi shall not make any preferential allotment of shares to any person(s) but may issue further shares and the unsubscribed portion of the issue can be apportioned by the Board of directors in terms of section 62 of the Act.

(iv) Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees:

Provided that the account holders of savings account and recurring deposit only may hold at least one equity share of rupees ten.

9. Membership

(i) No Nidhi shall admit any body corporate or trust as a member.

(ii) Except as otherwise permitted under these Rules, every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.

(iii) No minor shall be admitted as a member. However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of the Nidhi.

10. Net owned Funds:

Every Nidhi shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than ten lakh rupees or such higher amount as the Central Government may specify from time to time.

11 Branches:

(i) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years.

(ii) Subject to compliance with the aforesaid sub-rule:

(a) A Nidhi may open up to three branches within the district.

(b) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director.

(iii) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.

(iv) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.

12. Acceptance of Deposits by Nidhis:

(i) A Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.

(ii) In the case of companies covered under clauses (a) and (b) of rule 3 and existing on or before 26th July, 2001 and which have accepted deposits in excess of the aforesaid limits, the same shall be restored to the prescribed limit by increasing the Net Owned Funds position or alternatively by reducing the deposit according to the table given below:

TABLE

<u>Ratio of Net Owned Funds to Deposits (as on 31.3.2010)</u>	Date by which the company has to achieve prescribed ceiling of 1:20
a) More than 1:30 but upto 1:40	By 31.3.2014
b) More than 1:40 but upto 1:45	By 31.3.2015
c) More than 1:45 but upto 1:50	By 31.3.2016

(iii) Companies which are covered under the Table in sub-rule (ii) above shall not accept fresh deposits or renew existing deposits if such acceptance or renewal leads to violation of the prescribed ratio.

(iv) The ratio specified in sub-rule (ii) above shall also apply to incremental deposits.

13. Application form for Deposit

(i) Every application form for placing a deposit with a Nidhi shall contain the particulars given below:

- (a) Name of the Nidhi.
- (b) Date of incorporation of the Nidhi.
- (c) The business carried on by the Nidhi with details of branches, if any.
- (d) Brief particulars of the management of the Nidhi (name, addresses and occupation of the directors, including DIN).
- (e) Net profits of the Nidhi before and after making provision for tax for the preceding three financial years.
- (f) Dividend declared by the Nidhi during the preceding three financial years.
- (g) Mode of repayment of the deposit.
- (h) Maturity period of the deposit.
- (i) Interest payable on the deposit.
- (j) The rate of interest payable to the depositor in case the depositor withdraws the deposit prematurely.
- (k) The terms and conditions subject to which the deposit may be accepted / renewed.
- (l) A summary of the financials of the company as per the latest two audited financial statements as given below:

- (i) Net Owned Funds
- (ii) Deposits accepted
- (iii) Deposits repaid
- (iv) Deposits claimed but remaining unpaid
- (v) Loans disbursed against

- (a) Immovable property
- (b) Deposits
- (c) Gold and Jewellery

- (vi) Profit before Tax
- (vii) Provision for Tax

- (viii) Profit after Tax
- (ix) Dividend per share

(m) any other special features or terms and conditions subject to which the deposit is accepted / renewed.

(ii) The application form shall also contain the following statements:

(a) in case of non- payment of the deposit or part thereof as per the terms and conditions of such deposit, the depositor may approach the Registrar of Companies having jurisdiction over the Nidhi.

(b) in case of any deficiency of the Nidhi in servicing its depositors, the depositor may approach the National Consumers Disputes Redressal Forum, the State Level Consumers Disputes Redressal Forum or District Level Consumers Disputes Redressal Forum, as the case may be, for relief.

(c) A declaration by the Board of directors to the effect that the financial position of the Nidhi as disclosed and the representations made in the application form are true and correct and that the Nidhi has complied with all the applicable rules

(d) A caution to the investor that the Central Government does not undertake any responsibility for the financial soundness of the Nidhi or for the correctness of any of the statement or the representations made or opinions expressed by the Nidhi and for repayment of deposit / discharge of liabilities by the Nidhi.

(e) At the end of the application form but before the signature of the depositor, the following verification clause by the depositor shall be appended :

"I have read and understood the financial and other particulars furnished and representations made by the Nidhi in this application form and after careful consideration I am making the deposit with the Nidhi at my own risk and volition."

