REGULATION OF COMPANIES ON THE BASIS OF THEIR CORPORATE STRUCTURE AND SIZE AND THEIR IMPLICATIONS IN PAKISTAN

To 2016

By

Muhammad Shahid Gul

194-FSL/LLM (CL)/08

Supervised by

Misbah ul Mustafa

A Thesis submitted in partial fulfillment of the requirements for the Degree of

Master of Laws,

Faculty of Shariah and Law,

International Islamic University,

Islamabad.

INTERNATIONAL ISLAMIC UNIVERSITY

ISLAMABAD

FACULTY OF SHARIAH AND LAW

It is certified that I have read the thesis submitted by Muhammad Shahid Gul entitled *Regulation of Companies on the Basis of Their Corporate Structure and Size and Their Implications in Pakistan* as a partial fulfillment for the award of degree of LLM (Corporate Law). We have evaluated the thesis and found it up to the requirement in its scope and quality for the award of the degree.

Supervisor: _____

Misbah ul Mustafa (Visiting Faculty Member)

Internal Examiner: _____

Atta Ullah Khan (Assistant Professor)

External Examiner: _____

Yousaf Amanat (Visiting Faculty Member)

TABLE OF CONTENTS

CHAPTER 3

CHAPTER 4

CHAPTER 5

Dedication

Dedicated to my late mother

Acknowledgements

I wish to express my sincere thanks and appreciation to my honorable supervisor, Mr. Misbah ul Mustafa, Advocate High Court and Visiting Faculty Member International Islamic University, for his continuous guidance and invaluable support throughout the research and writing of this thesis.

I say special thanks to my revered teachers Prof. Imran A. Nyazee for his untiring efforts and kind consideration and respected Dr. Tariq Hassan for his valuable recommendations which enabled me to accomplish this task.

I am grateful to Mr. Muhammad Sohaib and Mr. Yousaf Amanat for their generous and timely assistance when I needed the most. I also pay my thanks to Dr. Muhammad Munir and Mr. Zubair Abbasi for their support and encouragement in various aspects.

I wish to express my gratitude to Hasnain Ashraf, Khurram Shahzad, Waseem Iqbal, and especially to Mohib Liaqat Goraya for their support and friendship which led me to unforgettable experience and joyful moments. In spite of comments and recommendations of the individuals mentioned above, I take all the responsibility for any errors, omissions or imperfections of this work.

Preface

The United Kingdom is one of the countries where company law has originated and developed the legislation for small and private companies, thus, became model for other countries. Before the introduction of company law reforms, the company laws of the UK were almost designed with a view to large companies with numerous public investors. Presently, 90% of the UK limited companies are Small Private Companies (SPCs) playing an important role in the economy. As the company laws were enacted with large public companies in mind, the SPCs were given exemptions therefrom. The 'one-size-fits-all' approach[1] prevailed which was not practicable. Its negative impact was the avoidance by the investors to form private companies instead they preferred in making partnerships or sole proprietorships.

The developing countries like Pakistan and India while adopting the legislations of developed countries like the UK ignored the very fact that small and medium companies are bone marrow of their economy. As the UK and India had to change the law relating to SPCs, thus, there is a need to introduce the models of these countries in the Pakistani company legislation, that is, the CO, 1984.

The CO, 1984 of Pakistan needs to be revised as it does not differentiate among companies on the basis of size,[2] that is, small, medium and large companies as proposed in the Companies Act (CA), 2006 of the UK, so as to ease the burden of small companies, which are facing the sketchy and cumbersome procedures in the wake of unified mechanism given in the CO, 1984 for regulating both the public and private companies.

Before the CA, 2006 of the UK and the proposed CA, 2008[3] of India, the public companies have been given preference over the private companies as apparent in the previous legislations of the UK and India. In other words, large companies with their

---

[1] See *infra* 1.3.5.

[2] See Securities and Exchange Commission of Pakistan, '*Concept Paper for the Development and Regulation of the Corporate Sector,*' (2006), para 4.4.

[3] See *infra* 3.9.

substantial and procedural laws have been considered while small companies being ignored have been loaded with the same pace as public ones without gauging the needs and requirements thereof.

Small companies, which have been facing hardships by dint of stringent regulations and complicated and lengthy procedures,[4] are still under this burden and to ease the same we need to examine SPCs to address their structural and regulatory problems[5] in effective manner otherwise small investors will be reluctant to form companies and this will affect the growing economy. It is better to facilitate the small companies rather than the large ones, for the advantages of the former are more than the latter.

The given unified mechanism, before the company law reforms, to regulate both the public and private companies in the UK and India was reviewed and considered to pay serious attention to small companies not merely because of their majority but also for their contribution in making economy, generating jobs, encouraging the small investors and flourishing the business environment. Therefore, the slogan "Think Small First"[6] in the UK was raised to give effect to this task with an efficient manner.

My research work emphasizes the need to carry out a thorough examination of the CO, 1984 so as to examine the relevance of its objectives in the current economic environment, the adequacy of its provisions, its capacity to allow for the balanced growth of corporate enterprises, particularly SMEs, and the extent of its harmonization with international best practices[7] as proposed in the 'Concept Paper' issued by Securities and Exchange Commission of Pakistan (SECP) in 2006 not only for the achievement of its avowed objectives, but for the creation and maintenance of a liberal, deregulated and efficient corporate sector.

---

[4] See *infra* 1.2.6 and 1.2.9.
[5] See *infra* 1.2.3.
[6] See *infra* 1.3.2, 2.3.2.2 and 2.4.
[7] See *infra* Chapter 4, note 174.

For analysing "Regulation of Companies on the basis of their Corporate Structure and Size and their Implications in Pakistan", this thesis has been divided into five chapters: Chapter 1 gives the brief introduction, addresses the problems of SPCs and discusses the need for the small private company law reforms in modern legislation.

Chapter 2 concerns the developed country's perspective, that is, historical background of the UK company law reforms as to SPCs, addresses the problems of small businesses and deals with the changes made for SPCs in the consequence of CLR.

Chapter 3 addresses the developing country's perspective, that is, historical background of Indian company law reforms as to SPCs, discusses the problems of small businesses and sets out the changes made for SPCs in the consequence of CLR.

Chapter 4 concerns Pakistani legislation where the given reforms are being proposed, sets out the existing laws relating private companies, deals with problems which are being faced by the SPCs and addresses the advantages of the proposed reforms.

Chapter 5 sets out the valuable conclusion and recommendations with the emphasis that the new model pertaining to SPCs as introduced in the UK and India should be introduced in the Pakistani legislation, namely, the CO, 1984.

Glossary of Abbreviations

ADR	Alternative Dispute Resolution
AGM(s)	Annual General Meetings
ASB	Accounting Standards Board
BOD(s)	Board of Directors
CA	Companies Act
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CH	Companies House
CJ	Chief Justice
CLA	Corporate Law Authority
CLD	Company Law Directive
CLR	Company Law Review
CLRC	Corporate Laws Review Commission
CLRSG	Company Law Review Steering Group
CPC	Civil Procedure Code
CS	Company Secretary
DCA	Department of Company Affairs
DEA	Department of Economic Affairs
DIN	Director Identification Number
DTI	Department of Trade and Industry
EC	European Community
ED	European Directives
EGM(s)	Extraordinary General Meetings
FBR	Federal Board of Revenue
FDI	Foreign Direct Investment
FRRP	Financial Reporting Review Panel
FRSSE	Financial Reporting Standards for Small Entities
GB	Great Britain
GDP	Gross Domestic Product
GNP	Gross National Product
HC	High Court
IA	Insolvency Act
IAS	International Accounting Standards
IEPF	Investor Education and Protection Fund
IPR	Independent Professional Review
IT	Information Technology
KMP	Key Managerial Personnel
LA	Legal Advisor
LC	Law Commission
LLC	Limited Liability Company
LLP	Limited Liability Partnership

MCA	Ministry of Company Affairs
NCLT	National Company Law Tribunal
NZ	New Zealand
OECD	Organization for Economic and Cooperation Development
OFR	Operating and Financial Review
OPC	One-Person Company
PLCs	Private Limited Companies
RIA	Regulatory Impact Assessment
RIF	Rehabilitation and Insolvency Fund
RoC	Registrar of Companies
RRF	Rehabilitation and Revival Fund
SACC	South African Close Corporation
SBP	State Bank of Pakistan
SC	Supreme Court
SCAs	Small Company Accounts
SECP	Securities and Exchange Commission of Pakistan
SMC	Single Member Companies
SMEs	Small and Medium-sized Enterprises
SMEDA	Small and Medium Enterprises Development Authority
SMPLLCs	Single Member Private Limited Liability Companies
SPCs	Small Private Companies
The CO, 1984	The Companies Ordinance, 1984
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
VAT	Value Added Tax

Abstract

The concept of "Regulation of Companies on the basis of their Corporate Structure and Size and their Implications in Pakistan" is need of the hour as the Companies Ordinance, 1984 (the CO, 1984) of Pakistan does not differentiate among companies on the basis of corporate structure [size] which results in cumbersome and sketchy regulation for the corporate enterprises particularly Small and Medium-sized Enterprises (SMEs).

The United Kingdom is one of the pioneers which marked distinction in the legislation regarding private companies and the public companies in excellent fashion and presented its legislation as model for rest of the jurisdictions. India has also taken effective steps towards this significant matter while considering its needs in the present time and also for the times to come. It is high time for Pakistan to bring radical changes, that is, the CO, 1984, needs to be revised so as to ease the burden of SPCs, which are facing the burdensome procedures in the wake of unified mechanism given in the CO, 1984 for regulating both the public and private companies.

Serious attention must be paid to small companies not merely because of their majority but also for their contribution in making economy, generating jobs, encouraging the small investors and flourishing the business environment. There is, therefore, a need to carry out a thorough examination of the CO, 1984 so as to assay the relevance of its objectives in the current economic environment, the adequacy of its provisions, its capacity to allow for the balanced growth of corporate enterprises particularly SMEs, and the extent of its harmonization with international best practices not only for the achievement of its avowed objectives, but for the creation and maintenance of a liberal, deregulated and efficient corporate sector.

CHAPTER 1

Introduction

1.1 Introduction

A fair, modern and effective framework for the company law is critical to a country's economic performance.[8] Modernisation of company law is the way to facilitate the enterprises to meet the requirements of current business and increase the attractiveness of a country as a location in which investor friendly environment is provided to the business entities.[9] Business operates within a legal and regulatory framework which advances enterprise, growth, investment and employment.[10] The businesses that are the most successful are those that create long-term value – whose founders and directors are most admired – and not those that merely pursue short-term profit. Instead, they are passionate about the quality of what they produce; honest and fair in their dealings with consumers, employees and suppliers; and careful for their reputation.[11]

The scheme of company law and corporate governance, while dealing with the rules for company boards and shareholders and for the exercise of decisions on business growth and investment, sets out the basis of formation, operation and management which guide the investors to participate in business and give legal structure whereby companies are run.[12]

Over the time, company law can become outdated if it is not improved with the changing circumstances and needs of business – in particular the needs of SPCs as they are playing

---

[8] Saleem Sheikh, *A Guide to the Companies Act 2006* (United Kingdom: Routledge-Cavendish Publishing, 2008), ix; Foreword by the Rt Hon Patricia Hewitt, White Paper, 2005, p 3.

[9] See *infra* Chapter 2, note 97, paras 1.12-1.14.

[10] See Company Law Reform Bill, '*Regulatory Impact Assessment* (RIA),' (November 2005)

[11] See *supra* note 8.

[12] See *supra* note 10.

their substantial role in most of the economies – can make hurdles in ways wherein companies operate in an evolving business environment.[13]

Generally, a reform program is established to address the business needs and legal framework so as to overhaul the thorough and authoritative assessment of changes need to be made; to curb the unwelcome effects of unnecessary or inadequately drafted regulation which imposes cost; to explore every opportunity for bringing the law more into line with today's business needs especially the needs of small companies.[14] These problems impede business start-up, development and growth and ultimately undermine national economic performance through which all the individuals and businesses suffer.[15] A thorough analysis of the law is needed to make it more suitable for the needs of small businesses.[16] Giving better regulation for businesses must be the first and foremost priority of the government.[17]

The aim of the Company Law Review (CLR) programme is to enable everyone to maximise wealth and welfare by way of proper functions in managing resources and to provide creative and productive activity in the economy in the most competitive and efficient[18] way while giving optimal conditions for their exercise. The principal objective of reform is to achieve competitiveness and efficient creation of the wealth and other benefits for all participants in the enterprise. The aim is also to minimise the negative impacts of corporate activity on participants and to maximise their welfare.[19]

---

[13] See The Company Law Reform Bill [HL] Bill 190 2005–2006, Research Paper 06/30, 2 June 2006, Timothy Edmonds.

[14] Department of Trade and Industry, White Paper, *Company Law Reform* (March 2005) (Cmnd 6456)

[15] Better Regulation Executive, '*A Bill for Better Regulation: Consultation Document,*' (London, Cabinet Office, 2005).

[16] Company Law Reforms, '*Small Business Summary,*' (London, DTI, 2005)

[17] HM Treasury, Budget 2006: '*A Strong and Strengthening Economy: Investing in Britain's Future,*' (London, HM Treasury, 2006).

[18] The term 'efficient' referred to maximum output and contribution to prosperity at minimum cost, rather than simple efficiency in the popular sense.

[19] It is usually emphasised that a competitive economy would rely as little as possible on costly and inflexible legal mechanisms. The most efficient law would often derive from well tried best practice or provide the best conditions for its development.

Moreover, the aim of law is to provide facility and ensure freedom for management and controllers of companies. Companies are freed to protect them from abuse.[20] High standards of conduct being important components in promoting competitiveness and efficiency are maintained in order to fulfill the needs of shareholders and others and to respond to wider economic, environmental and social needs.[21]

The share of SPCs in the economy of Organization for Economic and Cooperation Development (OECD) countries is around 96% to 99%. In the United Kingdom (UK) 90% of the companies are SPCs. SMEs account for between 55 per cent and 80 per cent of total employment in Western Europe, Japan and USA. Their contribution in output in Japan is 65 per cent, in Germany 48 per cent and in USA 45 per cent. SMEs have played a very important role in the economic development of China. Presently, there are more than 10 million of SMEs comprising 99 per cent of the total number of enterprises in China. They are the major players in creating jobs in such country.[22] SMEs are capable of creating almost one billion new jobs that the world will need in the times to come.[23]

In developed countries, SMEs have constituted a significant portion of Gross National Product (GNP) and total employment. The successful experience of SMEs in Bangladesh demonstrates their significance. Different financial assistance programs have been carried

---

[20] There had to be a trade-off between freedom and abuse, and between freedom and efficiency. Abuse would damage the efficiency and the credibility of business and of the productive system.

[21] However, there are counter arguments to the pluralist view. First, it may be argued that in practice a broad enlightened shareholder value approach would provide an adequate environment for the development of such relationships. It is not clear that the trade-offs of shareholders' interests against those of other participants that the pluralist approach envisages would be necessary in practice. Second, it is not self-evident that the normal process of bargaining between suppliers and consumers of factors of production is incapable of generating appropriate safeguards or incentives for all sides. If there are problems because parties lack the information necessary for efficient bargaining it should be possible for institutional arrangements to overcome these within the framework of company law. Third, it may be argued that if there are deficiencies in this area they are best made good by changes in other areas of the law and public policy, or in best practice, rather than by making changes in company law, which might have unpredictable and damaging effects. Fourth, that to change the present focus of directors on increasing the value of business over time, subject to clear single-channel accountability to members, in favour of some broader objective involving the trade-off of interests of members and others, would dangerously distract management into a political balancing style at the expense of economic growth and international competitiveness.

[22] 'The role of Small and Medium Enterprises, Industry and Economy,' *Pakistani's Business Magazine* (23-29th October, 2000)

[23] Ibid.

out by the Bangladesh Government with a view to extending finance to small businesses at comparatively favourable conditions. SMEs form backbone of the Indian manufacturing sector and have become engine of economic growth in India. It is estimated that SMEs account for almost 90% of industrial units in India and 40% of value addition in the manufacturing sector.[24] Approximately, SMEs constitute nearly 90% of all the enterprises in Pakistan; employ 80% of the non-agricultural labor force; and their share in the annual Gross Domestic Product (GDP) is 40%.[25]

1.2 Problems of Small and Private Companies

The problems of Small Private Companies (SPCs)[26] are identified as follows:

1.2.1 'Think Large Companies First' Approach

The company legislation is being carried on the basis of 'think large companies first' approach while the needs of private companies and small businesses are being ignored.

