

RELEVANT AMENDMENTS FOR NOVEMBER 2022 EXAMINATION

FINAL COURSE

PAPER 4: CORPORATE AND ECONOMIC LAWS

The October 2021 Edition of the Study Material on Final Paper 4: Corporate and Economic Laws [comprising of 3 Modules – Modules 1 – 2 on Part I: Corporate Laws and Module 3 on Part II: Economic Laws] contains amendments made upto 30th April, 2021. Besides, notifications, circulars and other legislative amendments made upto **30th April, 2022** shall also be relevant and applicable for November 2022 examination.

Here is the list of the relevant amendments made during the period of **1st May 2021 to 30th April 2022**:

I. COMPANIES ACT, 2013

1. Ministry of Corporate Affairs Vide **Notification G.S.R. 409(E), dated 15th June, 2021** hereby amend the Companies (Meetings of Board and its Powers) Rules, 2014, through enforcement of **the Companies (Meetings of Board and its Powers) Amendment Rules, 2021**.

According to which, in the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be omitted. This rule 4 dealt with the **“Matters not to be dealt with in a meeting through video conferencing or other audio visual means”**

See Page no. 3.4 of the Study material

2. Ministry of Corporate Affairs Vide **Notification S.O. 3156(E), dated 5th August, 2021**, in exercise of the powers conferred by section 393A of the Companies Act, 2013, **the Central Government hereby exempts, from the provisions of sections 387 to 392 (both inclusive), the following:-**

(a) foreign companies;

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.

See Page no. 9.17 of the Study material

3. Ministry of Corporate Affairs, Vide **Notification G.S.R. 538(E), dated 5th August, 2021**, in exercise of the powers conferred by clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390, read with section 469 of

the Companies Act, 2013, Central Government hereby enforces **the Companies (Registration of Foreign Companies) Amendment Rules, 2021** to amend the Companies (Registration of Foreign Companies) Rules, 2014.

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2, the following explanation shall be inserted, namely:-

“Explanation- For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of clause (42) of section 2 of the Act.”

See Page no. 9.2 of the Study material.

4. Ministry of Corporate Affairs Vide Notification **G.S.R. 579(E), dated 19th August, 2021**, in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013, the Central Government hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, through the enforcement of **the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021**.

Accordingly, in the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4),— (i) in the first proviso, for clause (B), the following clause shall be substituted, namely:—

“(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

(i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

(ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.”.

(iii) after the second proviso, the following proviso shall be inserted, namely:— “Provided also that the following individuals, who are or have been, for at least ten years :—

(A) an advocate of a court; or

(B) in practice as a chartered accountant; or

(C) in practice as a cost accountant; or

(D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.”.

See Page no. 1.45 of the Study material. For Clause (B), above clause shall be replaced with. Further after point (c) to explanation, second proviso is inserted.

5. Nidhi (Amendment) Rules, 2022 - Amendment in Rules 3, 4, 5, 6, 8, 9, 14, 15 and Substitution of Rule 18

Vide Notification G.S.R. 301(E) [F. NO. 5/28/2020-CL-VII], DATED 19-4-2022, in exercise of the powers conferred by sub-section (1) of section 406, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, further to amend the Nidhi Rules, 2014, namely:-

Short title and commencement.

1. (1) These rules may be called the Nidhi (Amendment) Rules, 2022.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Nidhi rules, 2014 (hereinafter referred to as the said rules), in rule 3, in sub-rule (1), after clause (a), the following clause shall be inserted, namely:—

"(aa) 'Branch' means a place other than the registered office of Nidhi",

3. In rule 4 of the said rules, in sub-rule (1), —

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| (a) | for the words "five lakh rupees", the words "ten lakh rupees" shall be substituted; |
| (b) | the following proviso shall be inserted, namely: — |
| | "Provided that every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement". |

4. In rule 5 of the said rules, the following sub-rule shall be inserted, namely: —

"(5) The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022".

5. In rule 6, of the said rules,

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| (i) | for clause (d), the following clause shall be substituted, namely: — |
| | "(d) 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"; |
| (ii) | after clause (k), the following clause shall be inserted, namely : — |
| | "(l) raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi". |

6. In rule 8, of the said rules, after sub-rule (3), the following sub-rule shall be inserted, namely: —

"(4) A member shall not transfer more than fifty percent 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".