(iii) Every Nidhi shall obtain proper introduction of new depositors before opening their accounts or accepting

their deposits and keep on its record the evidence on which it has relied upon for the purpose of such introduction.

(iv) For the purposes of introduction of depositors, the Nidhi shall obtain documentary evidence of the depositor in the form of proof of identity and address as under:

(a) Proof of Identity (any one of the following)

- (i) Passport
- (ii) Unique Identification Number
- (iii) Income-tax PAN card
- (iv) Voter's Identity Card
- (v) Driving licence
- (vi) Ration Card

(b) Proof of address (any one of the following)

- (i) Passport
- (ii) Unique Identification Number
- (iii) Voter's Identity Card
- (iv) Driving licence
- (v) Ration card
- (vi) Telephone bill
- (vii) Bank account statement
- (viii) Electricity bill

(documents referred to Sl. Nos. (v), (vi) and (vii) above should not be more than two months old)

14. Deposits:

(i) Fixed deposits shall be accepted for a minimum period of six months and a maximum period of sixty months.

(ii) Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months. In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by the Nidhi.

(iii) Savings deposit account shall be opened, provided the maximum balance at any given time qualifying for interest does not exceed fifty thousand rupees at any point of time and the rate of interest shall not exceed two per cent above the rate of interest payable on savings bank account by nationalized banks.

(iv) A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.

(v) A Fixed Deposit Account or a Recurring Deposit Account may be foreclosed by the depositor subject to the following conditions:

(a) a Nidhi shall not repay any deposit within a period of three months from the date of its acceptance;

(b) where at the request of the depositor, a Nidhi repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;

(c) where at the request of the depositor, a Nidhi makes repayment of a deposit before the expiry of the period for which such deposit was accepted by the Nidhi, the rate of interest payable by the Nidhi on such deposit shall be reduced by two percent from the rate which the Nidhi would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run.

Provided that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor/s in the case of joint holding with survivor clause, or to the nominee or to legal heir/s with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.

15. Un-encumbered Term Deposits:

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank (other

than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent of the deposits outstanding at the close of business on the last working day of the second preceding month.

Provided that in cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.

16. Loans

(i) A Nidhi shall provide loans only to its members.

(ii) Loans given by a Nidhi to any member shall be subject to the following ceiling on each loan:

(a) two lakh rupees, where the total amount of deposits of such Nidhi from its members is less than two crore rupees.

(b) seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees.

(c) twelve lakh rupees, where the total amount of deposits of such Nidhi from its members is more than twenty crore rupees but less than fifty crore rupees.

(d) fifteen lakh rupees, where the total amount of deposits of such Nidhi from its members is more than fifty crore rupees:

Provided that where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent. of the maximum amounts of loans specified in clauses (a), (b), (c) or (d) above.

(iii) For the purposes of sub-rule (ii), the amount of deposits shall be calculated based on the last audited annual financial statements.

(iv) A Nidhi shall give loans to its members only against the following securities:

(a) Gold, silver and jewellery

Provided that the repayment period of such loan shall not exceed one year.

(b) Immovable property

Provided that the total loans against immovable property (excluding mortgage loans granted on the security of property by registered mortgage, being a registered mortgage under section 69 of the Transfer of Property Act, 1882) shall not exceed fifty percent of the overall loan outstanding on the date of approval by the board, the individual loan shall not exceed fifty percent of the value of property offered as security and the period of repayment of such loan shall not exceed seven years.

(c) Fixed deposit receipts, National Savings Certificates, other Government Securities and insurance policies

Provided that such securities duly discharged shall be pledged with the Nidhi and the maturity date of such securities shall not fall beyond the loan period or one year whichever is earlier:

Provided further that in the case of loan against fixed deposits, the period of loan shall not exceed the unexpired period of the fixed deposits.

17. Rate of interest

The rate of interest to be charged on any loan given by any Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by the Nidhi and shall be calculated on reducing balance method:

Provided that the Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of the Nidhi.

18. Rules relating to Directors

- (i) A director shall be a member of the Nidhi.
- (ii) A director of a Nidhi may hold office for a term up to ten consecutive years on the Board of the Nidhi.
- (iii) The director referred to in sub rule (ii) above shall be eligible for further appointment only after the expiration of two years of ceasing to be a director.
- (iv) Where the tenure of any director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.
- (v) The person to be appointed as a director shall comply with the requirements of sub-section (4) of section 152 of the Act and should not have been disqualified from appointment as provided in section 164 of the Act.