1.2.2 Product of Administrative Burdens

Legislation results in administrative burdens for private companies with provisions as exemptions to the provisions of public companies particularly in the areas of share capital, financial assistance and company meetings.[27] Moreover, small companies are loaded with unnecessary burdens due to inefficiencies and failings in company law which have the significant impact on the economy as a whole, therefore, the law should be clearer, more certain and more accessible and be able to strip out such provisions apply to small companies.[28]

---

[24] KD Raju, '*Small and Medium Enterprises (SMEs): Past, Present and Future in India,*' (n.l: n.p., n.d.)

[25] See '*State of SMEs in Pakistan,*' at http://www.smeda.org.pk/html. (accessed November 8, 2009).

[26] The abbreviation 'SPCs' is usually used for small private companies in India, therefore, here the abbreviation is being used.

[27] See Saleem Sheikh, *supra* note 8, ix.

[28] Department of Trade and Industry, '*Modernising Company Law,*' (July 2002) (Cm 5553–1)

1.2.3 Regulatory Problems

There have been arguments that small businesses suffer from disproportionate regulation.[29] A research was conducted to collect the evidence founded on regulation and small business performance. The regulatory requirements were almost the same for the SPCs as for public companies. Therefore, they proved to be onerous and failed to serve the purposes and requirements of SPCs. Such regulatory requirements demand for the law which should be accessible to those managing and advising small companies and relevant to their requirements.[30]

1.2.4 Observation of John Kitching

John kitching identifies in his account, 'Is Less More? Better Regulation and the Small Enterprise' the following types being the impediments in the performance of SPCs need serious attention[31]:

- Business burden studies;
- Compliance cost studies;
- Business decision-making and competitiveness studies.[32]

---

[29] I Fletcher, '*A Small Business Perspective on Regulation in the UK*,' (2001) 21 Economic Affairs 17

[30] Ibid., 47; See also *Infra* note 68.

[31] John Kitching, *'Is Less More? Better Regulation and the Small Enterprise,'* in the book, '*Better Regulation*' edited by Stephen Weatherill (USA: Hart Publishing, 2007) 157.

[32] For a more detailed discussion of the evidence base see J Kitching, *'A Burden on Business? Reviewing the Evidence Base on Regulation and Small Business Performance,'* (2006) 24 Environment and Planning C: Government and Policy 799.

1.2.5 Scheme of Law

The scheme of law failed to recognise the changing environment where business could generate wealth and where participants could operate harmoniously as team with a view to wider interests of the community in their activities.[33]

1.2.6 Imbalance Legislation Between Public and Private Companies

Small companies have been suffering in terms of regulations for they are made to ensure balance of interest of stakeholders of large companies which have the negative effect on the small investors keeping them away from making private companies.[34]

1.2.7 Over-Formal Language

One of the reasons is the over-formal language. Moreover, excessive detail in the legislation worsens the situation.[35]

1.2.8 Complicated and Costly Legal Advice and Court Procedures

The problem is acute for small companies without ready access to legal advice as well as issue of complicated and costly court procedures, which also contribute to problems and costs for small businesses.[36] One of the problems for the private companies is substantial costs in terms of time management and professional fees.[37]

---

[33] Department of Trade and Industry, '*Modern Company Law for a Competitive Economy: The Strategic framework*,' A consultation document from the Company Law Review Steering Group. (February 1999)
[34] See the Irani Report, 2005, paras 4.1-4.
[35] Board of Trade, '*Modern Company Law for a Competitive Economy*,' (1998)
[36] Jonathan Rickford, *A Practitioner's Guide to the Company Law Review*, (n.l: n.p., n.d.), p 1.
[37] See *supra* note 13.

1.2.9 Over-Regulation

There is a case for reform of the over-regulation—difficulties emerge from the overall approach of the legislation.[38]

1.2.10 Inaccessible Legislation for Small Companies

The companies' legislation is obscure and inaccessible for small business users for originally the provisions have not been designed for them rather they have been drafted after taking into account the needs of large public companies and then have been applied to private companies to fulfill their needs.

1.2.11 Obsolescent and Ineffective Law

Some of the relevant provisions with regard to private companies are hard to find and understand and expensive to administer.[39] In other words, these provisions are obsolescent, ineffective and useless for private companies.[40]

1.2.12 Complex and Outdated Regulation

There have been numerous additions, amendments and consolidations,[41] but they have created a mixture of regulation that is immensely complicated and seriously outdated.[42]

---

[38] See *supra* note 14.
[39] See Saleem Sheikh, *supra* note 8, 31.
[40] See *supra* note 36.
[41] See, for example, the *Wrenbury Committee*; the *Loreburn Committee*; the *Greene Committee*; the *Cohen Committee* and the *Jenkins Committee*.
[42] *Strategic Framework*, chp 5.2; *Developing the Framework* chp 6; *Competing the Structure*, chp 2.

1.2.13 Inflexible Law for Private Companies

The companies' legislation is not up to the mark having problems rather than facilitating modern practices and makes obstacles to run the companies smoothly and to progress in competitive manner and risks impending efficiency and limits the scope of private companies.

Compounding the problems, small businesses have become increasingly important components of the economy, while the regulations remain entrenched in the public company.[43]

1.3 Need for the Small Private Company Law Reforms in Modern Legislation

The company laws have been drafted for large companies in mind and legislation, while operating, has granted exemptions to SPCs to the provisions applicable to public companies. However, both the public and private companies have been defined in a different way to each other. Numbers of SPCs have been increased gradually and have needed the full-fledged legislation by virtue of having different needs. In this regard, the companies' legislation is burdensome creating unnecessary sketchy regulation and obstacles for SPCs. Consequently, these companies have to suffer costs and expenses unjustifiable at all. The law recognises SPC as an exception but not a rule. Nevertheless, there is dire need to take initiative for the revamp of existing laws pertaining to SPCs enabling them to run smoothly while removing unnecessary burdens and giving proper guidance readily on what they need to know about the law.[44]

---

[43] See *supra* note 33.

[44] See *supra* note 14. It was one of the four objectives of the white paper mentioned therein.

1.3.1 Developing Better Regulation

Though the exemptions and guidelines for small businesses while playing a part in policy are presumed to have reduced administrative burdens and simplified the regulatory context for all businesses, however, it is contrary to the reality. 'Developing better regulation' should be a key policy objective for the government for the SPCs as they have been one of the major intended beneficiaries of this policy agenda. This policy will encourage small investors to adopt practices and products as a result of regulation in ways that contribute to improved performance outcomes and, by extension, to national economic performance. This should be the central issue for policy-makers.[45]

1.3.2 'Ensuring Better Regulation' and 'Think Small First' Approaches

With the objectives of 'Ensuring Better Regulation' and 'Think Small First' approaches, the traditional company law, which was written for public companies in mind rather than SPCs and as mentioned earlier that the provisions were added in the legislation for private companies as exemptions to the provisions applying to public companies[46], needs to be changed considering the needs of SPCs, resetting the balance and making the law easier to understand and follow. It should be presented in an accessible and efficient manner with the emphasis on greater simplicity and clarity of language. Such areas should be complemented by clear and comprehensive guidance.[47]

1.3.3 Changing Patterns of Ownership

One of the important aspects is that the companies' legislation should pay heed to changing patterns of ownership of companies especially, small owner-managed

---

[45] Stephen Weatherill, *Better Regulation* (USA: Hart Publishing, 2007), 172-173; See also *supra* note 31.

[46] For example, CA, 1985, Part 7 on accounts and audit which is difficult to follow as well as provisions on meetings and resolutions applying largely to public companies.

[47] See *supra* note 14.

companies having limited liability so that it could deal with their needs.[48] Although the companies' legislation has many strengths and benefits, it should measure up well against the modern company law objectives, however.[49]

1.3.4 Needs for Small and Closely-Held Companies

There is a need through CLR to provide for the needs of small and closely-held companies and a company can be considered as 'small' either by dint of its economic importance or by reason of the small number of its shareholders as they are involved in the company's management.[50] Such companies are described as 'closely-held' or 'close companies'. Henry Hansmann and Reinier Kraakman define the term 'closely held' as those corporations whose shares—unlike those of 'publicly held' corporations—do not trade freely in impersonal markets, either because the shares are held by a small number of persons or because they are subject to restrictions that limit their transferability.[51]

In order to cater for the needs of private companies,[52]single member companies (SMC), companies of small economic size and companies wishing to operate through written procedures between members, rather than meetings, or by dispensing with some key formalities, many additions and adaptations through amendments are required in the company law so as to help SPCs wishing to opt out of normal governance requirements, written resolution and elective regime that are needed to apply to private companies. However, these procedures and regimes are little utilised in practice.[53]

---

[48] See Saleem, *supra* note 8, 37.

[49] See *supra* note 8, 36.

[50] See *supra* note 33; See also *supra* note 8, 46-47.

[51] See Henry Hansmann and Reinier Kraakman, *The Anatomy of Corporate Law* (New York: Oxford University Press, 2004), 2.

[52] These were defined for the first time by the CA, 1907, s 37. The 1907 Act exempted private companies from various provisions including those on prospectuses and the filing of accounts and directors' reports.

[53] See *supra* note 8, 47.

Similarly it is desirable to furnish the most competitive legal form possible for the typical small commercial businesses seeking limited liability and transferability of shares.[54]

1.3.5 'One-Size-Fits-All' Approach

The special exemptions and deregulations are provided to private companies in the presence of company law based on the needs of large company having a wide shareholding and applied to all companies with 'one-size-fits-all' approach whether large or small, public or private. Radical restructuring of the legislation is essentially needed.[55]

All these companies are subject to the same broad framework of company law. However, some of the provisions vary in accordance with the type and size of company, but the same basic principles are applied to all companies, even though some of the principles may have been inapplicable for small companies. The philosophy behind the legislation is that one size fits all companies.[56]

In order to adapt to the core of company law to fit the smallest companies which are mostly private companies and to tailor easily to development and changing technology, the company law should not only be flexible and responsive but also a clear distinction should be made between public and private companies.[57]

---

[54] In this regard, two types of approaches were considered in developing models for small companies, to wit, the 'free-standing' approach and integrated approached. The 'free standing' approach involved creating a separate, free-standing, limited liability vehicle for small companies, probably involving separate legislation. The 'integrated approach' would be within the single CA regime, with such regime adopted in New Zealand (NZ). The Group, however, favoured the integrated approach, which would involve both changes in form and substance to the existing legislation.

[55] See *supra* note 8, 39.

[56] Department of Trade and Industry, '*Modern Company Law For A Competitive Economy: Completing the Structure,*' (November 2000)

[57] See *supra* note 28.

1.3.6 Small Business Policy

'Encouraging small businesses' has become backbone of public policy[58] and 'Developing better regulation' is said to be one of the strategic subjects around which small business policy is founded.[59] Serious attention is necessary for the proposals to determine the 'administrative burdens' of regulation and to set targets for their reduction that arise out of the Better Regulation Task Force Report, "Regulation—Less is More: Reducing Burdens, Improving Outcomes."[60]

In order to meet the needs of small companies as one of central objectives, rules and regulations are needed to reformulate with the emphasis on fostering the enterprises in the context of the CLR program. The objective is to review and restructure those parts of the law that are most relevant to small companies and to make them more straightforward and easier to understand and apply in future.[61]

Nigel Griffiths had once said, "Companies' legislation should be reframed because the basic model is the private company and private company provisions should be presented as a single integrated whole. Provisions relating to public and listed companies should be drafted so that they are separated and dealt with as an additional set, in a separate Act or within part of the Act. In this case, the users of the legislation, who are concerned only with private companies, should no longer be required to consider them.[62]

---

[58] HM Treasury/Small Business Service, '*Enterprise Britain: A Modern Approach to Meeting the Enterprise Challenge,*' (London, TSO, 2002).

[59] Small Business Service, '*A Government Action Plan for Small Business,*' (London, Small Business Service, 2004)

[60] Better Regulation Task Force, '*Regulation—Less is More: Reducing Burdens, Improving Outcomes,*' (London, Better Regulation Task Force, 2005).

[61] See *supra* note 13.

[62] Nigel Griffiths, '*Parliamentary Debate on Small Businesses,*' (DTI, 2000)

CHAPTER 2

Regulation of Companies on the Basis of Their Corporate Structure (Size) in United Kingdom: 'A Developed Country' Perspective

United Kingdom is one of those countries which has not only been successful in designing the companies' legislation for SPCs in effective manner but also been playing a lead role in presenting its legislation as model for other countries. It is very fact that the company law in the UK has long history and deep roots in it. The private companies have been suppressed in previous legislation, before the introduction of CA, 2006, due to lack of proper attention even though the majority at the Companies House (CH) was the private companies which played extremely significant role in the national economy of the UK. It is desirable to apprise of the historical background of SPC law reform for the exhaustive understanding being in this discipline.

2.1 Work on Small Private Companies (From 1962 Through 1997)

The reforms of SPCs start from the Jenkins Committee in 1962.[63] The review of the Jenkins Committee being the important review was said to be the first major review of SPCs. The Committee took notice of the increase in number of companies (SPCs) at CH[64] and the evidence of the House of Board of Trade for the irresponsible multiplication of companies particularly of 'one-man' companies for the danger of misuse by way of incorporation with the status of limited liability of very small under-capitalised business and incorporation was considered to be cheap tool for protecting a name. The Committee was convinced that the rapid growth of very small companies could prone to abuse and cause ever-increasing administrative difficulties.

---

[63] Board of Trade, '*Report of the Company Law Committee*,' (Cmnd 1749) (1962)
[64] By the end of 1961, there were 4,03,000 private companies and 16,000 public companies.

The Jenkins Committee believed that if any flexibility were provided to private limited companies (PLCs), they would abuse the privilege of incorporation, thus, Committee did not recommend for any reform in this area. Consequently, being convinced just as the previous committees,[65] the recommendations of the Jenkins Committee further led to make the small companies overburdened and the CA, 1948 was amended accordingly.

The Bolton Report brought forth an economic analysis of the characteristics, functions and performance of small firms while recognising the problems peculiar to small companies as they were strikingly in the spheres of finance, taxation, general relations with government, management skills, sources of advice, disclosure provisions of the CA, 1967 and form-filing.[66] The Small Firms Division of the Department of Trade and Industry (DTI) was set up owing to one of the Bolton Committee, 1971 which was subsequently recognised as 'the Small Business Service'.[67]

The more lenient regime for small and medium companies in relation to the filing of accounts was enacted by the new CA in 1981 rather than creating a new form of incorporation for small firms. The further deregulation to private companies was brought by the CA, 1989 and written resolutions were replaced by the notices and meetings. Furthermore, in order not to hold Annual General Meetings (AGMs) and to dispense with requirements to lay accounts and to appoint auditors at such meetings by unanimous resolution by shareholders, an elective regime was introduced to that effect. It is worth mentioning here that a number of these reforms reflected European Directives (ED), such as, filing, preparation and auditing of accounts.[68] The Single Member Private Limited

---

[65] Greene and Cohen Committees were included in previous committees.

[66] See The Bolton Report, at chapters 12 (finance), 13 (taxation), 9 (relations with government), 10 (management skills and sources of advice), 17 (disclosure) and 15 (form-filling).

[67] Ibid., para 19.10

[68] See: First Company Law Directive, 68/151/EEC (OJ Sp Ed 1968, at p 41); Fourth Company Law Directive, 78/660/EEC (OJ L222, 14.8.1978, at p 11); See also Directive 2009/49/EC of the European Parliament and of the Council of 18 June, 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts; See also Directive 2009/49/EC of the European Parliament and of the Council of September, 2009 amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities.

Liability Companies (SMPLLCs) came into being when Regulations were promulgated in 1992 and these companies were also the evidence of the provision of an ED.[69]

The DTI established a working group to fulfill the project of Government which began in November 1992 and the working group was to overhaul the law related to private companies and to examine the needs of SPCs.

