

MCA UPDATES

1. Companies (Indian Accounting Standards) Amendment Rules, 2022:

MCA vide Notification No. **G.S.R. 255(E)** has issued Companies (Indian Accounting Standards) Amendment Rules, 2022 which amends the existing Companies (Indian Accounting Standards) Rules, 2015 ("the Rules"). These rules shall be effective from **April 01, 2022**.

Following IND-AS have been amended:

- ❖ IND- AS 101 (First-time Adoption of Indian Accounting Standards)
- ❖ Ind AS 103 (Business Combinations)
- ❖ In Ind AS 109 (Financial Instruments)
- ❖ Ind AS 16 (Property, Plant & Equipment)
- ❖ Ind AS 37 (Provisions, Contingent Liabilities and Contingent Assets)
- ❖ In Ind AS 41 (Agriculture)

Link of the aforesaid Notification is as follows:

<https://egazette.nic.in/WriteReadData/2022/234814.pdf>

2. Companies (Management and Administration) Amendment Rules, 2022

On **April 06, 2022** MCA vide its **Notification No. G.S.R. 255(E)** amended Companies (Management and Administration), 2014 which shall be effective from April 06, 2022.

In Rule 14 of Companies (Management and Administration), 2014, new sub-rule (3) inserted which provides that, address or registered address (in case of a body corporate), e-mail ID, Unique Identification Number and PAN Number from the register/ index/ return relating to the members of the Company will not be made available for any inspection or for taking extracts or copies.

Sub-rule (3) reads as under:

Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: -

- i. address or registered address (in case of a body corporate);***
- ii. e-mail ID;***
- iii. Unique Identification Number;***
- iv. PAN Number.***

Link of the same is as follows:

<https://egazette.nic.in/WriteReadData/2022/234911.pdf>

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3. Companies (Incorporation) Amendment Rules, 2022

On **April 08, 2022** MCA vide its Notification No. **G.S.R. 291(E)** amended Companies (Incorporation) Rules, 2014 which shall be effective from April 08, 2022.

In Rule 12, a new proviso is added, which specifies that Nidhi Company is required to obtain declaration from Central Government prior to filing of Form INC-20A i.e., Certificate of Commencement of Business and Subscribers to the Company are required to make declaration at the time of Incorporation only.

The proviso is reads as under:

Provided further that in case of a Company being incorporated as a Nidhi, the declaration by the Central Government under section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the company.

Subsequently necessary amendment is made in Form INC-20A by MCA.

Link of the same is as follows:

<https://egazette.nic.in/WriteReadData/2022/234994.pdf>

4. Nidhi (Amendment) Rules, 2022:

On **April 19, 2022** MCA vide its Notification No. **G.S.R. 291(E)** amended Nidhi Rules, 2014 and notified Nidhi (Amendment) Rules, 2022 which shall be effective from April 19, 2022.

A Nidhi company is a company that is **recognised under section 406 of the Companies Act, 2013 read with Nidhi Rules 2014**. Their core functions are borrowing and lending money among its members.

- A. In **Rule 3 regarding Definitions**, after Clause (a) a new Clause (aa) is inserted wherein the word branch is inserted. Branch means a place other than the registered office of Nidhi.
- B. In **Rule 3A regarding Declaration of Nidhis**, after the third proviso, two new provisos have been inserted which reads as follows:

“Provided also that no company, which has not complied with the requirements of this rule, or fails to comply with such requirement on or after the commencement of the Nidhi (Amendment) Rules, 2022, or in case the application submitted by the company in [Form NDH-4](#) is or has been rejected by the Central Government, shall raise any deposit from its members or provide any loan to its members under the provisions of these rules from the date of such non-compliance, or from the date of the commencement of the above said rules, or the date of rejection of the application in [Form NDH-4](#), whichever is later.

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Provided also that if any deposit raised by a company after the date of non-compliance, or the date of commencement of the above said rules, or the date of rejection of the application in [Form NDH-4](#), whichever is later as referred to in the fourth proviso shall be deemed to have been raised in pursuance of Chapter V of the Act, and shall be subject to all the requirements under that Chapter, or under any other provisions of the Act or the rules made thereunder, as the case may be.

Provided also that nothing in this rule shall apply to companies incorporated as Nidhi on or after the commencement of the above said rules.”

This proviso states that a Nidhi Company cannot raise deposits, and if raised they will have to comply with the provisions of Chapter V – Acceptance of Deposits by Companies.