19. Dividend

A Nidhi shall not declare dividend exceeding twenty five percent or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions:

- (a) an equal amount is transferred to General Reserve.
- (b) there has been no default in repayment of matured deposits and interest.
- (c) it has complied with all the rules as applicable to Nidhis.

20. Auditor:

(i) No person or firm appointed as Auditor of the Nidhi for a continuous period of five years shall be re-appointed as auditor.

(ii) For the purposes of the aforesaid sub-rule, no partner of the firm or any associate of the same firm either in that capacity or in any other individual capacity shall be eligible for reappointment.

21. Prudential norms:

(1). Every Nidhi shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as contained hereunder.

(2). Income including interest or any other charges on non-performing assets shall be recognised only when it is actually realised. Any such income recognised before the asset became non-performing and which remains unrealised in a year shall be reversed in the profit and loss account of the immediately succeeding year.

(3). (a) In respect of Mortgage Loans, the classification of assets and the provisioning required shall be as under:

NATURE OF ASSET	PROVISION REQUIRED
Standard Asset	No provision
Sub-standard Asset	10% of the aggregate outstanding amount
Doubtful Asset	25% of the aggregate outstanding amount
Loss Asset	100% of the aggregate outstanding amount

(b) The estimated realisable value of the collateral security to which a Nidhi has valid recourse may be reduced from the aggregate outstanding amount, if the proceedings for the sale of the mortgaged property have been initiated in a court of law within the previous two years of the interest, income or instalment remaining unrealised.

(4). Time limit for compliance

In case of companies which were incorporated on or before 26-07-2001, such companies shall make provisions in respect of loans disbursed and outstanding as on 31-03-2002 for income reversal and non-performing assets as per table given below:

For the year ended	Extent of provision
31-03-2014	Un-provided balance on equal basis over the three years as specified in the preceding column.
31-03-2015	
31-03-2016	

(5). A Nidhi may, if it so desires, make provision exceeding the percentage specified in the preceding sub-rule.

(6).(a) The Notes on the financial statements of a year should clearly disclose:

- (i) The total amount of provisions, if any, to be made on account of income reversal and non-performing assets remaining unrealised;
- (ii) The cumulative amount provided till the previous year;
- (iii) The amount provided in the current year; and
- (iv) The balance amount to be provided.

(b) Such disclosure shall continue to be made until the entire amount to be provided has been provided for.

(7) In respect of loans against gold or Jewellery:

- (a) The aggregate amount of loan outstanding against the security of gold or jewellery shall either be recovered or renewed within three months from the due date of repayment.

(b) If the loan is not recovered or renewed and the security is not sold within the aforesaid period of three months, the company should make provision in the current year's financial statements to the extent of unrealised amount or the aggregate outstanding amount of loan including interest as applicable.

(c) No income shall be recognised on such loans outstanding after the expiry of the three months period specified in (a) above or sale of gold or jewellery, whichever is earlier.

22. Every company covered under rule 3 shall file half yearly return with the Registrar in **Form No. 26.3** along with such fee as provided in Annexure 'B' within 30 days from the conclusion of each half year duly certified by a Company Secretary in practice/Chartered Accountant/Cost Accountant without filing fees.

23. Auditor's Certificate

The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the Rules and such certificate shall be annexed to the Audit Report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

24. Power to enforce compliance

(i) For the purposes of enforcing compliance with the Rules prescribed under this Chapter, the Registrar of Companies may call for such information or returns from the Nidhi as he deems necessary and may engage the services of chartered accountants, company secretaries in practice, cost accountants, or any firm thereof from time to time for assisting him in the discharge of his duties.

(ii) In respect of any Nidhi which has violated these rules or has failed to function in terms of the Memorandum and Articles of Association, the concerned Regional Director may appoint a Special Officer to take over the

management of the Nidhi and such Special Officer shall function as per the guidelines given by such Regional Director.

Provided that an opportunity of being heard shall be given to the concerned Nidhi by the Regional Director before appointing any Special Officer.

25. Penalty for non-compliance

If a company falling under rule 3 contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable in the manner provided in section 450 of the Act.
