

CA Final – Corporate Laws Amendments May 2020

CA Dhruv Daga

AIR 4 (CPT)

AIR 40 (IPCC)

AIR 19 (Final)

Coverage of the video

✓ Companies (Amendment) Act, 2019
(Companies (Amendment) Ordinance, 2018; Companies (Amendment) Ordinance, 2019; Companies (Amendment) Second Ordinance, 2019 – Repealed)

✓ All amendments in Rules

✓ Notifications

✓ Circulars

(From 1st May 2019 to 31st October 2019)



Sec 164(1)

A person shall not be eligible for appointment as a director of a company, if —

- .
- .
- (i) he has not complied with the provisions of sub-section (1) of section 165

Sec 197(7)

~~Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.~~

However, no implications of such omission as Sec 149(9) not omitted.

Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.



Sec 212(8)

If the **Director, Additional Director or Assistant Director** of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

If any **officer not below the rank of Assistant Director** of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Sec 212(9)

The **Director, Additional Director or Assistant Director of Serious Fraud Investigation Office** shall, immediately after arrest of such person under sub-section (8) shall, immediately after arrest of such person under such sub-section], forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

The **officer authorised under sub-section (8)** shall, immediately after arrest of such person under such sub-section, forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.



Sec 212(10)

Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a **Special Court or** Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the **Special Court or** Magistrate's court.

Sec 212(14A)

Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.



Sec 241(2)

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

Provided that the applications under this sub-section, in respect of such company or class of companies , as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with such Bench.

Sec 241(3)

Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.



Sec 241(4)

The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.



Sec 241(5)

Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

Sec 242(4A)

At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Sec 243(1A)

The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

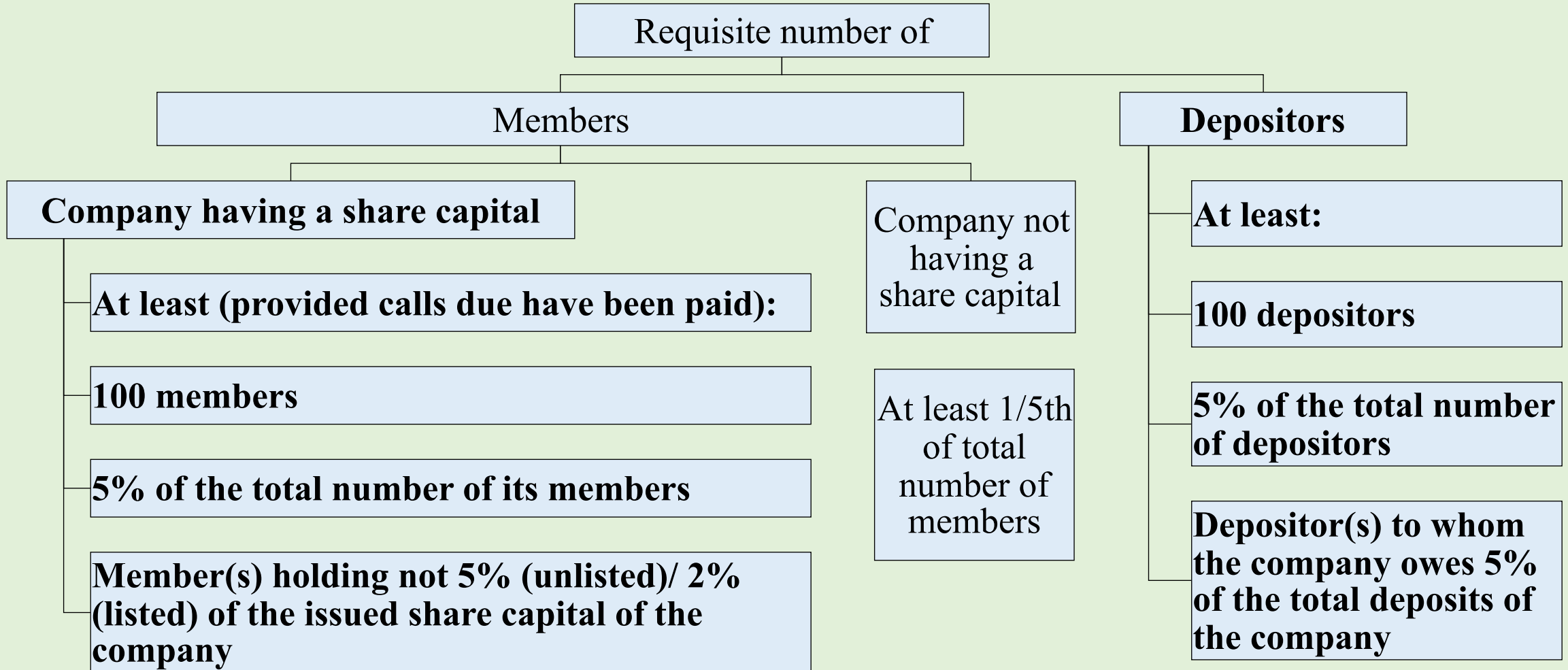
Sec 243(1B)

Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

Sec 243(2)

Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or **sub-section (1A)**, and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Sec 245



Sec 248

(1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation 1 or;

(b) Omitted

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 **or** he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

Sec 272

The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) ~~or clause (e)~~ of that section.



Sec 446B

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be **punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.**

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be **liable to a penalty which shall not be more than one half of the penalty specified in such sections.**

Sec 447

Any person who is found guilty of fraud involving

≥ Rs. 10 lakhs or 1% of turnover,
whichever is lower

Imprisonment – 6 months to 10 years
(+)
Fine – Amount involved in the fraud
to three times the amount involved in
the fraud

Otherwise

Imprisonment upto 5 years
or
Fine upto Rs. **50 lakh**
Or
Both

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Clarification under section 232(6)

Whether it is mandatory to indicate a specific calendar date as ‘appointed date’ in the schemes referred to in the section?

Companies can indicate appointed date either as a specific calendar date or an event based date (such as grant of license by competent authority or fulfilment of any preconditions agreed upon by the parties or meeting any other requirements as agreed upon between the parties etc.).

‘Appointed date’ identified under the scheme shall also be deemed to be ‘acquisition date’ and ‘date of transfer of control’ for purpose of Ind AS 103, Business Combinations.

Clarification under section 232(5)

Section 232(5) states that every company in relation to which the order u/s 232 is made shall cause a certified copy of the order to be filed with the Registrar for registration within 30 days of the receipt of certified copy of the order.

Now if the appointed date is a event based date and such event occurs at a date subsequent to the date of filing the order with the Registrar u/s 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

Rule 11(2) of Companies (Meetings of Board and its Powers) Rules, 2014

For the purposes of clause (a) of subsection (11) of section 186, the expression "**business of financing companies**" shall include, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".

For the purposes of clause (a) of subsection (11) of section 186, the expression "**business of financing industrial enterprises**" shall include, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".

Sec 406(1)

In this section, “Nidhi” means a company which has been incorporated as a Nidhi with 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, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

Sec 406(2)

Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

Sec 406(3)

A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days **which may be comprised in one session or in two or more successive sessions**, and if, **before the expiry of the session immediately following the session or the successive sessions aforesaid**, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.



Sec 406(4) & (5)

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Rule 2 of Nidhi Rules, 2014

These rules shall apply to –

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·

(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act

Rule 3 of Nidhi Rules, 2014

"Nidhi" means a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.

Rule 3A of Nidhi Rules, 2014

Declaration of Nidhis

The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the official Gazette

Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of :-

(a) one year from the date of its incorporation or

(b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:

Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein

Provided also that that in case a company does not comply with the requirements 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).



Rule 4 of Nidhi Rules, 2014

(1) ~~Nidhi to be incorporated under the Act~~ shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.

(5) Every ~~company incorporated as a~~ “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.

Rule 5 of Nidhi Rules, 2014

(1) Every Nidhi shall, within a period of one year from the **date of its incorporation**, 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 14; and
- (d) ratio of Net Owned Funds to deposits of not more than 1:20.

(2) Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.