7. In the said rules, in rule 9,

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| (a) | for the words "ten lakh", the words "twenty lakh" shall be substituted; |
| (b) | the following proviso shall be inserted, namely: — |
| | "Provided that every Nidhi existing as on the date of commencement of the Nidhi (Amendment) Rules, 2022 shall comply with this requirement within a period of eighteen months from the date of such commencement". |

8. In rule 14, of the said rules, in the proviso, after the words, "approval of the Regional Director", the words **"by making application in Form NDH- 2 along with fee specified in the Companies (the Registration Offices and Fees) Rules, 2014"** shall be inserted.

9. In rule 15, of the said rules, in sub-rule (1), the following proviso shall be inserted, namely:—

"Provided that in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members".

10. For rule 18 of the said rules, the following rule shall be substituted, namely: —

"A Nidhi shall not declare dividend exceeding twenty five per cent in a financial year".

Page no. of the study material: Module 2: 10.19 - 10.28

II. SEBI (LODR) Regulations, 2015

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021 and through the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022.

Through the enforcement of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021,

the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021, and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022, there was further amendments made in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Following are the relevant amendments in the principal regulation made vide the notification of the mentioned amendments regulations:

(A) In regulation 3

- i. the existing provision under regulation 3 shall be numbered as sub-regulation (1).
- ii. under the newly numbered sub-regulation (1), the word “the” appearing after the word “to” and before the word “listed” shall be substituted with the word “a” and the word “who” shall be substituted with the word “which”.
- iii. under the newly numbered sub-regulation (1), under clause (a), the words “Institutional Trading Platform” shall be substituted with the words “Innovators Growth Platform”.
- iv. after the newly numbered sub-regulation (1), a new sub-regulation (2) shall be inserted,
- v. Substituted **clause (b) of** sub-regulation (1), with the following:
[(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;” with the “non-convertible securities]
- vi. Inserted the following **Sub-regulation (3)**:
[(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.]

Amended Regulation 3

- [3.(1)** Unless otherwise provided, these regulations shall apply to a listed entity **which** has listed any of the following designated securities on recognised stock exchange(s):
- (a) specified securities listed on main board or SME Exchange or Innovators Growth Platform;
 - (b) non-convertible securities;
 - (c) Indian depository receipts;
 - (d) securitised debt instruments;
 - (da) security receipts

- (e) units issued by mutual funds;
- (f) any other securities as may be specified by the Board.

(2) The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds.

(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15]

See Page no. 2.51 –Module 2 of the Study material. Replace Para under heading “Applicability” with this amended Regulation.

(B) In regulation 6

In regulation 6, in the heading, the symbol and word “/her” shall be inserted after the word “his”.

Amended Regulation heading

[Compliance Officer and *his /her* Obligations]

See Page no. 2.57 –Module 2 of the Study material. Heading of Regulation 6.

(C) In regulation 17A

The paragraph after clause (2) shall be converted as “Explanation” and the word “sub-regulation” in the paragraph shall be substituted with the word “regulation”.

Amended Regulation

[Explanation: For the purpose of this **regulation**, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.]

See Page no. 2.53 –Module 2 of the Study material.

(D) In regulation 18(1)(b) and 18(1)(d)

In regulation 18, in sub-regulation (1), in clause (b), the word “At least” is inserted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. **1-1-2022**.

Amended Regulation

[At least two-thirds of the members of audit committee shall be independent directors]

In regulation 18, in sub-regulation (1), in clause (d), the symbol and word “/she” shall be inserted after the word “he”.

Amended Regulation

[(d) The chairperson of the audit committee shall be an independent director and he/she shall be present at Annual general meeting to answer shareholder queries.]

See Page no.2.62-point A-sub-point (b) and on 2.63 –sub-point (d) –Module 2 of the Study material.

(E) In regulation 19(1)

In the sub-regulation (1) word "fifty percent" is substituted with "two-thirds" by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. **1-1-2022**.

Amended Regulation

[At least **two-thirds** of the directors shall be independent directors]

See Page no. 2.64 –point B –Module 2 of the Study material.

(F) In regulation 21

i. The existing sub-regulation (2) shall be substituted with the following -

[The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.]

ii. In sub-regulation (3A), the word "once" shall be substituted with the following word **[twice]**

(iii) after sub-regulation (3A) and before sub-regulation (4), the following new sub-regulations (3B) and (3C) shall be inserted –

[(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.]

(iv) after sub-regulation (4), the following new proviso shall be inserted--

[Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.]

(v) in sub-regulation (5), the number "500" shall be substituted with **["1000"]**

vi. after sub-regulation (5), the following new sub-regulation (6) shall be inserted.

Amended regulation

Risk Management Committee.

21.(1) The board of directors shall constitute a Risk Management Committee.

