



Registration of Nidhi Companies

This article enumerates the brief transaction procedure involved in the establishment of a Nidhi Company and the laws relating to Nidhi Company in force in India. It shall be noted that the activities described hereunder covers various relevant legislations, regulations and rules, for the time being in force in India and the legal entity has to obtain approval/register itself with Ministry of Corporate Affairs ("MCA").

Preface

In the Indian financial sector, Nidhi Company refers to any mutual benefit society notified by the MCA. They are created mainly for cultivating the habit of thrift and savings amongst its members. The amount of business conducted by Nidhi Companies is not as big as commercial banks or deposit taking Non-Banking Finance Companies. Nidhi Companies are highly localized and mostly single office institutions. They are also referred to as mutual benefit societies, because they accept deposits and give loans to only their own members; and membership is limited to individuals. The principal source of funds is the contribution from its own members. The loans are given to the members at relatively reasonable rates for purposes such as house construction or repairs and are generally secured.

Nidhi Companies

Although Nidhi Companies have been in operation for long years, there was no legal definition for them. The Central Government had constituted a committee in March 2000 called the Shri P. Sabanayagam Committee ("Committee") to look into various aspects of Nidhi Companies. Taking into consideration the manner of functioning of Nidhis and the recommendations of the Committee in its report and also to prevent unscrupulous persons using the word 'Nidhi' in their name without being incorporated by Department of Company Affairs ("DCA") (which now is the Ministry of Corporate Affairs ("MCA")) and yet doing Nidhi business, the Committee suggested the following definition for Nidhi Companies:

"Nidhi is a company formed with the exclusive object of cultivating the habit of thrift, savings and functioning for the mutual benefit of members by receiving deposits only from individuals enrolled as members and by lending only to individuals, also enrolled as members, and which functions as per Notification and Guidelines prescribed by the DCA. The word Nidhi shall not form part of the name of any company, firm or individual engaged in borrowing and lending money without incorporation by DCA and such contravention will attract penal action."

A part of this definition is present in the Companies Act, 2013 at Section 406.

Regulatory Framework

Nidhi Companies are companies registered under Section 620A of the Companies Act, 1956 (Section 406 of the new Companies Act, 2013) (both referred together as the "Act") and is regulated by MCA. Even



though Nidhi Companies are regulated by the provisions of the Act, they are exempted from certain provisions of the Act, as applicable to other companies, due to limiting their operations within their own shareholders/members.

Nidhi Companies are also included in the definition of Non-Banking Financial Companies (“**NBFC**”) under the regulatory ambit of the Reserve Bank of India (“**RBI**”). Non-banking financial entities partially or wholly regulated by the RBI include:

- (i) NBFCs comprising equipment leasing (EL), hire purchase finance (HP), loan (LC), investment (IC) (including primary dealers (PDs)) and residuary non-banking (RNBC) companies;
- (ii) mutual benefit financial company (MBFC), i.e. nidhi company;
- (iii) mutual benefit company (MBC), i.e. potential nidhi company; i.e., A company which is working on the lines of a Nidhi company but has not yet been so declared by the Central Government; has minimum net owned fund (NOF) of Rs.10 lakh, has applied to the RBI for certificate of registration and also to Department of Company Affairs (DCA) for being notified as Nidhi company and has not contravened directions/ regulations of RBI/MCA.
- (iv) miscellaneous non-banking company (MNBC), i.e. chit fund company.

Since Nidhi Companies come under one class of NBFCs, RBI is empowered to issue directions to them in matters relating to their deposit acceptance activities. However, in recognition of the fact that these Nidhi Companies deal with their shareholder-members only, RBI has exempted the notified Nidhi Companies from the core provisions of the RBI Act and other directions applicable to NBFCs. As on date RBI does not have any specified regulatory framework for Nidhi Companies.

From April 2014, a Nidhi company is to be registered under Nidhi Rules 2014 and Companies Act 2013. Nidhi Companies on account of being under the regulatory supervision of MCA enjoy exemption from core provisions of the RBI Act so as to prevent regulatory overlap. In relation to compliances of Nidhi companies, interest rates on fixed and recurring deposits, Nidhi Rules 2014 are applicable w.e.f April 2014.

Incorporation procedure of Nidhi Company

A company is not a Nidhi Company from inception and has to file with MCA to be granted status of a Nidhi Company. The process for incorporation is as follows:-

- (i) Incorporation of a Public Limited Company;
- (ii) Objects of the company mentioned in Memorandum of Association shall cover only those activities permissible for Nidhi Companies as prescribed in DCA's Notification GSR No. 555 (E) dated July 26, 2001 and GSR 308 (E) dated April 30, 2002 (details of are discussed later in this article);
- (iii) Upon incorporation of the company, a proposal for application to MCA to declare the company as a Nidhi Company will have to be filed to which extent a board resolution will need to be passed;



- (iv) Apply to MCA in Form 63 for declaration as Nidhi Company. The other documents that need to be submitted along with Form 63 are as follows:-
- Certificate from a chartered accountant is required if the company has complied with the directions contained in the notifications GSR No. 555 (E) dated July 26, 2001 and GSR 308 (E) and 309 (E) dated April 20, 2002;
 - Certificate from a chartered accountant regarding whether the ratio of loan on immovable property is within the prescribed limit;
 - Copy of resolution of the board of directors in support of the proposal of the company for recognition as a Nidhi Company;
 - Certificate signed by two directors regarding the number of members as on the date of application (membership should not be less than 200 at any time)
 - Certificate from the auditors of the company to the effect that the company has complied with the directions of MCA issued from time to time and has maintained its books of account according to the recognised principles of accounting; and
 - Any other information can be provided as an optional attachment.