C. New **Rule 3B** has been inserted which prescribes conditions to be fulfilled by public companies desirous of being declared as Nidhi, which reads as follows:

- 1) On and after commencement of Nidhi (Amendment) Rules, 2022, public company desirous to be declared as a Nidhi shall apply, in Form NDH-4, within a period of 120 days of its incorporation for declaration as Nidhi, if it fulfils the following conditions, namely: -
 - (I) it has **not less than 200 members**; and
 - (II) it has **Net Owned Funds of Rs. 20 lakh or more**.
- 2) The company shall also attach, alongwith Form NDH-4, the declaration with regard to fulfilment of **fit and proper person criteria**, as per this sub-rule, by all the promoters and directors of the company.
- 3) For the purpose of determining as to whether any promoter or director is a fit and proper person, the following shall be taken into account, namely: -
 - a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person; and
 - b) the person not incurring any of the following disqualifications, namely: -
 - i. criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 has been filed by a person authorised by the Central Government against such person and which is pending;
 - ii. charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences which is pending;
 - iii. an order of restraint, prohibition or debarment has been passed against such person by any regulatory authority or enforcement agency in any matter concerning company law, securities laws or financial markets which is in force;
 - iv. an order of conviction has been passed against such person by a court for any offence involving moral turpitude;
 - v. such person has been declared insolvent and not been discharged;
 - vi. such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;
 - vii. such person has been categorised as a wilful defaulter;
 - viii. such person has been declared a fugitive economic offender;

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ix. such person is a director in five or more companies incorporated or declared as Nidhi, or is a promoter of three or more companies incorporated or declared as Nidhi.

4) The Central Government, shall examine the application filed in Form NDH-4 and convey its decision within a period of 45 days to the company:

Provided that in case a decision on an application filed in form NDH-4 is not taken by the Central Government within the aforesaid period of receipt of such application, the same shall be deemed as approved.

5) On being satisfied that the company meets the requirements under sub- rules (2) and (3), the Central Government, shall notify in the Official Gazette, declaring it as a Nidhi or Mutual Benefit Society, as the case may be:

Provided that the decision of the Central Government approving the Application, shall be filed by the company with the Registrar along with Form 20A required u/s section 10A of the Act:

Provided further that such company shall commence its business only once the decision of the Central Government approving its Application is obtained from the Central Government pursuant to the declaration given under Rule 12 of the Companies (Incorporation) Rules, 2014.

6) In case a company does not comply with the requirements of sub- rule (1) of this Rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of allotment).

7) The provisions of this Rule shall not be applicable to a public company incorporated under the Act before the date of commencement of the Nidhi (Amendment) Rules, 2022.

D. In **Rule 4(1) relating to Incorporation and incidental matters** following amendments have been made:

1) minimum paid up equity share capital for Nidhi Company is increased from Rs.5 Lakhs to **Rs. 10 Lakhs**

2) A new proviso has been inserted as follows:

“Provided that every Nidhi company existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of 18 months from the date of such commencement”.

E. In **Rule 5 relating to requirements for minimum number of members, net owned fund etc.** has been inserted stating that the provisions of this Rule shall not be applicable to Companies incorporated on or after Nidhi (Amendment) Rules, 2022.

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F. In **Rule 6 relating to General restrictions or prohibitions**, following amendments have been made:

1) Clause (d) has been substituted as follows:

“acquire or purchase securities of any other company 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”.

2) Clause (l) has been inserted as follows:

“raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi”.

G. In **Rule 8 relating to Membership** a new sub-rule (4) has been inserted as follows:

“A member shall not transfer more than 50% of his shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit, as the case may be.

Provided that the member shall retain the minimum number of shares required under Sub Rule (3) of Rule 7 at all times”.

H. In **Rule 9 relating to Net Owned Funds** following amendments have been made:

1) minimum Net Owned Fund requirement has been increased from RS.10 Lakhs to **Rs. 20 lakhs**.

2) A new proviso has been inserted as follows:

“Provided that every Nidhi company existing as on the date of commencement of the Nidhi (Amendment) Rules, 2022 shall comply with this requirement within a period of 18 months from the date of such commencement”.

I. In **Rule 10 relating to Branches following** amendments have been made:

1) In Sub-rule (3) it is specified that, if a Nidhi proposes to open more than 3 branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director. Such Application shall be made in Form NDH -2 and fees for Form NDH -2 shall be specified in Companies (the Registration Offices and Fees) Rules, 2014.