Another consultative document was issued in 1994 by the DTI for analysis and views on the research of the Law Commission (a general law reform body established by statute) (LC) on reform of the law applicable to private companies.[70] There was want of consensus as noted by the LC in their study in regard to the definition of a small company.[71] They enumerated nine definitions which hailed from the European Observatory for SMEs, clearing banks, the Bank of England, value added tax (VAT) legislation, corporation tax legislation, the Fourth Company Law Directive (CLD), the CA definition and the Bolton Report, 1971.[72] The CA, 1985 defined a company as being a small company if it was a company which could satisfy at least three of the following conditions:[73] turnover not exceeding £2.8 million, balance sheet not exceeding £1.4 million and number of employees not exceeding 50. The definition contained in the Bolton Report[74] defined the companies with less than 200 employees. The CLRSG has wisely said rather than choosing one of these definitions or seeking for another:

> A company may be regarded as small either because of its economic significance or because of the small number of its shareholders. In the latter case all the

---

[69] See: Twelfth Company Law Directive, 89/667/EEC (OJ L395, 30.12.1989, at p 40) and CA, 1985, s 1(3A).

[70] See Department of Trade and Industry, '*The Law Applicable to Private Companies,*' (London, November 1994) Document URN 94 529; A consultative document seeking views on the Law Commission's feasibility study on reform of private companies.

[71] Ibid., 7; See also Paul Davies and Jonathan Rickford, 'An Introduction to the New UK Companies Act,' ECFR 2008, 48–71

[72] See generally: *The Law Applicable to Private Companies*, at Appendix A; Income and Corporation Taxes Act 1988, s 13 (as amended); CA, 1985, s 247; Report of the Committee of Inquiry on Small Firms *Small Firms* (1971) Cmnd 4811 (London, HMSO, 1971).

[73] See the CA 1985, s 247.

[74] See *supra* note 66, para 19.10.

> shareholders are often also involved in management and such companies are frequently described as 'closely-held' or 'close' companies. Most companies are small on both counts and the Steering Group is concerned with both aspects of small.[75]

The concluding remarks of LC were analogous to the previous Committee Reports, namely, if the access of limited liability were provided to small under-capitalised firms, the financial problems of general business community might be increased. This increase might be supplemented due to inability of those creditors which might be other small businesses to collect debt and to encourage such incorporated companies. The LC was of the view that incorporation could cause problems for creditors as well as for owners of small businesses themselves.

The LC recommended for the reforms in a number of areas of company law to promote the interests of small businesses such as a requirement for clarification as to the law relating to directors' duties and the simplification of the shareholder remedies regime.[76]

In a nutshell, after perusing the history up to 1998, it may be concluded that though the various reforms through the committees and reports were made in order to modernize the company law framework but they failed; they could not overhaul the company law and perceive the needs of SPCs owing to the apprehension of the abuse of the incorporation and limited liability and the credence was given to public companies. Accordingly, an amendment had been made for the public companies first and then it had been made as exemptions to the private companies as afterthought while ignoring the very fact that majority of the companies registered at the CH were private companies.

---

[75] See *supra* note 33, paras 2.19, 5.2 and 5.2.2.

[76] The LC later carried out projects on both those topics; See: *Shareholder Remedies* Report No 246 (1997) Cm 3769 (London, TSO, 1997); *Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties* Report No. 261 (1999) Cm 4436 (London, TSO, 1999).

2.2 Work on Small Private Companies (From 1998 Through 2008)

The history of the CLR starts from the recommendation of the LC on minority shareholder protection and thereafter on company directors in 1999[77] with previous report on minority shareholders in 1997.[78]

The Government showed its interest to commission the CLR to analyse the existing company legislation with the report of LC on company directors. The purpose was to bring forward those recommendations necessary for enabling British company law to help a competitive economy.[79] The work of the LC was therefore deemed to be included with the subsequent CLR reports.

The Final Report was published by the CLR to the Secretary of State for Trade and Industry in July 2001 along with a number of other reports previously published.[80] The Government counselled on the recommendations from the CLR and was convinced to embrace the proposed legislation in two white papers, '*Modernising Company Law*' (July 2002) and '*Company Law Reform*' (March 2005).

The Companies Reform Bill, 2005-06[81] was sent into the House of Lords through which most of the parts of 1985 Act were amended by way of consultation began in 2007 and

---

[77] LC, '*Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties,*' Law Com No. 261; See also *supra* note 76.

[78] LC, *'Shareholder Remedies,'* Law Com No. 246.

[79] This was announced in the DTI's document of March 1998, 'Modern company law for a competitive economy', the leading title for all subsequent reports from the CLR.

[80] These included 'Modern company law for a competitive economy: completing the structure' (November 2000), 'Modern company law for a competitive economy: trading disclosures' (October 2000), 'Modern company law for a competitive economy: registration of company charges' (October 2000), 'Modern company law for a competitive economy: capital maintenance: other issues' (June 2000), 'Modern company law for a competitive economy: developing the framework' (March 2000), 'Modern company law for a competitive economy: company general meetings and shareholder communication' (October 1999), 'Modern company law for a competitive economy: company formation and capital maintenance' (October 1999), 'Modern company law for a competitive economy: reforming the law concerning overseas companies' (October 1999), 'Modern company law for a competitive economy: the strategic framework' (February 1999) and 'Modern company law for a competitive economy' (March 1998).

[81] See *supra* note 13. The Bill was previously referred to as the Company Law Reform Bill until a later consolidation introduced a new Companies Bill. According to the House of Lords debates, Lord Clinton

thereafter all parts of the Act were to be implemented by October 2008 by dint of Government's intention to that effect.

The period from 1998 to 2005 can be said to be a wide consultation period by the Government addressing rationale for change, dealing with the drawbacks inherent in the existing company law regime and setting out the suggestions embracing publication of many parts of Companies Bill at various stages of consultation. The both Houses scrutinized at length the Companies Bill[82] with the observations about the existing Company Law that the companies' legislation was costly with sketchy and complicated procedure; it was burden for the SPCs and fear for growth thereof in future; they were irrelevant and incapable therefor.[83]

From 1998, the consultation process was structured in four phases with each being completed by a new consultation document consolidating progress and opening up new issues. The detail of these phases is as under:

Phase 1 was The Strategic Framework in February 1999;
Phase 2 was Developing the Framework in March 2000;
Phase 3 was Completing the Structure in November 2000; and
Phase 4 was The Final Report in May 2001.

Davis advocated a need for consolidation. However, Lord Sainsbury contended that following consultation, the need for consolidation was not a major objective. He stated that it would not be possible to have a consolidated Bill that would hold for a lengthy period of time: it was neither desirable nor what people wanted. See HL debates: 11 Jan 2006.

[82] The Bill began its life as the Company Law Reform Bill, which was not a consolidation of companies' legislation and only amended parts of the CA, 1985. However, at a later stage in Parliament, the Bill was changed to the Companies Bill as a consolidating measure.

[83] See Foreword by Rosemary Radcliffe, *A Practitioner's Guide to the Company Law Review* (2001) p 21.

2.2.1 Phase 1: The Strategic Framework (February 1999)

Phase one consists of the strategic framework, which being the first consultation document referred to as *Modern Company Law for a Competitive Economy – The Strategic Framework*[84], brought forth the proposals presented by the DTI in February 1999. This consultation document was issued by the CLRSG comprising a series of consultation documents established to overhaul a fundamental review of the UK small private company law.

In 1998, the then Labour Government in the UK took notice of the companies' legislation in order to overhaul the company law and a series of consultation documents issued by the DTI were brought to accomplish the purpose which was from 1998 to 2000. The Government established a Steering Group in order to review the whole areas of the UK Company law and to make valuable recommendations for making new legislation.[85]

This project, commenced in March 1998 on CLR as to small businesses, was the DTI Company Law Review wherefrom the first publication was published with regard to distinctive legal structures for small businesses.[86] In February 1999, the CLRSG gauged that at the inception of 1997 small companies accounted for 45% of non-government employment and 40% of turnover while acknowledging the economic importance of small companies.[87]

The Steering Group elucidated the problems and difficulties being faced by the small businesses having received the responses to their previous 1998 publication. One of the recurring problems was the legislative inaccessibility to those managing and advising

---

[84] See *supra* note 33.

[85] See *supra* note 83. According to one member of the Steering Committee, "Company law provides Government's framework for the orderly conduct of British business. It is a truism that such a framework needs to be coherent so that it can encourage sound entrepreneurial activity and enhance the confidence in the UK as a good place for business activity . . . But the present framework of company law is . . . anything but coherent. It is a patchwork of piecemeal legislation – and latterly corporate governance codes as well – built up over a century or more." See also *supra* note 37.

[86] See *supra* note 36, Chapter 5, paras 5.2 and 5.7.

[87] See *supra* note 33, paras 2.19, 5.2 and 5.2.2.

small companies, for many of the provisions of the CA, 1985 were inapplicable to SPCs and the structure of that Act (which predisposes to be established on large public companies with all-inclusive modifications for other companies) was such as to make it unfathomable and unapproachable for small business users.

Many provisions of the Act were irrelevant and immaterial for small companies. Another problem encountered by small businesses was the sketchy and onerous regulation in the Act and defective in terms of insecurity for the creditors against their debts wherefor it was initially drafted. The most significant problem, which was kept reiterating even in previous committee report, highlighted by the *Strategic Framework* was the capacity for abuse of the limited liability company (LLC) and the subsequent risk of insolvency and non-payment of debts to which easy access to limited liability status might lead.[88]

The Group threw light on the significance of small and closely-held companies while recognising their role played thereby in the UK economy and competitiveness. There was felt a need of a best milieu for a pivotal process of the start-up and development of such businesses. In view of the Group, the most competitive legal form was needed, which could be possible for the typical small commercial business seeking limited liability and transferable shares.

Two types of approaches were discussed, namely, 'Free-standing approach' and 'Integrated approach'. 'Free-standing approach' was meant for begetting a separate, free-standing, limited liability vehicle for small companies, based on separate legislation. In order to shape the regulation, the economically small closely-held would be eligibility criteria which could be juxtaposed with the full CA provisions. These companies would have to recourse to the CA regime, should they desire to develop beyond their limits. The South African Close Corporation (SACC), the US LLC and the Limited Liability Partnership (LLP) are those jurisdictions that have followed this approach. Conversely,

---

[88] Ibid., para 5.2.12

the 'Integrated approach would be within the single CA regime. The NZ has chosen this integrated approach.

While toting up the principal benefit of a stand-alone small companies vehicle, the Group considered it to be as essential as to fulfill the needs of those companies in contrast to the existing CA, 1985. The legislation would be drafted succinct with a view to a limited class of users. Though the criteria, whereupon the legislation would be developed, would deal with major problems of transition, however, its levels were obdurate.

The Group went in favour of integrated approach including both changes in form and substance to the existing legislation. To me, this approach was the turning point which differentiated the private companies from the public companies. The constituents of the legislation based on integrated approach would be as below:

- In order to demonstrate the private company provisions as a single integrated whole, companies' legislation needs to be reframed, for the basic paradigm was the private company. Separate and additional sets are required in a separate Act or within part of the Act so as to draft the provisions relating to public and listed companies in order that the users of private companies should not indulge them in other provisions except private company provisions.

- The law relating to private companies should be compatible with changing conditions and be capable of accomplishing the needs of current business. Thus the legislation should be simplified.

- A new set of articles such as a special version of Table A consisted of the provisions for companies where all the shareholders involved in management would be drafted which could be suitable for the needs of close companies.

- Attention should be paid to the issue whether it would be possible for private companies in general, or a more restricted class of closely-held companies to choose such a form that be exempt from a wide range of CA requirements and could furnish greater freedom to customise their constitutions to their individual needs. In this respect, written resolution procedure would be adopted to have unanimity but change would be made only on a majority vote.

Phase one was related to the *Strategic Framework*, which addressed a need for bringing the SPCs with the changing conditions and for removing unnecessary obstacles owing to ignorance of previous reforms.

2.2.2 Phase 2: Developing the Framework (March 2000)

This phase was related to a consultative document referred to as *Modern Company Law for a Competitive Economy: Developing the Framework.*[89] This was the second strategic consultation document published by the Group in March 2000. This phase was the development on the series of consultation document issued in 1999 and the reflection of the responses received by the Group. This document was based on the various proposals taken into consideration. Some of those were pertaining to SPCs. Moreover, proposals as to the scope of the UK company law; directors' duties; and the accounting aspects for small and large companies were also part of that document.

According to the Group's proposals, public and very large private companies would be required to annex a new statutory Operating and Financial Review (OFR)[90] in their full annual report the contents of which would be partly determined by statute, elucidating the

---

[89] Department of Trade and Industry, '*Company Law For A Competitive Economy: Developing the Framework,*' (March 2000). This document was similar to the Group's February 1999 document. It was wide-ranging and addressed a number of corporate issues in detail.

[90] The OFR was a new form of narrative report, in which companies would need to describe future strategies, resources, risks and uncertainties, including policies in relation to employees and the environment where these areas were relevant to future strategy and performance. The OFR would ensure transparency and improvement in company reporting, and in developing relationships with employees, customers, suppliers and others that support long-term value creation.

exhaustive requirements being prescribed in standards. The OFR was proposed for the purposes of the assessment and opportunities for success of the business while enabling the users therefor; the reputation and the impact of the companies on the community and the environment; the betterment of the wider relationships among the employees and suppliers. Another proposal was about director's report wherefor the large companies would be required to replace it partly by the OFR and partly by a supplementary statement and in contrast, by a cover sheet to the accounts for small companies. The Secretary of State would determine any public interests which the statement or cover sheet would have to include therewith.

There was a proposal for a wider range of both the scope of audit and the range of auditors' liability for which the balance would be maintained by a removal of the embargo on auditors on the basis of agreement for a limit on their liability with the company and clarification of the law on contributory fault by companies. The CLRSG proposed to introduce the Financial Reporting Standards for Small Entities (FRSSE).[91] Here, the approach of the Group was founded on the principles, to wit, 'think small first' and 'the integrated approach' emanating from the first consultative document: the *Strategic Framework.*

The proposals perused by the Group for simplifying the laws for private companies generally were relating to the exemptions from the requirement for resolutions in writing; the removal of the requirement for having a company secretary (CS); by curtailing the minimum notice periods for meeting, rendering the provision for arbitration of shareholder disputes; providing the relaxation to directors for the restriction on their power to issue shares and making plain the rules of capital maintenance and the model constitution as well. In this regard, a regime would be supplemented to apply automatically on formation unless excluded drafted for the small companies containing therein the existing 'elective' regime while enabling private companies to opt out of certain requirements relating to meetings, however, requiring a specific decision to do so.

---

[91] See *supra* note 33, 19-20.

The more flexible provisions on notice of meetings, the appointment of auditors and written resolutions were also proposed to be included.

Attention was also paid by the Group on the issue of 'owner-managed' companies[92] for further simplifying them. The following three possibilities were taken into account:

- conferring the power of the general meeting on the board;
- conferring the power of the board on the general meeting; and
- relaxing the rules on general meeting for owner-managed companies

so as to enable general meetings to take place as if they were board meetings. These three options were with merits and demerits.

The proposal was considered for making a simpler form of report and accounts, to be prepared and filed by small companies, that is, those satisfying three of the following criteria: turnover of less than £4.8 million; gross assets of less than £2.4 million; fewer than 50 employees. The Group recommended abolishing the difference between accounts prepared for shareholders and those filed at CH: the abbreviated accounts presently filed by some companies saved no costs and provided inadequate information for users and suggested that the accounts should be filed within seven months of the year end and not within ten months as at present. The exemption from audit for companies was proposed in order to meet three of the following criteria: turnover of less than £1 million; gross assets of less than £500,000; fewer than 25 employees. An Independent Professional Review (IPR) as a new form of independent guarantee, considerably short of audit has been proposed for small companies above this threshold.

[92] Such companies are those where the owners and directors are the same people and the difference between the board and the general meeting is arguably superfluous therefor.

2.2.3 Phase 3: Completing the Structure (November 2000)

In November 2000 the Group published its consultative document: *Modern Law for a Competitive Economy: Completing the Structure*.[93] This third phase was based on *Developing the Framework* including the mixture of policy decisions, new proposals and further ideas for consultation. The proposals of *Developing the Framework* were revised in the light of responses and further comments were invited on a limited number of issues that emanated from this consultation document. The new proposals were also addressed by the Group.

In this phase, the consultation document reiterated the needs of the SPCs covering the following areas:

- The law should be made accessible to all particularly for those involved with small companies.