Non-Permissible activities for Nidhi Companies

Pursuant to Notifications GSR 555 (E) dated July 26, 2011 and GSR 308 (E) dated April 30, 2002, MCA directed Nidhi Companies to not carry out certain activities such as:-

- (i) Carrying on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of shares or debentures issued by any body corporate except the shares of another Nidhi Company, if specifically permitted by MCA;
- (ii) Opening any new current account with its members;
- (iii) Admitting as member, any body corporate or trust;
- (iv) Issuing any equity share of nominal value less than rupees 10/- except in case of Nidhi Companies incorporated on and after July 26, 2001:
- (v) Levying service charge for issue of shares to members;
- (vi) Making any preferential allotment of shares to any persons or group of persons but shall make only rights issue of shares and the unsubscribed portion can be apportioned by the Board of Directors in terms of the Companies Act, 2013;
 - provided that this restriction shall not apply to allotment of shares up to the face value of Rs.100/- to new deposit holders or borrowers and in respect of qualification shares held by Directors.
- (vii) Acquiring another company by purchase of shares or control of composition of Board of Directors otherwise than through amalgamation or merger under the Act and subject to the regulations applicable to Nidhi Companies in force;

- (viii) Carrying on any business other than the business of borrowing or lending in its own name and allow use of its name by any other body corporate whose main object is to earn profit by borrowing and lending;
- (ix) Entering into any financial dealing with any person other than its members;
- (x) Pledging any type of security lodged with it by its members;
- (xi) Taking further deposits from or lend further money to any body corporate;
- (xii) Entering into any partnership arrangement in its borrowing or lending activities;
- (xiii) Issuing or causing issuance of any advertisement in any form for soliciting deposit. However, Private circulation of the details of fixed deposit schemes among the members shall not be considered to be "advertisement" inviting deposits;
- (xiv) Paying any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans;
- (xv) Issuing prepaid interest warrant; and
- (xvi) Entering into any arrangement for the change of its management without a special resolution passed in its general meeting and approval of MCA.

Required Compliance post grant of Nidhi Company status

Once the company receives status of Nidhi Company and start operating as one, it shall:-

- (i) Ensure that its membership is not reduced to less than two hundred members at any time;
- (ii) Obtain certificate every year from the statutory auditors certifying that it has complied with the directions specified in this notification and has maintained its books of account according to recognised principles of accounting; and
- (iii) Ensure that its Net Owned Fund (excluding the proceeds of preference share capital) is not less than ten lakh rupees or such amount as the Central Government may specify from time to time.

Branches of Nidhi Companies

A Nidhi Company has to satisfy certain criteria as provided by MCA to open branches which are as follows:-

- (i) Nidhi Company may open up to three branches within a revenue district if it has earned a profit for last three continuous years;
- (ii) Nidhi Company may open beyond three branches outside the revenue district subject to above condition and prior permission of MCA; and
- (iii) Nidhi Company can't open branches or collection centres or offices or deposit centres, by whatever name called, outside the state of its Registered Office.

Deposit ceiling, types of accounts and tenure rules



A Nidhi Company may accept deposits not exceeding twenty times its Net Owned Funds ("NOF") as per last audited balance sheet subject to certain NOF to deposit ratio exceptions provided in MCA's Notification GSR 308 (E) dated April 30, 2002.

Net Owned Funds as defined by MCA 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 of the company. A reserve shall be considered as a "free reserve" if it is available for distribution as dividend. Further, the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

Subject to the aforesaid limits, a Nidhi Company can only open the following types of accounts:-

- (i) Fixed Deposit Account: Fixed deposit account can be opened for a minimum period of 12 months and a maximum period of 60 months;
- (ii) Recurring Deposit Account: Recurring deposit account can be opened for a minimum period of 12 months and maximum period of 60 months, provided that in the 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 Company; and
- (iii) Saving Deposit Account: The maximum balance at any given time qualifying for interest shall not exceed INR 20,000/- and the rate of interest shall not be more than 2% above the rate of interest payable on savings bank account by nationalised banks.

ECA's Commitment:

- Complete assistance for making the necessary filings, applications etc. to MCA for incorporation of public limited company and obtaining Nidhi Company status
- Informal discussion with contact personnel within MCA so as to perfect the application before the same is submitted.
- Follow up support at various points in time during and after the pendency of the application so as to ensure that any additional documents/records requested by MCA is submitted in a systematic and timely manner.
- Updating Company on a regular basis as to the status of the pending application.

Disclaimer

Our article is based on the laws of India as on date. The laws and Rules mentioned herein are subject to changes from time to time and any such changes may affect the article. We have no



responsibility to update our note for events and circumstances occurring after the date of this memorandum, unless specifically requested for.

We do not, in giving this article, accept or assume responsibility for any other purpose or to any other person to whom this memorandum is shown or in whose hands it may come unless expressly agreed by us in writing.