2) In sub-rules (4) & (5) wordings “or collection centres or offices or deposit centres, or by whatever name called” is omitted.

3) Sub-rule (6) has been substituted as follows:

“(a) A Nidhi shall not close any branch, unless, -

(i) the proposal to close the branch along with the plan as to how the existing deposits have been or shall be paid off and how the existing loan shall be recovered is duly approved by the Board at its meeting; and

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(ii) it has obtained the prior approval of the Regional Director by applying in Form NDH-2 along with fee as specified in the Companies (the Registration Offices and Fees) Rules, 2014 at least 60 days prior to such closure.

Provided that the Regional Director shall consider such application and pass orders within a period of 30 days of receipt of such application.

(b) After obtaining approval from the Regional Director, the Nidhi shall-

(i) publish advertisement, as per format NDH-5, in a newspaper in vernacular language in the place where it carries on business at least 30 days prior to such closure, informing the public about such closure;

(ii) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi as well as the relevant Branch for a period of at least 30 days from the date on which advertisement was published;

(iii) give an intimation to the Registrar within a period of 30 days of such closure in Form NDH-2 along with fee as specified in Companies (the Registration Offices and Fees) Rules, 2014”.

4) A new sub-rule (7) has been inserted as follows:

“Any place, not being a registered office or a branch, where a Nidhi carries on its operation shall be closed within a period of 6 months from the date of commencement of the Nidhi (Amendment) Rules, 2022 and intimation shall be sent to the Registrar in this regard in Form NDH-2.”

J. In **Rule 12 relating to Application Form for Deposit** after the word “gold” the word “silver” has been inserted.

K. In **Rule 15 relating to Loans**, the following proviso has been inserted:
“Provided that in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members”.

L. **Rule 18 relating to Dividend** has been substituted as follows:
“A Nidhi shall not declare dividend exceeding 25% in a financial year”.

M. In **Rule 23A relating to Compliance with Rule 3A by certain Nidhis**, after the first proviso, two new provisos have been inserted.

“Provided further that no company which has not complied with the requirements of this rule, or fails to comply with such requirement on or after the date of commencement of the Nidhi (Amendment) Rules, 2022, or in case the application submitted by the company in Form NDH-4 is or has been rejected by the Central Government, shall raise any deposit from its members or provide any loan to its members under the provisions of these rules from the date of such non-compliance,

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or the date of commencement of the said rules, or the date of rejection of the application in Form NDH-4, whichever is later.

Provided also that any deposit raised by a company after the date of non-compliance, or the date of commencement of the above said Rules, or the date of rejection of the Application in Form NDH-4, whichever is later, as referred to in the second proviso shall be deemed to have been raised in pursuance of Chapter V of the Act, and shall be subject to all the requirements under that Chapter, or under any other provisions of the Act or the rules made thereunder, as the case may be."

- N. In the Annexure, Format of Form NDH-2, NDH-3 and NDH-4 has been amended.
- O. A new Form NDH-5 relating to Format of Advertisement to be given while closing branch has been inserted vide this Notification.

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=LTYzYkMKNKOLX6JwM%252BaPeA%253D%253D&type=open>

5. FAQs on MCA v3 Login

On **April 18, 2022** MCA released revised FAQs and further released updated FAQs on **April 24, 2022** for guiding the stakeholders with regards to login on the MCA V3 portal titled "**MCA21 V3 Login FAQs**"

Links for the aforementioned FAQs are as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=mXANIntMmJpqsqbLbrV%252B7w%253D%253D&type=open>

<https://www.mca.gov.in/bin/dms/getdocument?mds=NK%252FjEVHmcers5tEwOuYvFg%253D%253D&type=open>

6. Companies (Registration of Charges) Amendment Rules, 2022

On **April 27, 2022** MCA vide its Notification No. **G.S.R. (E)** amended Companies (Registration of Charges) Rules, 2014 which shall be effective from April 27, 2022.

A new subrule (5) is inserted which reads as follows:

"Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934 (2 of 1934)."

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As per this Notification, Banking Companies have been exempted from the requirement to file Form CHG-1 for creation/modification of charge for any loans borrowed or advances taken from RBI repayable on demand or on expiry of specified time period pursuant to RBI Act, 1934.

Links for the aforementioned FAQs are as follows:

<https://egazette.nic.in/WriteReadData/2022/235389.pdf>

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