- There was a need to concentrate on substance, simplification of the law, removal of the unnecessary restrictions or obligations while producing coherent overall framework which could reflect the needs of small companies.

- The way of expressing and drafting the law should be clear, unequivocal and accessible for the understanding of those using it.[94]

- There was a need to structure the legislation applied to small companies in a manner which may be easily identifiable.

---

[93] See *supra* note 57.

[94] The Group stated that a poorly drafted law could impose significant costs, especially on business. However, accuracy and certainty should not be sacrificed unduly in an attempt to make the law merely superficially more accessible. For example, over-simplification or imprecise language may make the law apparently more readable, particularly for the non-specialist; but it was likely to give rise to greater uncertainty.

- Some parts of legislation being complex would also need to be simplified by reason of complexity of the underlying policy or business practices. Simple policy and clear exemption in complex areas were needed to cope with the given problems of legislation rather than merely simpler drafting.

- Proposal as to the minimum period of notice for all meetings of private companies at 14 days was suggested.

- The restriction on the SPCs with regard to passing of written resolution for achieving unanimity and the requirement of a written resolution to notify the auditors as serving no purpose were proposed to be abolished.

- There was a need as proposed by the group to abolish the application of ss 151-158 of the CA, 1985 to private companies including the requirement of auditor's report at the time of directors' declaration of solvency which was required for reduction of capital in proposed new procedure and also the requirement for alternations or reduction of the share capital and purchase of own shares to be authorized in the articles.

- The requirement in s 80 of the CA, 1985 for shareholder authorisation to allot shares should be abolished for private companies.

- The SPCs would not be required to have CS.[95] However, private companies should be permitted to appoint a secretary should they wish to perform secretarial functions.

---

[95] There had been advocates for retaining the CS arguing that the abolition would assist only sole director companies, since those with two or more may easily designate one of the directors as secretary; and the secretary was an important element in the corporate governance of private companies; and the existence of a secretary helped to ensure that a company complied with its statutory obligations and helped to prevent abuse. The Group was not convinced of any of these arguments.

- A system of Alternative Dispute Resolution (ADR) including arbitration schemes resolving disputes was introduced through proposal in this document.

- There was a need to modify radically Table A (articles of association) for reflecting the needs of private companies.

- The Group took forward the proposals for simplifying the company law and accounting requirements for private companies which had been discussed in *Developing the Framework.*

- The distinction between the public and private companies was also part of the consultative document.

- The proposals with regard to the inclusive statements of directors' duties[96] and OFR to be prepared by public companies and large private companies for improving transparency as discussed in *Developing the Framework* were promoted by the Group.

In this third phase, the two main areas promoted by the Group are as follows:

- Simplifying the legal requirements for small companies.

---

[96] As it is evident that everyone requires directors to promote the success of the company in the interests of its members but taking account of all relevant considerations, including the implications for the company of their decisions over time and of wider relationships, such as those with employees, suppliers, customers and the wider community, the Group emphasised that the directors' statement should be expressed at a sufficiently high level of generality that it could be capable of judicial development within its terms. The Group did not see any merit in defining 'fiduciary' so long as the intention of achieving substantial continuity with the present law was achieved. The Group believed that the relevant provisions could be drafted so that general principles of statutory interpretation would ensure that to the extent that they enacted the common law, the existing authorities would be capable of being invoked to explain the nature of the duties that they codified. The Group agreed that the duties must be subject to the overriding duties of directors towards creditors in insolvency or threatened insolvency situation; See also Insolvency Act (IA) 1986, s 214 (wrongful trading).

- Promoting a new framework of institutions to develop and apply company law in the future.

2.2.4 Phase 4: The Final Report (May 2001)

In phase four, the Group issued in July 2001 its *Modern Company Law for a Competitive Economy: Final Report*[97] which stated, "the most fundamental review for at least 40 years –and arguably in the law's 150 year history'. This report, which had been presented to the Secretary of State for Trade and Industry, was *the Final Report* comprising the recommendations of the Group on CLR. This report consisted of two volumes containing draft sections for a new Companies Bill. Volume 1 dealt with the final recommendations of the Group on CLR. Volume 2 was concerned with a selection of draft clauses so as to show how a new Companies Bill would be drafted in a clearer manner than its predecessors for the purpose of achieving the aims, that is, any new legislation needs to be written in clear, plain English and be user-friendly.

The Final Report covered a wide range of CLR as discussed by the Group in previous consultative document. The main three categories covered by the report were:

- Simplifying and modernising the law for small companies;
- Providing a legal framework for companies that reflects the needs of the modern economy; and
- Ensuring a flexible and responsive institutional structure.

The report considered the following recommendations while addressing SPCs:

A simple statutory model constitution would be provided for small companies rather than the memorandum and articles of association. The private companies would not be

[97] See Department of Trade and Industry, '*Modern Company Law for a Competitive Economy: Final Report,* ' (July 2001)

required to have shareholder authorisation for the allotment of shares. The private companies would be incorporated through a modern and simple process. The memorandum and articles of association would be joined together into a single document. The present requirement for an 'objects' clause would be repealed so that the companies could be run with unlimited objects. The facility for implementing electronic voting by shareholders would be available for companies. Migration to and from Great Britain (GB) would be made easier for such companies. The process of re-registration as other kinds of company should be simplified. Private companies would no longer be required to maintain a mortgage or charges register. The 'unanimous consent rule' should be codified and extended albeit it already existed in the common law.[98] The private companies would be provided with written resolution permitting them to take certain decisions more easily. They would not be obligated for holding a general meeting. There would be no requirement of unanimous endorsement for written resolution.

FH 7016

The 'elective regime' is that regime under which private companies can take decision without going into the formalities of the Act such as holding an AGM, and laying of accounts and the annual appointment of auditors at the AGM. This regime would become the default for such companies meaning thereby the default regime will be that regime under which AGM would not be essential for a private company where it makes appropriate decision which could cover the obligation made by such AGM.

The requirement for appointing a CS would be no longer apply to private company though it will be able to avail this should it so wishes. ADR would be available for SPCs for settling disputes between shareholders in private companies. Such companies would not have to go into detailed and lengthy procedures for seeking resolution through courts. Private companies would be furnished particularly with a special arbitration scheme for shareholders. Financial reporting and audit needed to be simplified for small companies. 'Small Company Accounts' (SCAs) will be provided to smaller companies in order that they could be able to prepare it more easily so as to raising the thresholds in the UK to

[98] The effect is that any decision that a company has the power to make would be valid even if it had not observed all the required legal formalities, provided that all members of the company gave their consent.

the maxima permitted in European Community (EC) law. The turnover threshold for preparing a statutory audit would not be less than £4.8 million also (the EC limit again).

Statutory accounts need for small companies to be simplified whereas the requirement of small companies for filing 'abbreviated accounts' for public disclosure would be abolished. The requirement of private companies for filing accounts within ten months of their year end would be replaced by seven months. As regards the prohibition from giving any form of financial assistance to assist in the sale and purchase of its shares in order that the 'whitewash' procedure could no longer apply, private companies would not be required to follow the complex rules to that effect. The large private companies would be required to publish OFR.[99] The requirement to hold AGMs would be replaced by 'unanimous consent' for the shareholders of private companies.[100]

The Group presented its Final Report to the DTI while discussing a wide range of CLR including selected provisions of a Companies Bill. Here, it is, conspicuously, to be stated that all the recommendations of *the Final Report* moved forward to the Government were not conceded by it, for alterations and amendments were also made in some of the Report's recommendations. In other words, the Government did not accept all *the Final Report's* proposals.[101]

---

[99] Public companies would have to publish an OFR as part of their annual report.

[100] Public companies should hold their AGMs and file their accounts within six months of their year end.

[101] In 2005, the DTI published a document entitled Company Law Reform: Small Business Summary. It stated that an effective framework of company law and corporate governance promoted enterprise and stimulated investment. The Government was determined to ensure that the UK system made it easy to set up and grow a business. A thorough overhaul of the law was needed to make it more suited to the needs of small business. This summary sets out the main DTI proposals of the Company Law Reform Bill (as it was then) affecting small business. Currently company law was written with the large company in mind. The Government stated that it could not eliminate the complexity in company law, (as this would reduce flexibility for companies), so to make it easier to understand for both companies and their advisors, it must be supplemented by clear and comprehensive guidance. Small companies would easily be able to identify the basic day-to-day requirements that applied to them. The Government would increase the coverage of CH plain English guidance and ensure it followed the principles of 'think small first'. Increasingly, small companies were using the CH website. CH would continue to improve their website for their customers, including a wider range of web-based guidance, better links to related websites and on-line access to up-to-date companies' legislation. During 2007, CH would be offering web incorporation and this would be supported by easier access to relevant material, for example the new shortened and simplified private company Articles of Association.

2.3 White Papers 2002 and 2005

The Government after receiving the recommendations of the Group and the LCs published two White Papers on the scope of CLR including the drafts of parts of the Companies Bill so that the interested and concerned parties could take them into consideration. The two White Papers were such as *Modernising Company Law*[102] and *Company Law Reform*[103] in July 2002 and in March 2005 consecutively.

2.3.1 White Paper 2002

In July 2002, the Labour Government issued its first White Paper on CLR, *Modernising Company Law*. The then Secretary of State for Trade and Industry, Patricia Hewitt, while throwing light on the state of British company law stated, "When British company law was created in the nineteenth century, it was a source of competitive advantage. However, it had now become a competitive disadvantage. The law had become encrusted with amendments and case law over generations. It had failed to adapt to meet the changing role of small enterprises, IT and international markets. The law needed to change: it needed to modernise and reform and it needed to be fit for the twenty-first century and beyond."[104]

The White Paper stated that the current company law had been drafted with a view to the needs of large public companies with additional provisions for other companies. This demonstrated the genesis of company law in the mid-nineteenth century, when the joint-stock company was considered as an ideal model in order to raise money for large capital projects, for instance, railway building.

The Government was of the view that the focal point while commencing the CLR should be the reforms of SPCs with 'Think Small First' approach – with additional or different

[102] See *supra* note 28.
[103] See *supra* note 14.
[104] See *supra* note 8.

provisions for larger companies being brought into wherever needed because of their majority registered at CH; they contributed principally in the economy of the UK. The balance between the companies became shackled in the result of additional amendments. Therefore, the law was required to balance the interests of all concerning company avoiding unnecessary burdens and the distinction was also required to be made between public and private companies.

As regards the ways wherein companies rendered decisions were more simplified by virtue of removal of the requirement for private companies to hold AGMs[105] and with simplification of the rules on written resolutions making them easier for private companies for taking decisions.[106]

In order to bring the transparency, the Government favoured a single document that would fulfill the requirements of objects clause. The Government wanted that the models for both public and private companies should be clear, obvious and simple.

The public companies would have to hold AGMs within six months of the financial year-end whereas private companies would have to hold AGM within ten months should it so desire.

The shareholders should have power to require a scrutiny of a poll.[107] The current director's report was proposed to be replaced. The Government proposed short, simple,

---

[105] This would require an ordinary resolution to 'opt in' and to lay accounts and appoint auditors at such meetings. For public companies, the requirement to hold an AGM would be retained though it would be possible unanimously to dispense with AGMs.

[106] The Government's aim was to maintain the simplicity of the current written procedure while also ensuring that all members receive adequate information about written resolutions. In particular, the Government believed that companies should send proposed resolutions to all members at the same time, as far as it was practicable.

[107] The scrutiny would cover the activity both of the company and its registrar, and examine the procedure for establishing the admissibility of votes and proxies, the voting procedure and the procedure for counting votes. The scrutiny would be conducted by a registered auditor, not necessarily the company's own auditor, and the object would be to give an opinion on whether the procedure for the recording and counting of proxies and votes was adequate to ensure that the statement of votes cast was accurately stated. The scrutiny would have to be completed within a month of the meeting and the scrutineer's report sent to the members.

supplementary statement for small companies and recommended to simplify the accounts for around 15,000 companies by way of extending the definition of a small company for accounting purposes to the EU maximum (£4.8 million turnover, £2.4 million balance sheet total, 50 employees).

The Government abolished the requirement to file abbreviated accounts of the small and medium companies at CH. The time to filing account for small companies was reduced to seven months.

The Government was unwilling to opt for an IPR for small company accounts. The assessment was needed for the impact of the July 2000 increase in the audit threshold for small companies to £1 million in order to take decision for proposing a further increase. The largest companies would be obligated to publish an OFR, to wit, a narrative report on a company's business, its performance and future plans.

The Government took keen interest in establishing a single body, which befit for membership and constitution. This body would legislate exhaustive rules keeping in view the current Accounting Standards Board (ASB) on matters such as the form and content of financial statements,[108] disclosure requirements for the OFR, and the form and content of the summary statement. These 'form and content' rules would be applied on public and large private companies by a successor body to the Financial Reporting Review Panel (FRRP) in the same manner as current accounting law and standards enforced by the FRRP. These rules for small companies would be continued to be enforced by the CH.

The government rejected the recommendation of the Review for creating a statutory Company Law and Reporting Commission and a Private Companies Committee. However, it considered the Review's objectives that would be accomplished without legislation.

---

[108] However, these rules would not be applicable where international accounting standards (IAS) apply.

On the issue of company formation and capital maintenance, particularly for private companies, the Government recommended to simplify and update the law relating thereto. It also abolished the requirement for private companies to appoint CS, however, they would be free to appoint them if they want.

2.3.2 White Paper 2005

The UK Government issued its White Paper: *Company Law Reform* in March 2005 addressing its own proposals as to exhaustive reform of the UK company law regime in line with modern business needs.[109] The foundations of the White Paper are on CLR, 2003,[110] the Government's White Paper,[111] 2003 and a partial draft to Company Law Review Bill issued at that time. In the words of the Secretary of State, "the CLR had been universally recognised as providing a thorough and authoritative assessment of the changes that needed to be made, and provided the essential blueprint for the reforms now proposed by the Government. For these reasons, the Government had been committed to ensuring the legal and regulatory frameworks within which business operated and promoted enterprise, growth and the right conditions of employment, would be provided."[112]

White Paper: *Company Law Reform* has set out four principal objectives:

- Enhancing shareholders engagement and a long-term investment culture;
- Ensuring better regulation and a 'think small first' approach;
- Making it easier to set up and run a company; and
- Providing flexibility for the future.

---

[109] See *supra* note 14.
[110] Department of Trade and Industry, '*Company Law Review,*' (2003)
[111] Department of Trade and Industry, '*White Paper,*' (2003)
[112] See *supra* note 8.

2.3.2.1) Enhancing Shareholders Engagement and a Long-Term Investment Culture

This objective included an important debate between shareholders and directors for bringing a good understanding and effective engagement between the two. This needed a well-organized and crystal clear apparatus. The provisions in the Bill with regard to better direction for directors on their responsibilities and duties also came under discussion. In order to promote company's long-term performance and value creation, there was a need to ensure that directors and shareholders work together as a team while having effectual and productive communication to each other.

2.3.2.2) Ensuring Better Regulation and a 'Think Small First' Approach

The history of company law demonstrates that the company laws were primarily drafted with a view to public companies. The current company laws were enforced with certain exemptions given to private companies to provisions of public companies.[113] The numbers of companies registered recently were SPCs. Thus, the laws became narrow and unwieldy with unnecessary regulation and hurdles. SPCs were also overburdened with costs and expenses by virtue of administrative procedure which was not justifiable for them. Therefore, there was a dire need to introduce a new law dealing with these issues that could identify SPCs not as exception but as rule. The Government ensured to eradicate the unneeded burdens exerted on SPCs enabling them through proper guidance for understanding the law required by them.

2.3.2.3) Making it Easier to Set Up and Run a Company

It is evident that it was easy to set up a company in the UK in contrast to other countries but some procedural requirements made worse the position of set up and its initial operation. This had led the SPCs to appoint a CS and to hold the AGM. The bill intended do away with the hurdles wherever expedient.

---

[113] See *supra* note 73, e.g., Part 7 on accounts and audit, which is difficult to follow, moreover, provisions on meetings and resolutions applying largely to public companies.

2.3.2.4) Providing Flexibility for the Future

The Government wanted flexibility to be built up for the CLR so as to keep it up to date in the future.[114]

It is pertinent to discuss the second objective at length to know what proposals were accepted by the Government or what were not accepted by the same that would have effect on the companies' legislation with respect to SPCs in the future.