(2) The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.

(3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

(3A) The risk management committee shall meet at least [**twice**] in a year.

(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.

(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security:

Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.

(5) The provisions of this regulation shall be applicable to:

- i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,
- ii. a 'high value debt listed entity'.

(6) The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

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| See Page no. 2.65 –Module 2 of the Study material. |
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(G) Regulation 24(5)

In regulation 24, in sub-regulation (5), the words "or equal to" shall be inserted after the words "less than" and before the words "fifty percent".

Amended Regulation

[(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than **[or equal to]** fifty per cent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved]

See Page no. 2.54 –Module 2 of the Study material.

(H) Regulation 26

- (i) in **sub-regulation (1)**, the symbol and word “/she” shall be inserted after the word “he”.
- (ii) In **Sub-regulation (1)(a)**, the word “**high value debt listed entities**” has been added after the word “foreign companies”.

Amended Regulation

26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which **he /she** is a director which shall be determined as follows:

- (a) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies **['high value debt listed entities']** and companies under Section 8 of the Companies Act, 2013 shall be excluded;

See Page no. 2.53 –Module 2 of the Study material.

(I) Regulation 27(2)

Substituted for word “**fifteen**” and inserted the word “**the end of each**” before the quarter.

- (2) (a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within **[twenty one]** days from **[the end of each]** the quarter.

See Page no. 2.57 –Module 2 of the Study material.

(J) Regulation 29(1)(f)

Words “where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers.” is omitted.

See Page no. 2.65- bullet point 5- –Module 2 of the Study material.

(k) In Schedule V,

(i) In Paragraph C, clause (5), shall be substituted with the following, namely, -

“(5) Stakeholders’ relationship committee

- (a) name of the non-executive director heading the committee;
- (b) name and designation of the compliance officer;
- (c) number of shareholders’ complaints received during the financial year;
- (d) number of complaints not solved to the satisfaction of shareholders;
- (e) number of pending complaints.”

ii. In Paragraph C, after clause (5) a new clause shall be inserted, namely, -

“(5A) Risk management committee:

- (a) brief description of terms of reference;
- (b) composition, name of members and chairperson;
- (c) meetings and attendance during the year;”

See Page no. 2.55 –point 5 -Module 2 of the Study material.

III. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

(1) The Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Reserve Bank of India, Vide Notification No. FEMA 23(R)/(5)/2021-RB, Dated September 08, 2021 through the enforcement of the **Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021** the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations') has been amended:

In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

(“ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and”.

See Page no. 1.58 of the Study material.

(2) External Commercial Borrowings (ECB's) - Changes Due to Libor Transition

Vide A.P. (Dir Series 2021-22) Circular No. 19, Dated 8-12-2021, the following changes have been made in the Master Direction No. 5 dated March 26, 2019, on "External Commercial

Borrowings, Trade Credits and Structured Obligations", prescribing the benchmark rates and the maximum spread over benchmark for calculating the all-in-cost for foreign currency (FCY) ECBs and TCs.

"In view of the imminent discontinuance of LIBOR as a benchmark rate, the following changes to the all-in-cost benchmark and ceiling for FCY ECBs:

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| i. | Redefining Benchmark Rate for FCY ECBs: Currently, the benchmark rate is defined in paragraph 1.5 of the master direction as "benchmark rate in case of FCY ECB/TC refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, e.g., EURIBOR". Henceforth, benchmark rate in case of FCY ECB/TC shall refer to any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing. |
| ii. | Change in all-in-cost ceiling for new ECBs/TCs: To take into account differences in credit risk and term premia between LIBOR and the ARRs, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates. |
| iii. | One Time Adjustment in all-in-cost ceiling for existing ECBs/TCs: To enable smooth transition of existing ECBs/TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks. |

See Page no. 1.34 –point vi and the footnote-Module 3 of the Study material.

IV. The Insolvency and Bankruptcy Code, 2016

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 - Substitution of Regulations 18

Vide NOTIFICATION F. NO. IBBI/2021-22/GN/REG/080, DATED 9-2-2022, the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by enforcement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 w.e.f. 9-2-2022.

Prior to its substitution Rule 18, read as under:

"18. *Meetings of the committee.* A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to

that effect is made by members of the committee representing thirty three per cent of the voting rights."

Said regulation shall be substituted with the following:

"18. Meetings of the committee.

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| (1) | A resolution professional may convene a meeting of the committee as and when he considers necessary. |
| (2) | A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights. |
| (3) | A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights." |

See Page no. 6.48 -Module 3 of the Study material.