(3) If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form NDH-2 along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.

Provided that the Regional Director may extend the period upto one year from the date of receipt of application.

Explanation.- For the purpose of this rule “Regional Director” means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1) **and gets itself declared under sub-section (1) of section 406**, besides being liable for penal consequences as provided in the Act.

Rule 7(1) of Nidhi Rules, 2014

Every Nidhi shall issue **fully paid up** equity shares of the nominal value of not less than ten rupees each

Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.

Rule 12(1) of Nidhi Rules, 2014

Every application form for placing a deposit with a Nidhi shall contain the following particulars, namely:-

.

.

(ba) The date of declaration or notification as Nidhi

.

.



Rule 12(2)(a) of Nidhi Rules, 2014

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 Nidhi.

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 **Bench of the National Company law Tribunal** having jurisdiction over *Nidhi*.

Rule 23(2) of Nidhi Rules, 2014

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 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.

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 **Central Government** may appoint a Special Officer to take over the management of Nidhi and such Special Officer shall function as per the guidelines given by **Central Government**.

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



Rule 23A of Nidhi Rules, 2014

Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3,4 within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:

Provided that in case a company does not comply with the requirements 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).



Rule 23B of Nidhi Rules, 2014

Every company referred in clause (a) of rule 2 shall file Form NDH-4 alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:

Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019:

Provided further that, in case a company does not comply with the requirements 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).

Rule 11 of Companies (Appointment and Qualifications of Directors) Rules, 2014

(2) The Central Government or Regional Director (Northern Region), or any officer authorized by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC 3 **or the web service DIR-3-KYC-WEB as the case may be** within stipulated time in accordance with rule 12A:

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC **or the web service DIR-3-KYC-WEB as the case may be** is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.]

Rule 12A of Companies (Appointment and Qualifications of Directors) Rules, 2014

Every individual **who has been allotted** a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before **30th June** of immediate next financial year

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October,2018.

Every individual **who holds** a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC **for the said financial year** to the Central Government on or before **30th September** of immediate next financial year

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October,2018.



Rule 12A of Companies (Appointment and Qualifications of Directors) Rules, 2014

Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Note: For the financial year ending on 31st March 2019, the individual shall submit e-form DIR-3 KYC or web form DIR-3 KYC-WEB, as the case may be, on or before the 14th October, 2019.



Rule 12B of Companies (Appointment and Qualifications of Directors) Rules, 2014

Directors of company required to file e-form ACTIVE

(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as “Director of ACTIVE non-compliant company”.

(2) Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as “Director of ACTIVE compliant company”



Databank of Independent Directors

Company Law Committee



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Penalties

Section	Contravention	Quantum of Penalty
157	Any company fails to furnish DIN to the ROC (within 15 days of receipt of intimation from director)	Company – Rs. 25,000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 1 lakh Every officer of the company who is in default – Not less than Rs. 25,000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 1 lakh



Penalties

Section	Contravention	Quantum of Penalty
159	Any individual or director makes any default in complying with section 152, 155 or 156	Individual or director – Rs. 50,000 and where the default is a continuing one, with a further penalty which may extend to Rs. 500 for each day after the first during which such default continues
165	Person accepts appointment as a director in contravention of permissible limit for maximum directorships	Rs. 5,000 for each day after the first during which such contravention continues
191	Any default in complying with this section (Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares)	Director – Rs. 1,00,000



Penalties

Section	Contravention	Quantum of Penalty
197	Any default in complying with this section (Managerial Remuneration)	Company – Rs. 5,00,000 Any person – Rs. 1,00,000
203	Any default in complying with this section (Key Managerial Personnel)	Company – Rs. 5,00,000 Every director and key managerial personnel of the company who is in default – Rs. 50,000 and where the default is a continuing one, with a further penalty of Rs. 1,000 for each day after the first during which such default continues but not exceeding five lakh rupees.



Penalties

Section	Contravention	Quantum of Penalty
238	Director issues a circular containing offer (u/s 235) and recommendation to the members of the transferor company by its directors to accept such offer without being presented for registration and registered	Director – Rs. 1,00,000



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