2.4 Ensuring Better Regulation and a 'Think Small First' Approach

Having analysed the setbacks of SPCs, there was stress to eliminate the tradition wherein the public companies were preferred to private companies irrespective of the fact of increasing significance of SPCs the proof whereof was their majority at CH and the economy of the UK. Nevertheless, the language of the law was to be improved in terms of simplicity and clarity in order to comprehend and to reset the balance in companies' legislation between public and private companies. Law was to be made accessible and user-friendly and complex provinces were to be boosted by clear and comprehensive guidance such as directors' duties. Therefore, 'Think Small First' approach needed to be promoted rather than traditional 'Think Large First' approach.

There was a need in present time to improve website communication with CH so that incorporation by 2007 could be possible and access to relevant as well as any change through amendment could be readily provided to small companies.

As regards the resolutions and meetings, the decision-making process was required to be streamlined and made intelligible so that the private companies could follow them easily.

---

[114] This would be subject to appropriate processes of public consultation and parliamentary scrutiny.

As to AGMs, a deregulation procedure was proposed to be applied to private companies. The requirement to lay accounts or to appoint auditors at the AGM was abolished unless they elect to do so.

So far as the written resolutions (as the bill recommended making them easier for private companies for their easier decision-making) are concerned, a simple majority or 75 per cent majority of those eligible to vote was preferred for a written ordinary resolution and a written special resolution to be passed to unanimity as proposed by the bill in order that this process could be made more easier than the earlier one. The existing provision, which had allowed the members holding 10 per cent to requisition a general meeting, was suggested to be continued.

On the proposals of notice periods and short notice requirements, the bill proposed that they would be simplified. The requirements of 21 days notice for an AGM and 14 days notice for Extraordinary General Meeting (EGM) were replaced by 14 days the minimum notice period for all company meetings.[115] Consent to short notice would be fixed at 95 per cent but 90 per cent was prescribed for private companies which would be default figure for such companies enabling them at short notice to hold meeting.

On the issue of the principle of 'unanimous consent', the bill rejected the option codifying it instead proposed it to be continue to apply at common law.[116]

No legislative provision would be enacted to spell out the concept of dispersed meetings, since a valid general meeting is allowed with audio-visual links.[117]

The White Paper stated that legislative changes would be brought into the company's constitution such as Articles of Association[118]. Table A[119] was considered to be

[115] However, companies could set a longer notice period if they wished.

[116] At common law, any decision taken (however informally) by all of a company's shareholders together constitutes a decision of the company.

[117] Audio–visual links enable participants to see and hear what is going on in the other rooms and to be seen and heard by those in other rooms.

inappropriate form of model Articles[120] by the Government. The main causes were irrelevant and inapplicable provisions remained therein, the one-size-fits-all' approach, user-unfriendly, poorly-laid out and frequently incomprehensible. Moreover, the remoteness of its larger part with the matters of small businesses and its rigidity and immutability even after the introduction of SMC exacerbated its position.

These reasons compelled the Government to review it and make reform to Table A effectively.

The private companies limited by shares needed a set of model articles to operate.[121] Likewise, a full set of model articles for private companies limited by guarantee were required to be made. In order to use the model articles, guidance with clarity and conciseness should be provided to small companies.

Henceforth, the new set of model articles,[122] under which the companies would be set up, would work in the same manner as Table A did. The replacement from Table A to new model Articles would be available to existing companies provided that their shareholders pass a special resolution to do so.

The Secretary of State would have power under the Bill to prescribe, by secondary legislation, stand-alone model articles for public companies, private companies limited by

---

[118] They regulate the internal affairs of the company and provide freedom for shareholders to make their own rules, subject to some legal constraints.

[119] Table A (Articles) provides model Articles for companies limited by shares. It also operates as a 'default' set of Articles for such companies, namely, that the Articles of a company limited by shares will be set out in Table A if the company does not register Articles at CH, or to the extent that any Articles which it does register do not exclude or modify Table A provisions.

[120] Although it has been revised on many occasions, it still remained a product of the mid-nineteenth century in language and substance, and was largely drafted from the viewpoint of a public company rather than that of a private company: 'successive revisions to Table A have tended to include increasingly elaborate provisions, designed to cover every conceivable event or set of circumstances that a company may find itself in, however unlikely it is that the majority of companies who are using Table A would ever find themselves in those circumstances'; See also White Paper, p 33.

[121] Similarly, there should be a separate set of model articles for public companies limited by shares similar in scope to the current Table A but with clearer layout and drafting.

[122] The new set of model articles would operate as default provisions for the types of company for which they are prescribed.

shares and private companies limited by guarantee. In the future, the private companies limited by shares would be set up under the new Act and the Table A would completely be replaced by the private company articles which as proposed would have greater impact in simplifying the law for small companies. The private company articles were proposed to be default articles where a company does not register its own articles at CH and also does not specify the model articles for exclusion or modification. Table A would be applicable and be the model articles unless the new model articles become effective.[123]

The new model articles, which consist of minimum number of rules, would beget the benefits such as clear and simple language and accessibility to the directors and shareholders of small companies as compared to previous model articles. They have been made principally keeping in view the small owner-managed companies.

Any private company limited by shares would be free to add, or amend or delete rules from the model articles while using the private company articles so that they could make them for their own use.

Written resolution would tantamount to meeting fulfilling its requirement. Where the private company requires a meeting to be held, its procedure would have to include in a new Act.

Draft guidance notes on private company articles, which would be provided for private companies, would be available at CH elucidating the Articles of Association what they are and how they are to work.

The Government recommended abolishing the requirement of private companies to appoint CS. However, shareholders should be allowed to require the CS to be appointed or leave it for directors to decide.

---

[123] The Government intended to provide separate model articles for public companies. Their content would be similar to Table A and would include more detailed rules for more complex circumstances.

The nature of offences including refinements to the 'officer in default' framework while making it clearer for the individuals for what breach they could be liable. The White Paper disapproved the criminal liability imposed by the company itself in certain circumstances and intended to shift it from company.

Directors including de facto directors would be subject to liability should they fail to perform or to prevent default. Secretaries would be under liability for breach after having been properly charged with the relevant functions by directors where they are found to have failed in carrying out their functions. Corporate managers[124] or senior executives[125] (covering the senior employees within the company but not external third parties) would also be liable for personal liability.

Delegates[126] should be personally liable for the breach under the Bill on a case-by-case basis. The term delegation to be 'proper' provided in the clauses of the Bill means that it be reasonable in all circumstances. The White Paper spelt out that delegation would not have the same sense as assignment. In other words, they are not to be understood as analogous to each other. Even a 'proper' act of delegation could not be made valid justification for removing the liability until proved otherwise. However, decision would be rendered on a case-by-case basis.[127]

The White Paper obligated every company to observe the requirement to have company's officers should it deems fit for using targeting sanctions on such officers. For this purpose, the Registrar of Companies (RoC) would have the power, given by the Government, to issue a notice the requirement of which to be fulfilled by the company

---

[124] These comprise relatively senior employees, with a policy and decision-making role that can affect the enterprise substantially, and have responsibility for the function which is the subject of the breach.

[125] The draft clauses of the Bill used the term 'senior executive' instead of 'manager', to describe the category of person envisaged.

[126] The term 'delegate' covers individuals to whom a particular function has properly been delegated, by or under the authority of the directors or secretary.

[127] As an example, if a statutory function is one that many companies often and reasonably outsource to informed third parties, those third parties may be brought within the frame of liability for breach.

within the prescribed time, failing which would make the company liable for a criminal sanction.[128]

The company's register of members necessary for members' contact and for public inspection was considered to be an integral part of the constitutional system by the Government. Some deregulatory changes were brought for companies for maintaining their registers easily. The public right would be available to the Bill both for inspection and obtainment of a copy of a company's register of members. This register would be able to be used for a court order in case the company refuses.

On the proposals of the capital maintenance and share provisions, the Government proposed them to be amended due to complex and unintelligible. There was a need to introduce a number of deregulatory measures for private companies on capital maintenance. The provisions restricting the private companies from providing financial assistance for the purchase of their own shares was removed by the Bill.

In order to better comprehend the new framework under the CA, 2006 administering private companies, the DTI issued two documents, namely:

- The CA, 2006 – a summary of what it means for private companies;
- Private Company Information.

[128] Other sanctions include amending CA, 1985, s 458 so that the penalty for fraudulent trading would be increased from seven to ten years.

CHAPTER 3

Regulation of Companies on the Basis of Their Corporate Structure (Size) in India: 'A Developing Country' Perspective

3.1 Introduction

Presently, in order to accomplish the needs of small businesses in India, the organizational structure of an enterprise should be flexible and accessible which is essential for the companies. Most of the countries are bringing CLR as to SPCs with the changing circumstances so that their economy could flourish. The UK, which is well-head of the company law in most countries, has undergone the process of reforms in the company law and produced the CA, 2006 presenting the separate legislation for public and private companies as a paradigm for other nations.

History of company law witnesses that the law has mostly been enacted for public companies and the basic aim of CLR was to distinguish the public and private companies by reason of their different structures and requirements and their respective effects on the economy. The SPCs are in majority and are contributing to generating the economy, therefore, they should be provided with the separate legislation so that they could run and operate smoothly and efficiently.[129] The UK white paper states: "Wherever possible, the Government wants the new law to recognize SPCs not as the exception, but as the rule. We will therefore remove unnecessary burdens on small firms and present the provisions they use most often in a more accessible way."[130]

---

[129] Vinod Kothari and Samik Mukherjee, 'Irani Committee Report - An Analysis of Corporate Law Reform In India: Are We Keeping Pace With The World?'(n.l: n.p., n.d.)

[130] See *supra* note 14.

3.2 Need for Company Law Reforms in India

In order to chase the task of economic restructuring in response to the realities of a changing economic environment, there is a need to undertake thorough review of the Indian company law. It is obvious that in order to achieve sustainable economic reform, overhaul of the basic legal structure for businesses is needed from time to time, because the Indian companies were mobilizing resources at a scale unimaginable even a decade ago, continuously entering into and bringing new activities into the fold of the Indian economy. In doing so, they were emerging internationally as efficient providers of a wide range of goods and services as increasing employment opportunities at home. At the same time, the increasing number of options and avenues for international business, trade and capital flows had imposed a requirement not only for utilizing entrepreneurial and economic resources efficiently but also to be competitive in attracting investment for growth. India has, therefore, undergone the process of CLR[131] and made the Companies Bill, 2008, which has been presented on 23rd October, 2008 in its Lok Sabha (Parliament).

3.3 Historical Background of Company Law Reforms in India

The genesis of the CA of 1956 in India is based on the recommendations of the Bhabha Committee in 1950 to furnish a new foundation for corporate operations while consolidating the existing company laws. Before the enactment of the CA, 1956, the companies had been regulated by the CA, 1913. Having been enacted the CA, 1956, the CA, 1913 was repealed.[132] Amendment had also been made to the CA, 1913 even before 1947.

The Act of 1956 was modelled on the CA, 1948 of the UK. The CA, 1956 had had the amendments therein in 11th December 1956 with the recommendations of the Dalmia Jain

[131] The basic objectives of the reform exercise are to distinguish between companies which have major shareholder interest and small companies.

[132] See *supra* note 35, Chapter 1: Background, para 1.

Inquiry Commission,[133] the Companies Act Amendment Committee, 1957.[134] The Companies (Amendment) Act of 1960 was based on these recommendations. Afterwards, the Company Law (Amendment) Committee was established by the Government and major amendments were put into action by way of the Companies (Amendment) Act of 1974 which came into effect from 1st February, 1975.

3.4 Evolution of the Concept of Private Companies in Indian Company Law

As regards the evolution of the concept of private companies and the law relating thereto, before the Indian CA, 1913, the term "private company" was used largely in descriptive manner as a connotation for a company, which raised its capital privately. The then prevailing company law did not make any distinction between public and private companies, and all the companies registered with limited liability were subject to the same rights and obligations.

The Indian CA, 1913, which was based on the UK CA, 1908, recognised, for the first time, the concept of "private limited company". The object was to provide an alternative form of organisation to small traders and family concerns that did not invite public investment.[135]

The Indian CA, 1913, defined a "private company"[136] as a company which by its articles–

(a) restricted the right to transfer the shares, if any;

---

[133] This commission was headed by Justice Vivian Bose, which was set up under notification SRO No. 2993 of the Ministry of Finance (Department of Economic Affairs (DEA)).

[134] This committee was headed by Justice (Retd.) Shri A. V. Visvanatha Sastri, and findings by the then Attorney General for India Shri C.K. Daftary.

[135] This helped them maintain some privacy about their business affairs, as in a partnership or sole proprietorship, and at the same time, get the benefit of limited liability and legal personality with perpetual succession.

[136] These words were inserted by the Indian Act XXII of 1936.

(b) limited the number of members to fifty not including persons who were in the employment of the company[137]; and

(c) prohibited any invitation to the public to subscribe to the shares, if any, or buy debentures of the company.

As soon as the time kept lapsing, compliance requirements and prohibitions kept increasing, as it was stated earlier that the Indian CA, 1956 had been drafted for the large companies, these characteristics of a private company still continue on the statute book. However, compliance requirements and prohibitions have been increasing, over the years, as the Government tried to address the issues of accountability and corporate governance from time to time, particularly when private companies were used as vehicles of convenience for siphoning funds by the big players in the market. The new compliance requirements were more rigorous whenever these were prescribed as a reaction to frauds and scams that occurred in the corporate sector.

As the legal framework for corporate entities in India has been provided by the CA, 1956, this Act kept becoming opaque and outdated due to changing conditions and growing economy of India and could not be modernised in the consequence. The reviews had been conducted and 24 amendments had been placed since 1956. In 1993 and 1997, unavailing efforts were made for bringing a new legislation in replacement of the CA, 1956.[138]

3.5 Major Amendments in Indian Company Law

As regards the major amendments which had impact on the CA, 1956 were Sachar Committee's recommendations through which Companies (Amendment) Act, 1988 came into being, then in 1998, 2000 and the last one in 2002 through which the Companies

[137] See *supra* note 2, para 4.6. In this para, it was recommended that this restriction be removed from private companies.

[138] See *supra* note 35, Chapter 1: Background, para 4.

(Second Amendment) Act 2002 was made in the result of the Eradi Committee report.[139] Even after coming of the Companies (Amendment) Bill, 2003[140], which had been introduced by the Ministry of Company Affairs (MCA)[141] in the Rajya Sabha on 7th May 2003, the need for comprehensive reform and new law, which could supersede the existing Act, was felt, for there was a need to make changes even in this bill in order to deal with the needs of SPCs not only for the present time but also for the times to come. This had led to reconsider exhaustive review of the CA, 1956 and to introduce a new Companies Bill for the consideration of the Parliament.

The MCA[142] noted that the number of companies in India had been expanded from about 30,000 to nearly 7 lakhs in 1956. Such developments compelled the government to modernise the regulatory structure for the corporate sector comprehensively. Accordingly, a 'Concept Paper' on the new company law [143] was published by the MCA after the revision of the CA, 1956.

3.6 Efforts of the Indian Government

The Government of India examined the Concept Paper, 2004[144] and was of the view that it would be better to make an independent Expert Committee to merit valuation on the

---

[139] Ibid., para 1

[140] This bill included important provisions relating to corporate governance was also introduced, the consideration of which has been held back in anticipation of the comprehensive review of the Company Law.

[141] "Ministry of Company Affairs", earlier known as Department of Company Affairs (DCA) under Ministry of Finance, was designated as a separate Ministry vide Cabinet Secretariat Notification No.DOC.CD-160/2004 dated 27.05.2004 to function under Minister of State with Independent Charge. The Ministry is primarily concerned with the administration of the CA, 1956, other allied Acts and rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law.

[142] The Ministry took up a comprehensive revision of the CA, 1956 through a consultative and participative process to enable the evolution of a simplified compact law to take into account the changes in the national and international scenario, and to enable adoption of internationally accepted best practices and provide adequate flexibility to respond to future changes.

[143] It was placed on the website of the Ministry on 4th August, 2004.

[144] The Government have undertaken an exercise to revise the CA, 1956 to enable a compact law that would be able to address the changes taking place in the national economy as well as in the international scenario, enable adoption of internationally accepted best practices and provide adequate flexibility for

proposals of the MCA presented through its Concept Paper as well as the Companies Bill, 2003. Consequently, it established an Expert Committee[145] on Company Law under the Chairmanship of Dr. J.J. Irani[146] on 2nd December 2004 to make valuable recommendations in this regard.[147]

The purpose of constituting this Committee was to advise Government on the reviews to the CA, 1956 because the Government wanted to make it simplified and capable of dealing with the changes in the national and international scenario and absorbing internationally accepted best practices while furnishing the appropriate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. Furthermore, in order to meet the requirements and changing demands of a competitive economy, it became significant to modernise the Indian company law through a new legislation.

After due course of its reflections and detailed consultations by various Ministries, Departments and Government Regulators,[148] the Committee[149] submitted its report to the Government on 31st May 2005.[150] In the same year, an Expert Group on 4thMay 2005 under the Chairmanship of Shri O.P. Vaish, Senior Advocate, was established by the

---

timely evolution of new arrangements to address the changing requirements of the corporate sector and make our companies globally competitive.

[145] The Expert Committee consists of 13 members and 6 special invitees drawn from various disciplines and fields including trade and industry, chambers of commerce, professional institutes, representatives of Banks and Financial Institutions, Sr. Advocates etc. Government Ministries as well as regulatory bodies concerned with the subject were represented through special invitees.

[146] Dr J.J. Irani was the director of Tata Sons Inc.

[147] See *supra* note 35, Chapter 1: Background, para 7.

[148] The Committee, recognizing the relevance of a climate that encourages people to set up businesses and make them grow, addresses the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promotes international competitiveness of Indian businesses and provides it the flexibility to meet the challenges of the global economy. The Committee considered the desirable scope and coverage of the CA.

[149] In the words of Dr. Jamshed J. Irani, the Committee had the benefit of participation by several experts in various disciplines. It has tried to take a comprehensive view in developing a perspective on changes necessary in the CA, 1956 in context of the present economic and business environment. Nevertheless, corporate law is a vast subject and we expect that while the report of this Committee would provide useful inputs for its revision, it may still not be the last word on various issues.

[150] The recommendations of Committee were examined in the Ministry and proposals were formulated for the revision of the CA, 1956. After having finalized the proposals and obtained the necessary approvals, the Ministry introduced a new Companies Bill, 2008 in consultation with the Legislative Department in the Parliament.

MCA to examine issues relating to streamlining the prosecution mechanism under the CA, 1956. After considering the report of Irani Committee and other inputs received from time-to-time, the Government took up the exercise of comprehensive review of the CA, 1956. Broadly the objective of the review was to[151]—

(i) retain desirable features of the existing framework, segregate substantive law from the procedures to enable a clear framework for good corporate governance that addresses the concerns of all stakeholders equitably;

(ii) revise the law so as to enable a compact statute that is amenable to easy understanding and interpretation;

(iii) enable greater flexibility in procedural aspects so that with the passage of time the procedural framework, to be prescribed through rules, may be amended without amendment of the substantive enactment;

(iv) establish a climate that encourages setting up of businesses and their growth while enabling measures to protect the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices and effective enforcement;

(v) provide a framework for responsible self-regulation through determination of corporate matters through decisions by shareholders, in the background of clear accountability for such decisions, obviating the need for a regime based on Government approvals;

(vi) address the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promote international competitiveness of Indian

[151] See the proposed Indian Companies Bill, 2008, p 180.

businesses and provide them with the flexibility to meet the challenges of the global economy;

(vii) incorporate international practices based on the models suggested by the United Nations Commission on International Trade Law (UNCITRAL); and

(viii) provide for a reasonable and appropriate framework for enforcement of the law that enables proper investigation and imposition of appropriate sanctions comprising of penalties for non-compliance and punishment for violation of the law and for fraudulent conduct, keeping in view the experience resulting from past stock market scams and concerns expressed by Joint Parliamentary Committees thereon.

Afterwards, the new Companies Bill, 2008 was introduced in the Lok Sabha by the MCA, Shri Prem Chand Gupta, to consolidate and amend the law relating to companies and took back the Companies (Amendment) Bill, 2003[152] which was introduced in the Rajya Sabha on 7th May, 2003. In the light of the above-mentioned objective, the present Bill, inter alia, provides for[153]:—

(i) the basic principles for all aspects of internal governance of corporate entities and a framework for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a single, comprehensive, legal framework to be administered by the Central Government. In doing so, the Bill also seeks to harmonise the company law framework with the sectoral regulation; reduction of Government Control over internal Corporate Processes;

(ii) articulation of shareholders democracy with protection of the rights of minority stakeholders, responsible self-regulation with adequate disclosures and accountability;

---

[152] This Bill was not in accordance with the present day requirements of companies in India.
[153] See *supra* note 151, 181.

(iii) easy transition of companies operating under the CA, 1956, to the new framework as also from one type of company to another. Freedom with regard to the numbers and layers of subsidiary companies that a company may have, subject to disclosures in respect of their relationship and transactions or dealings between them;

(iv) a new entity in the form of One-Person Company (OPC) while empowering Government to provide a simpler compliance regime for small companies. Retention of the concept of Producer Companies, while providing a more stringent regime for companies with charitable objects to check misuse;

(v) application of the successful e-Governance initiative of the MCA (MCA-21) to all the processes involved in meeting compliance obligations. Company processes may also be carried out through electronic mode;

(vi) speedy incorporation process, with detailed declarations and disclosures about the promoters, directors, etc., at the time of incorporation itself. Every company's director would be required to acquire a unique director identification number (DIN);

(vii) relaxation of restrictions limiting the number of partners in entities such as partnership firms, banking companies, etc., to a maximum 100, with no ceiling as to professional associations regulated by Special Acts;

(viii) duties and liabilities of the directors and every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence. The requirement to appoint independent directors, where applicable, to listed public companies is a minimum of one-third of the total number of directors. For other public companies, the requirement and number may be prescribed through rules;

(ix) statutory recognition to audit, remuneration and stakeholders relationship committees of the Board and the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the CS to be as Key Managerial Personnel (KMP);

(x) companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other Special Acts. The Bill prohibits insider trading by company directors or KMP and declares it as an offence with criminal liability;

(xi) recognition of both accounting and auditing standards. The role, rights and duties of the auditors defined so as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies is proposed to be made mandatory;

(xii) a single forum for approval of mergers and acquisitions along with a shorter merger process for holding and wholly owned subsidiary companies or between two or more small companies as well as recognition of cross border mergers. Concept of deemed approval also provided in certain situations;

(xiii) a framework for enabling fair valuations in companies for various purposes. Appointment of valuers is proposed to be made by audit committee or in its absence by the Board of Directors (BODs);

(xiv) claim of an investor over a dividend or a benefit from a security not claimed for more than a period of seven years not to be extinguished, and Investor Education and Protection Fund (IEPF) to be administered by a statutory authority;

(xv) shareholders associations or group of shareholders to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and 'Class Action Suits';

(xvi) a revised framework for regulation of insolvency, including rehabilitation, liquidation and winding up of companies and the process to be completed in a time bound manner;

(xvii) consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal (NCLT) with appeal to National Company Law Appellate Tribunal with suitable transitional provisions. The nature of the Rehabilitation and Revival Fund (RRF) proposed in the Companies (Second Amendment) Act, 2002 to be replaced by Rehabilitation and Insolvency Fund (RIF) with voluntary contributions linked to entitlements to draw money in a situation of insolvency;

(xviii) a more effective regime for inspections and investigations of companies while laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence for repeated defaults. Company is identified as a separate entity for imposition of monetary penalties from the officers in default. In case of fraudulent activities, provisions for recovery and disgorgement have been included;

(xix) levy of additional fee in a non-discretionary manner for procedural noncompliance, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature are to be penalised by levy of monetary penalties by the adjudicating officers not below the level of Registrars. The appeals against orders of adjudicating officers are to lie with suitably designated higher authorities;

(xx) special Courts to deal with offences under the Bill. Company matters such as mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be dealt with by the NCLT.

3.7 Problems of Existing Companies Act, 1956 as to Small and Private Companies

The existing CA, 1956 being a bulky document with seven hundred and eighty one (781) sections,[154] the scheme of which includes the provisions procedural in nature specifying quantitative limits which are irrelevant to the changes occurred over a period of time since its enactment. The existing law became rigid and stringent because every change was based on the parliamentary process. The law could not perceive the rapid economic changes in the national and international scenario. Thus, the law became *passé* and old-fashioned.

However, this need not be the case since many essential features of corporate governance which are already recognized in the CA, 1956 need to be retained and articulated further. What is required is that along with the changes in the substantive law, wherever required, a review of procedural aspects may also be undertaken so as to enable greater degree of self-regulation and easy compliance. The company law, therefore, may be so drafted that while essential principles are retained in the substantive law, procedural and quantitative aspects are shifted to the rules. This would enable the law to remain dynamic and to adapt to the changes in business environment.

A complex single set of legal principles cannot be sufficed for the operation of companies both for public and private companies by virtue of their distinct forms. Mechanism[155] for a large body of regulatory provisions, governance codes and standards are not in consonance with the CA, 1956. Such mechanism cannot expand its coverage in a meaningful manner even if a method of improvement therefor is allowed to do so in future.

---

[154] See *supra* note 35, Chapter 2: Approach of new company law, para 7.

[155] In future, such mechanism will have to complement the principles which are laid down in the law. Regulatory and professional bodies have an extremely important role to play in this regard.

There is no flexibility and freedom of operation and compliance at a low cost for SPCs despite the fact that private companies have to rely on their personal or in-house resources and cannot go for public issues or deposits for their financial requirements. Moreover, the CA, 1956 makes taxonomy of companies in broad manner into private and public and sets out the regulatory requirements on the basis of such taxonomy.

Reducing number of sections or provisions of the law is not alone sufficient in simplifying, rationalizing and modernizing the law. The existing law, being unwieldy and complicated, does not supply a pliable system for proper growth of companies and their dynamic orientation. It is not providing a flexible framework to conceive new developments and is unable to adapt the requirements of the changing environment occurred in the corporate world which has had their impacts on the SPCs.

Classification was one of the problems for small companies as the CA, 1956 classified three types of companies, that is, public companies, private companies and private companies which were subsidiaries of public companies. It became difficult and complicated for private companies to comply with the requirements by virtue of a distinct *modus operandi* between public and private companies.

Prior to the amendment in 1960, it was considered by the Companies Amendment Committee whether there should be provided more freedom and liberty to private companies and then in 1985 and 1996 the same was reiterated but the idea could not be clicked due to the reason that private companies are already enjoying a greater number of exemptions[156] under the Act irrespective of the fact that they were facing the hardships and needed genuine reforms ignored by the then Committee.

---

[156] The exemptions, in fact, are more in number, because exemption from one single section automatically means exemption from several others in some cases. For example, private companies are exempted from issuing prospectus when raising capital [section 70(3)]; as a result, they are exempt from the application of sections 63 and 68 of the Act; in fact, they are exempt from almost all sections pertaining to issue of capital. Similarly, registration of a private company is simpler than a public company because it need not:

(a) obtain consent of directors to act as such in Form 29;
(b) obtain certificate of commencement of business; and

Most of the exemptions were irrelevant and inapplicable to private companies especially to subsidiaries of public companies.[157] The problem of differential treatment between the public and private companies was not addressed in effective manner, such as the amendment[158] of section 43A brought into the Act whose object was as under:

> "The amendment proposed implements the recommendation --- that private companies which employ public money to an appreciable extent should be subject to the same restrictions and limitations as to disclosure and otherwise as applied to public companies."[159]

In order to better understand the distinction between the public and private companies, it is pertinent to observe the paragraph 23 of the Companies Act Amendment Committee Report 1957[160] which states as follows:

> "Private companies are exempted from the operation of several sections of the Act and enjoy certain privileges, principally on the ground that they are family concerns in which the public is not directly interested. It is, however, well known that there are many private companies with large capital doing extensive business and controlling a number of public companies. This is made possible because funds of other companies, public and private, are

---

(c) file the statement in lieu of prospectus with RoC in Schedule IV to the Act.

[157] The Act divides private companies into two categories: private companies per se and private companies which are subsidiaries of public companies.

[158] See the Companies Act Amendment Committee Report (1957).

[159] This object was brought out in the notes to the Bill for the Companies (Amendment) Act, 1960.

[160] It has been stated before the Committee that three major factors/qualifications should be kept in mind while prescribing liberalised norms for private companies. First, the liberalised provisions will have to be limited to "small" private companies; small, in terms of paid-up capital or turnover or both; it can then be considered whether any, or some, of liberalised provisions can be extended to other (larger) private companies as well. Secondly, the liberalisation may be optional, in the sense that smaller private companies may or may not utilise the extra benefits/exemptions instead of stipulating that all SPCs shall be governed by the liberalised regulatory regime. The idea is to let the smaller private companies comply with some of the provisions of the Act if they want to do so to satisfy some stakeholders. For example, private companies are exempt from issuing a prospectus, or filing a statement in lieu thereof (section 70 of the Act) for raising capital. But, if the company wishes to do so, it may have the option of filing the prospectus/statement in lieu thereof. Thirdly, exempted private companies that have financial dealings - by way of inter-corporate deposits, trade advances, loans, investment or any other clever derivation thereof – with public or listed companies will have to be treated quite separately, in order to avoid siphoning of funds from the latter.

> invested in such private companies. As public money is invested in such companies there is no reason for treating such companies, as private companies. The problem of private companies has always been somewhat difficult. On the one hand, there are genuine private companies which are nothing but glorified partnerships and, on the other, there are private companies whose operations, financial and industrial, are far wider than those of many public companies. To meet this problem, the Cohen Committee[161] created the category of exempted private companies but the relevant provisions in the English Act are very complicated. It was strongly urged upon us that the several exemptions granted to and the privileges enjoyed by private companies should be withdrawn, as they are abused. But to withdraw them from all private companies may cause hardship to genuine SPCs. At the same time, there is no doubt that private companies, which employ public money directly or indirectly to a considerable extent, should be subject to the same restrictions and limitations as to disclosure and otherwise as apply to public companies."[162]

Practically, the conversion of private companies into public companies could not be carried out properly even after section 43A was amended twice, once in 1974 and then in 1988.

Consequently, this section became redundant, for it could not be proved to be effective for decreasing the differential treatment and became inoperative in December, 2000 because it did not work properly. However, the restriction in terms of accepting deposits from persons other than shareholders, directors or their relatives was imposed on private companies.[163]

---

[161] Board of Trade, '*Report of the Committee on Company Law Amendment,*' (Cmnd 6659) (June 1945)

[162] See the Companies Act Amendment Committee Report (1957), para 23.

[163] The amendment was made in the definition of a private company under section 3(1) (iii) of the CA 1956.

Most of the compliance and filing requirements under the Act, which had been destined for public companies,[164] were needlessly expanded to the private companies including the private companies which were 'small'.[165]

3.8 Recommendations of 'the Irani Report' as to Small and Private Companies

The Irani Report, 2005 has been appreciated with a view to international developments in company law. The characteristic of the Irani Committee is that it has been successful by virtue of its practical approach in terms of the ground realities, emerging economic scenario and the increasingly important role of Indian companies in the global arena. Furthermore, the Irani Committee has toiled to furnish adequate flexibility for timely evolution of new arrangements needed in the ever-changing business models and to facilitate the adoption of internationally accepted best practices.

- The Committee acknowledging the Indian economy in its growing stage noted that numerous companies including small companies are being set up that would enhance new business and technological opportunities, adding more, small companies[166] would be set up as the Indian economy is SMEs oriented.[167]

---

[164] It is clear that the Act of 1956 was rooted in an environment that spawned the license and permit raj in India. Though the Act has been amended on more than two dozen occasions, presumably to keep in tune with the changing and liberalised environment, doubts have been expressed lately on the continued validity of the very structure of the Act. It has been argued that the Act is designed chiefly to address the requirements of public companies, with adaptations being provided, here and there, for private companies.

[165] As public investment in these companies is minimal, and financial institutions, including banks, have the skills and professionalism to protect their interests, this is not adding value to the management of assets in the corporate sector at all. To the contrary, it has added to compliance costs which, in the case of a large number of private companies, can be time-consuming and unduly burdensome.

[166] This new sub-classification within private companies, in view of the Committee, is of a private company which may be called 'small' by virtue of its paid-up capital and free reserves, or turnover, or aggregated annual receipts to paid-up capital ratio.

[167] International experience shows that a major source of growth of industrial sector has been the small companies. Moreover, these are typically target limited companies, which do not normally have access to funds of the wider investing public. A separate law for small companies so enacted should have minimal regulatory framework as is the position in many other countries including UK, Germany, France, Netherlands, USA, etc.

- Small companies with regard to their size should not be overburdened with the level of compliance requirements as compare to large public companies.[168]

- They should be capable of taking quick decisions and be amenable in the changing economic environment and be encouraged through a system of exemptions so that they could easily comply with the requirements.

- Small companies should be strengthened with simplified decision-making procedures by relieving them from selecting statutory internal administrative procedures.

- SPCs should be provided with exemptions consolidated in the form of a Schedule to the Act in financial reporting and audit requirements and simplified capital maintenance regimes so as to achieve transparency at a low cost through simplified requirements.

- The Committee appreciated the integrated approach of the UK.[169] In this regard, the definition of small companies should be considered and the problems relating to prescribing their size should be taken into consideration effectively and they all be done through rules.

- The assessment of size should be on the basis of gross assets comprising of fixed assets, current assets and investments not exceeding a particular limit as also turnover. Associations, Charitable Companies etc. licensed under section 25 of the existing CA, 1956 should not be treated as small companies irrespective of their gross assets. The small company could be defined in terms of minimum

---

[168] The Committee sees no reason why small companies should suffer the consequences of Regulations that may be designed to ensure balancing of interest of stakeholders of large–widely held companies.

[169] This approach being in the same Act would provide a deregulated framework for private companies which would also apply to small companies.

capital employed, turnover and the number of persons employed, fulfilling at least three requirements, as is position in the UK.

- The operation of SPCs, which be flexible and responsive, should be provided at low cost while giving such companies a simpler legal regime through exemptions.[170]

- The law should provide a framework compatible to growth of small corporate entities. Exemptions should facilitate compliance by small companies in an easy and cost effective manner, however. There should not be an incentivized concealment of true size by any entity or be a barrier to growth of small companies.

- As regards the legal framework which must be provided to SPCs compatible to growth of them, the compliance by small companies should be in an easy and cost effective manner. Such a framework is necessary for enabling sustainable economic reform. This must be in line with emerging economic scenario, encouraging good corporate governance and enabling protection for the interests of the stakeholders, including small investors.

- Private companies in the existing company law have been provided with certain exemptions and relaxations which should be carried on.

- Decision-making process should be simplified without observing the formalities of the Act if members of a company unanimously agree. In the absence of unanimity, a simplified circular resolution procedure should be provided.

[170] The Committee acknowledged that small companies should not be subjected to the same regulations as big companies. This is consistent with the "Stakeholder" approach by virtue of a limited number of stakeholders in small companies.

- Dispute resolution procedures should be simplified. In this respect, the UK has introduced the arbitration procedure for private companies.

- The concept of OPC has been introduced by the Committee.[171] The main features would be such as company would be registered as a private company with one member, but would have another person as director, safeguards would be available in the event of the death of that single member. The acronym OPC is introduced to distinguish such companies.

- A separate law dealing with private companies or small companies, which had been recommended by the Naresh Chandra Committee, 2002, has been rejected by *the Irani Report* instead it favoured a separate legislation for LLP.

- On the one hand, the Irani Committee appreciates the integrated approach and on the other hand recommends for making a separate legislation for LLP. From my perspective, attention should be paid towards the lacunas and drawbacks of already existed structure, that is, private companies and should not go for a new separate legislation because of the propensity whether the new structure would be able to be succeeded and encouraged by the people. Instead, the already existed structure, which is successful in spite of the demerits and drawbacks, could be coped with effective manner should this task be taken seriously as did by the UK.

- The committee recommended that company law should be compact and intelligible containing the essential principles in substantive law.

- Procedural and quantitative aspects should be addressed in the rules.

- Law should enable self-regulation but impose greater accountability through disclosures and speedy administration of reasonable legal sanctions.

---

[171] In several European jurisdictions, single-shareholder companies are already a reality.

- Process of registration should be speedy, optimally priced and compatible with e-Governance initiatives.

- Companies should be required to make necessary declarations and disclosures about promoters and directors at the time of incorporation. Stringent consequences should follow if incorporation is done under false or misleading information.

- Regular filing should be made easy, efficient and cost effective. Non-filing of documents or incorrect disclosures should be dealt with seriously. Delays in filing should be penalized through non-discretionary late fee relatable to the period of default.

- There should be a system of random scrutiny of filings of corporates to be carried out by the registration authorities.

- Every company should be required to appoint, a CEO, CFO and CS as its KMP whose appointment and removal shall be by the BODs.

- Special exemptions may be provided for small companies, who may obtain such services, as may be required from qualified professionals in practice.

- SPCs are no longer required to appoint a CS. Small companies should be given exemptions/relaxations in respect of disclosures relating to financial statements.

- Small companies may be given an option to dispense with the requirement of holding an AGM. Such companies may be permitted to pass resolutions by circulation. The items of negative lists may also be transacted by small companies through postal ballot.

- The Committee was of the view that small companies need not be subject to the costs of a regime suited to large companies with a wide stakeholder base.

- Relaxations to small companies with regard to the format of accounts to be prescribed in the Act/Rules may also be considered. If necessary, a separate format for small companies may be devised.

- Exemptions from certain disclosures may also be considered and relaxations, if any required, in respect of compliance with Accounting Standards may be provided for small companies while notifying the Accounting Standards. If necessary, a separate Accounting Standard may be framed for small companies.

3.9 Small Private Companies Under the Proposed Indian Companies Bill, 2008

- Section 2 (*zzzg*) of the Companies Bill, 2008 defines the "small company" as a company, other than a public company,—

  (i) whose paid-up share capital does not exceed such amount as may be prescribed and the prescribed amount shall not be more than five crore rupees; or

  (ii) whose turnover as per its last profit and loss account does not exceed such amount as may be prescribed and the prescribed amount shall not be more than twenty crore rupees:

  Provided that nothing in this clause shall apply to —

  (*A*) a holding company or a subsidiary company;

(*B*) a company registered under section 4[172]; or

(*C*) a company or body corporate governed by any special Act.

- Section 2 (*zzk*) of the Bill provides the definition of "OPC" means a company which has only one person as a member.

- Under section 2 (*zzp*) of the Bill, "private company" means a company which, by its articles,—(*i*) restricts the right to transfer its shares; (*ii*) limits the number of its members to fifty: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that – (*A*) persons who are in the employment of the company; and (*B*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and (*iii*) prohibits any invitation to the public to subscribe for any securities of the company.

- Under section 3 of the Bill, a company may be formed for any lawful purpose by any— (*a*) seven or more persons, where the company to be formed is to be a public company, or (*b*) two or more persons, where the company to be formed is to be a private company, or (*c*) one person, where the company to be formed is to be a OPC.

- Section 5 of the Bill concerns the memorandum of a company. This memorandum of a company shall state the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company, or the last letters and word "OPC Limited" in the case of a One Person limited company provided that nothing in this clause

[172] Companies registered under this section will be companies with charitable objects.

shall apply to a company registered for charitable purposes under section 4 of this Bill.

- The section 6 of the Bill addresses the articles of a company which shall contain regulations for the company. Sub-section 4 of the same section provides that the provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

- Under section 12 of the Bill, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

- The section 13 of the Bill deals with the alterations of articles. This section states that a company may, by a special resolution, alter its articles including alterations having the effect of conversion of — (a) a private company into a public company or a OPC, or (b) a public company into a private company or a OPC, or (c) a OPC into a public company or a private company: Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company: Provided further that any alteration having the effect of conversion of a public company into a private company or a OPC shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

- The section 55 of the Bill provides that a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting. The cancellation of shares shall not be deemed to be a reduction of share capital.

- The section 92 of the Bill provides that five members personally present in the case of public company and two members personally present in the case of a private company, shall be the quorum for a meeting of the company unless the articles of the company provide for a larger number.

- The section 132 of the Bill sets out that every company shall have a BODs consisting of only individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a OPC.

- Under section 142 of the Bill, the articles of a company may confer on its BODs the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

- The section 421 of the Bill sets out that save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of Chapters III (Prospectus and Allotment of securities), IV (Share Capital and Debentures), VII (Management and Administration), IX (Accounts of Companies), X (Audits and Auditors), XI (Appointment and Qualifications of Directors) XII (Meetings of Board and its Powers) and XIII (Appointment and Remuneration of Managerial Personnel) of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to private company, OPC and small company or any of them.

- The clause 421 of the Bill provides that in case of OPC or small company the Central Government may by notification exempt the compliance of certain provisions. However, a copy of draft notification shall be laid before both the House of Parliament.

CHAPTER 4

Regulation of Companies on the Basis of Corporate Structure (Size) and its Implications in Pakistan

SMEs are the backbone of the Pakistani economy.[173] They have been playing an effective role with different perspectives such as creating jobs, strengthening the entrepreneurial culture and giving boost to the national economy and many more. In order to fortify and promote SMEs, it is high time to take a step to encourage them while making the UK legislation as role model in order that they could work at fast pace and could be able to equate with other nations' SMEs.

Therefore, we would have to overhaul the legal framework of private companies under the CO, 1984 and would need to appreciate the efforts made in previous years in this regard to modernise and simplify the company legislation. Here, it is pertinent to applaud and commend the efforts of Corporate Laws Review Commission (CLRC) made in the year of 2006 for bringing radical changes. However, this work unfortunately could not be carried on incessantly. It is desirable to highlight the objective of the CLRC which evinces the vision of the Concept Paper for the development and regulation of the corporate sector published by SECP which reads as follows:

> "It is necessary to carry out a holistic examination of the Ordinance in order to assess: (a) the relevance of its objectives in the current economic environment; (b) the adequacy of its provisions, not only for the achievement of its avowed objectives, but for the creation and maintenance of a liberal, deregulated and efficient corporate sector; (c) its capacity to allow for the

[173] See SME Policy Pakistan - Ensuring Conducive Business Environment: Concept Paper at http://www.smeda.org.pk/html. (accessed December 12, 2009).

balanced growth of corporate enterprises, particularly SMEs; and (d) the extent of its harmonisation with international best practices."[174]

4.1 Brief Historical Background of the Companies Ordinance, 1984

In Pakistan, the CA, 1913 was adopted after independence.[175] Later on, the CA, 1958, the Securities and Exchange Ordinance, 1969, the Companies (Managing Agency and Election of Directors) Order, 1972 and the Companies (Shifting of Registered Office) Ordinance, 1972 were passed. The CO, 1984[176] repealed all these laws, except the Securities and Exchange Ordinance, 1969 of which only Ss.11-15[177] were repealed. The law on insider trading[178] has been introduced recently as have the rules of mergers and acquisition. In 2002, the SMC was introduced.[179]

The corporate sector in Pakistan is regulated primarily by the CO, 1984. The Ordinance was promulgated to "consolidate and amend the law relating to companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith."[180]

Since the CO, 1984, the period of twenty five years is the period of growth of the Pakistani economy including the corporate sector. In order to address the needs of changing environment of corporate sector, the CO, 1984 has been amended in 1991, 1999

---

[174] See Securities and Exchange Commission of Pakistan, *supra* note 2, para 1.3.

[175] Nazir Ahmed Shaheen, *Practical Approach to the CO, 1984* (Rawalpindi: Federal Law House, 2008), 2.

[176] The CO, 1984 was promulgated on the October 8, 1984 that repealed previous CA, 1913. Prior to independence, companies were regulated by the Indian CA, 1913 which was a replica of the English Companies (Consolidation) Act, 1908 save certain minor variations. Post independence, Pakistan adopted the CA, 1913 after making certain necessary amendments thereto. In 1959, a Company LC was formed to review the CA, 1913. The Company LC published its report in 1962 and the recommendations made therein culminated in the promulgation of the CO, 1984.

[177] These sections were repealed by the CO, 1984 (XLVII of 1984) Notification No. F. 17(1)/84-Pub dt. 8-10-84.

[178] See Chapter III-A inserted by the Finance Act (I of 1995), s 7(5) dt. 2-7-1995.

[179] This word was substituted by the Companies (Amendment) Ordinance, 2002, dt.26.10.2002.

[180] See the Preamble of the CO, 1984.

and 2002. SECP[181] established several Corporate Law Reform Committees to review and assess the company law regime in Pakistan. In April 1991, a review committee was formed which submitted its report to the Federal Government in 1993. Some of its recommendations were incorporated in the law through an ordinance promulgated by a caretaker government, however, the ordinance lapsed and the recommendations made therein were not placed before the Parliament.

In February 1997, a Commission on Corporate Laws published its report. Some of its most important recommendations were incorporated in the Companies (Amendment) Act, 1999. In January 2001, SECP established a committee to review the CO, 1984. The Companies (Amendment) Ordinance, 2002 was promulgated on the basis of this committee's recommendations. Two significant developments came into being in the wake of such amendments. However, those amendments were not exhaustive within them.[182] In 2006, a 'Concept Paper' has been issued by the SECP and a CLRC has been formed to undertake a comprehensive review of the company law.[183]

4.2 Existing Situation of Private Companies Under Companies Ordinance, 1984

In order to carry on a business of family and small scale, a private company which either be limited by shares or limited by guarantee and having a share capital, may be formed with the minimum one person called as SMC[184] (also called as OPC[185] in India) and with two persons called as private company.[186] The genesis of private companies was said to

---

[181] The then Corporate Law Authority (CLA).

[182] Two significant developments in this regard are (a) the growth of nonbanking finance companies and (b) the introduction of single member companies.

[183] See *supra* note 174.

[184] See the ECs (SMPLLCs) Regulation, 1994 providing that a sole person whether natural or legal can form or become a SMLLC. The regulations further provide that, subject to certain modifications, all the provisions of the CAs which apply to private companies limited by shares or by guarantee will apply to small and medium companies.

[185] See *supra* note 151. In India, a draft Companies Bill, 2008 has proposed this new entity OPC that will be a private limited company as SMC. SMC and OPC are analogous to each other.

[186] See the CO, 1984, s 15(1).

have been embodied in the CA, 1907/1908 of the UK.[187] The SMC was introduced in the UK in 1980 giving exemption to it from filing a balance sheet. Its purpose was to protect the small investors in contrast to large investors who were financially stronger than the former.

The CO, 1984 defines a private company as a company that by its articles:

(i) restricts the rights to transfer its shares, if any;

(ii) limits the numbers of its members to fifty not including persons who are in the employment of the company; and

(iii) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company:

Provided that, where two or more persons hold one or more shares in a company jointly, they shall for the purposes of this definition, be treated as a single member.[188] All these three conditions above-mentioned in the definition should be included in the articles of a company otherwise such company would not be treated as a private company nor would it be provided with the exemptions as are available to private companies under the CO, 1984.[189]

Albeit the private companies are constrained from transferring their shares, with the restriction of members not more than fifty and with the prohibition not to invite the public to subscribe for their shares, yet they have been given certain exemptions which are as follows:

---

[187] Imran Ahsan Khan Nyazee, *Company Law* (Rawalpindi: Federal Law House, 2008), 47.

[188] See *supra* note 186, s 2 (28).

[189] Ibid. s 46. It elaborates, "If these provisions are not complied with "the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Ordinance and this Ordinance shall apply to the company as if it were not a private company."

- Only two members are required for registering a private company[190] and it is not required to have more than two directors.[191] In case of SMC, only one member is required and such company may have just one director.[192]

- A private company is not required to hold a statutory meeting or prepare and file a statutory report.[193]

- There is no restriction on the appointment and advertisement of the first directors of a private company.[194]

- A private company is not required to file with the registrar a statement in lieu of prospectus.[195]

- A private company can commence its business and exercise any borrowing powers without any restrictions.[196]

- A private company having paid up capital of less than 7.5 million rupees[197] is neither required to send its annual accounts to SECP, nor stock exchange nor registrar.[198]

- There is no restriction on the allotment of shares of a private company.[199]

In addition to the above, the following further legal exemptions are provided for those private companies which are not the subsidiary companies of any public company.

---

[190] See *supra* note 186.
[191] Ibid., s 174
[192] Ibid.
[193] Ibid., s 157 (12)
[194] Ibid., s 184 (3)
[195] Ibid., s 69 (3)
[196] Ibid., s 146 (6)
[197] Ibid., s 242 (3)
[198] Ibid., s 233 (5)
[199] Ibid., s 68 (9)

- The legal restrictions imposed on a public company in regard to financial assistance to be given for the purchase of its shares do not apply to a private company.[200]

- Restrictions imposed upon the powers of management of the directors of a public company do not apply to the directors of a private company.[201]

- The prohibition on public companies with regard to the granting of loans or the guaranteeing of loans granted to directors does not apply to a private company.[202]

- The prohibition on voting by interested directors is not applicable to a private company.[203]

- Provisions requiring an agent of a public company, who makes a contract in his own name but on account of the company as undisclosed principal to make a memorandum of the contract and file it in the company's office do not apply to a private company.[204]

- A private company may employ an unqualified auditor as also any person in the employment of its directors or officer, as an auditor.[205] However, a private company is to employ an auditor who is a chartered accountant only if its paid up capital is rupee 3 million or more.[206] This means that a private company whose paid up capital is less than 3 million may not employ a chartered accountant for audit.

---

[200] See *supra* note 186, s 95.
[201] Ibid., s 196 (3)
[202] Ibid., s 195 (2) (a) (i)
[203] Ibid., s 216 (2) (a)
[204] Ibid., s 225 (1)
[205] Ibid., s 254 (1) (b)
[206] Ibid., s 254 (1) (ii)

4.3 Problems of Small and Medium-sized Enterprises and Their Proposed Solutions

Where the SMEs are the contributors in the economy of the country, their problems must be addressed seriously in order to make them efficient and effective promoting the entrepreneurial culture while having all the privileges of company. In developing countries, their numbers are increasing but with the low pace the reason of which may be the ignorance of the investors as to privileges and benefits which are available after the formation of a company. SMEs constitute nearly 90% of all the enterprises in Pakistan.[207] It is worthwhile to address their problems and seek their possible solutions so that they can be encouraged and promoted for speedily growth of the economy.

According to Dr. Tariq Hassan,[208] "The benefits of corporatization to economy primarily result from improved transparency and accountability. The corporate entities are required under the law to maintain proper records of operations and business affairs. Disclosure requirements are generally set out in the law along with the responsibilities for preparation and circulation of specified statements. The comprehensive legal and organizational framework within which corporate entities operate gives rise to a well-regulated and well-documented economic sector. In consideration of the multiple benefits arising from corporatization, the Government has encouraged a policy of corporatization and privatization of public sector entities, which is expected to have a profound impact on accountability in the public administration."[209] In order to promote and encourage the

---

[207] See *supra* note 25.

[208] The author, a former Chairman of the Securities and Exchange Commission of Pakistan, is a lawyer based in Islamabad. He has a master's and doctorate in law from Harvard Law School and is a member of the Board of Governors of LEAD Pakistan.

[209] See the speech of Dr. Tariq Hassan, '*Benefits of Corporatization*' delivered at the Expert Advisory Cell dt. 20-11-2003 at http://www.secp.gov.pk/ChairmanSpeeches/PDF/201103_EAC.pdf (accessed December 2, 2009)

corporatization of SMEs, SECP has reduced the fees for incorporating the company[210] and corporate tax rate from 50% to 20% for SMEs registered under the CO, 1984.[211]

On the contrary, the company is not entitled to run its business unless it takes the certificate of incorporation. When it wants to run, it undergoes the lengthy procedure. It incurs high tax rates and filing requirements keep increasing. It has to automatically become the part of Federal Board of Revenue (FBR) as withholding agent not by choice rather by law. It is overburdened with the mandatory filing of returns and statements electronically (e-Filing). It is required to maintain the external audit as well as secretarial records. Filing of Audited Statements of Accounts with SECP is mandatory for it. The company is under obligation to appoint Legal Advisor (LA) and CS. As long as it keeps doing business, its costs keep increasing too.[212]

The following are the problems of SMEs being faced by them:-

- The labour laws are not without shortcomings, for instance, there is no protection of labour force in spite of the presence of their class in labour laws. Labour laws dealing with employers and employees such as the rights of formation of collective bargaining agents, rights of safety and levies, rights to obtain fixed wages and benefits of provident funds and the payment of wages to the employees, etc. These laws need effective implementations.[213]

- The credit by the banks and other financial institutions (Formal Financing) for maintaining the business is not provided to the SMEs as compare to large companies which impedes their growth. The reasons of lack of access to credit facilities are, to wit, the requirements of banks and other financial institutions for

---

[210] See Securities and Exchange Commission of Pakistan, '*SECP facilitation*', p 1, at http://www.secp.gov.pk/html. (accessed December 12, 2009)

[211] The Task Force Report on Corporate Tax Policy (Islamabad: April 14, 2005), 19-20.

[212] See the presentation of Muhammad Zeeshan Merchant, '*Corporatization: Pros and Cons!*' Tax House, Karachi. (May 26, 2008)

[213] Faisal Bari and others, "*SME Development in Pakistan: Analyzing the Constraints to Growth,*" Pakistan Resident Mission Working Paper No. 3 (Islamabad: Asian Development Bank, 2005), 37.

giving loans, high costs and interest rates which are increased in each financial year, delay in loan financing process, sometimes the lack of access to banks, hurdles in obtaining loans, extension of non-performing loans and charging of advance taxes.[214] At times, banks are unwilling to extend credit because of not maintaining proper accounts and due to their size.[215] One of the reasons is that SMEs do not disclose the exact picture of their accounts.[216]

- The lack of state institutional resources has undermined the performance of SMEs.[217] Moreover, the government's lack of interest worsens the performance of such companies.[218]

- It is a dilemma that shortage of power supply has affected each and every sector including the SMEs. The reasons such as high tariff rates, unreliable power supply, continuous load shedding and poor line connections and delivery are the impediments for the SMEs.[219]

- Finance is the one of the main problems being faced by such enterprises and they have to take credit due to shortage of money with heavily interest-based. These have to rely on the limited personal and in-house resources (Informal Financial) as enterprises need huge capital for operational affairs and regulatory requirements.[220]

- The problem of high costs of leasing and the regulations of the State Bank of Pakistan (SBP) relating thereto affect the performance of the SMEs. They are

---

[214] S. Akbar Zaidi, *Issues in Pakistan's Economy* (Karachi: Oxford University Press, 1999), 126-131.

[215] Muhammad Saleem Bhutta, "*Engineering Subcontracting and Enterprise Development in Pakistan,*" (Phd. Thesis, Bahuddin Zakaria University, 2000), 16-17.

[216] Arif Iqbal Rana and Usman Asad, (2007) '*SME Pulse Entrepreneur and Small and Medium Enterprise Center,*' A survey report on the health of SMEs in Pakistan, 19, 35.

[217] Shahab Khawaja, "*Unleashing the Potential of the SME Sector with a focus on Productivity Improvements,*" (n.l: n.p., 2006), 4-5.

[218] See *supra* note 214, 133.

[219] See *supra* note 213, 29-32.

[220] See *supra* note 214, 131-33

unable to purchase machinery and other equipments and unaware of the techniques of asset-based lease financing.[221]

- As regards the taxation, heavy taxes are imposed on the SMEs. The reasons such as complex taxation administrative setup, no incentives in existed tax laws for them, inability to afford proper documentation in terms of proper audited statements and other professional requirements, discretionary powers of tax authorities granted by taxation laws and inconsistency in tax laws are the obstacles for the SMEs. The UK has given financial relaxations and exemptions with regard to taxation requirements in terms of simplifying the regulatory requirements and granting concessions.[222]

- In Pakistan, it has become the habit of people to avoid tax, the reason whereof is presented that tax is injustice with the people imposed by the government, for people are not provided with facilities against the payment of taxes. Nevertheless, they use resources and different tricks for the sake of avoiding tax.[223] There is a need to pay heed to this field and relaxations and exemptions should be provided to small businesses. Tax exemptions and simplified tax compliance requirements by means of filing of simple tax returns and accounts should be provided to SMEs. Terms and conditions for the payment of tax should be made easier, clearer and simplified. Small investors of SMEs should be given exemptions with regard to payment of taxes.

- The policies as to tariff rates need to be reviewed, for they are also one of the impediments for SMEs. High tariff rates are imposed on raw material and the low

---

[221] See *supra* note 213, 28.

[222] Sanjaya Lall, "*Strengthening SMEs for International Competitiveness,*" for the Egyptian Centre for Economic Studies Workshop. (Cairo: March 6-8, 2000), 7-8.

[223] M. Levi and M. Suddle, "White-Collar Crime, Shamelessness, and Disintegration: The Control of Tax Evasion in Pakistan" *Journal of Law and Society*, Vol. 16, Number 4, 1989, p 498.

tariff rates on imported furnished products which cause the serious effects on SMEs.[224]

- Want of technology impinge the competitiveness and innovation of SMEs. Illiteracy among the employees, outmoded machinery and equipment, lack of zeal for innovation, new technology, skills and expertise are the causes which deteriorate the performance of these enterprises.[225]

- Smuggling is also a problem which weakens the market competition and since the majority is of sole proprietorship and partnership, the unregistered companies give bad impact affecting SMEs.[226]

- The SMEs have to bear the heavy expenses while facing enforcement mechanism by virtue of costs and expenses. There is no any proper ADR mechanism for them.[227]

- There is a need to review the laws regarding Foreign Direct Investment (FDI) so as to make the domestic investors confident as compared to foreign investors to whom so many facilities have been provided which cause the discouragement of local investors. The Foreign Private Investment (Promotion and Protection) Act, 1976 sets out that foreign investment will not be subject to higher income tax levels than those assessed on similar investments made by Pakistani Citizens. The Act and Protection of Economic Reforms Act, 1992 are the primary statutory safeguards for the rights of foreign direct investors.[228]

---

[224] See *supra* note 213, 43.

[225] Muhammad Shahid Chaudary, "*Country Paper Pakistan on Strategic Partnership in Promoting Technology Incubation system for SMEs,*" (SMEDA, GoP: October 18, 2004), 5-6.

[226] See *supra* note 213, 48.

[227] Ibid., 47

[228] Taimoor Ali Khan, "Legal Framework for Foreign Direct Investment in Pakistan in Perspective of the Emerging International Regime" (Llm Thesis, International Islamic University, 2007), 172.

Since its inception, Small and Medium Enterprises Development Authority (SMEDA) has played an effective role in promoting and encouraging the SMEs and enlightened this sector through workshops and training programs so that this sector could be able to compete with the world market.[229] SMEDA has given the SME Policy, 2007[230] which is considered the best policy so far but its drawback is that SMEDA has not obliged the small investors to follow it compulsorily.

In order to cope with the practical problems of SMEs being faced by them, the SECP and SMEDA have to play an effective role in promoting them, encouraging small investors, flourishing the business environment and enhancing their growth and competitiveness. The SMEs in Pakistan being in the nascent stage of incorporation process need to be promoted and encouraged and as such the investors thereof need to be educated for the benefits of the corporatization[231] through proper education and awareness in terms of clear and plain language, legible and intelligible presented by means of guidelines and policies. There is a need to promote awareness through the media in order to keep the concerned people abreast of financial matters.

The government of Pakistan needs to take keen interest to flourish SMEs sector while providing them facilities in terms of introducing micro-economic schemes, making the

---

[229] See '*Introduction*' at http://www.smeda.org/SMEDA_introdution_1.html (accessed November 17, 2009)

[230] See the SME Policy, 2007.

[231] In the words of Dr. Tariq Hassan, Corporatization entails separation of management from the owners while transforming an entity into a body with limited liability having perpetual succession. Corporatization allows a number of significant benefits to the entity as well as to the economy as a whole. Primarily, it extends the rights, duties and privileges of a natural person to a legal entity. These rights include among others the right to borrow money and invest funds, own property, sue and be sued and enter into contracts. Corporatization also allows the owners to limit their liability up to the extent of their investment in share capital of the entity. This helps to protect owners' personal assets from being used for discharging the debts and liabilities of the business. In addition, transferability of ownership interests is possible. Therefore, the life of a corporate entity is not limited to the life of its owners; rather it has perpetual succession. The separation of ownership and management allows professionals to administer and manage the affairs of an entity. While discharging their duties, they are bound to act honestly and with skill, care and diligence. Presence of professional management promotes credibility and effectiveness in the operations of the entity. Being entitled to the above rights and privileges, a corporate entity is better placed to raise equity and debt funds. It has easy access to capital market for raising long-term funds. Moreover, financial institutions generally prefer to extend financial assistance to documented and organized form of incorporated business that enjoys credibility. Corporatization, therefore, is the means by which companies seek to improve competitiveness and access to capital and borrowing in a local and global market.

existing laws simplified and implemented effectively, granting the relaxations and exemptions in terms of taxation and other regulatory requirements, promoting loans and leasing on easy terms and conditions, furnishing advisory services, ensuring better infrastructure facilities, reducing tariff rates and transaction costs, liberalizing investment laws keeping in view the FDI and providing the world market access to such enterprises for promoting entrepreneurial culture.

4.4 Problems of Small Private Companies Under the Companies Ordinance, 1984 and Their Proposed Solutions

When we talk about the relevant provisions of the private companies under the CO, 1984, we find them unjustifiable increasing regulatory and financial burdens upon the SPCs such as auditing procedures and filing of accounts and maintenance thereof.

The primary purpose of any law is to facilitate the public and bearing in mind the current international style of legal drafting, an ideal law for the Pakistani Corporate Sector may be lucid, succinct and intelligible.[232]

The law may be made flexible to address new issues and provide for corresponding legal requirements dictated by changes in the economic and corporate environment.[233]

Company law should be compact and intelligible containing the essential principles in substantive law. Procedural and quantitative aspects should be addressed in the rules.

The problems of SPCs under the CO, 1984 are identified as below:

---

[232] See *supra* note 2, para 2.1.

[233] See *supra* note 2, para 2.8. This reflects the concept of the UK Company Law Reform Bill, 2005, the key objective of which is to provide a flexible legal framework to cater for future developments.

- The first and foremost problem is that no separate legislation between public and private companies has ever been made so far through which private companies could be facilitated.[234]

- Private companies in the existing company law have been provided with certain exemptions and relaxations which should be carried on.[235]

- Under section 252 (1) of the CO, 1984, every company is required to appoint an auditor. It is recommended that the requirement of auditor should be removed for SPCs unless they choose to do so. The draft of FRSSE of the UK should be introduced in Pakistan.

- With regard to accounting provisions for private companies, they should be separately set out under the CO, 1984.[236]

- According to the 'Concept Paper, 2006', the restriction of fifty members in respect of private companies may be removed.[237]

- The concept of SMC may be clarified within the law i.e. the CO, 1984.[238]

- The SMC is required to appoint a CS under the provisions of the CO, 1984.[239] The requirement to appoint CS for the SMC should be abolished unless they opt to do so.

---

[234] See *supra* note 14. Recently, the UK has separated company legislation as to SPCs with the 'Integrated Approach' as well as 'Think Small First Approach' while providing them with relaxations and exemptions on the basis of their size

[235] See *supra* 4.2.

[236] Relaxations to small companies with regard to the format of accounts to be prescribed in the Act/Rules may also be considered.

[237] Ibid., para 4.6

[238] Ibid. Though there are the Companies (Single Member Private Limited Companies) Rules, 2003, however, the substantive law may be provided in the CO, 1984 and procedural law may be provided in the rules.

- The factors distinguishing between small, medium and large companies (along with the benefits and liabilities pertinent to each category) may be elaborated, and the test for determining the category within which the company falls may be prescribed, based on capital turnover, the number of members or the number of employees, as may be relevant.[240]

- India has recommended that the company law may provide for a less onerous regime for smaller companies[241] whereas the UK Company Law Reform Bill, 2005 has distinguished amongst small companies, medium-sized companies and other companies in respect of accounting disclosures and filing requirements.[242] In the UK, the CLRSG has considered for making a simpler form of report and accounts, to be prepared and filed by small companies, that is, those satisfying three of the following criteria: turnover of less than £4.8 million; gross assets of less than £2.4 million; fewer than 50 employees. In India, small company has been defined under the proposed Companies Bill, 2008, according to which, the paid-up share capital of a small company shall be up to five crore rupees and turnover shall be up to twenty crore.

- The CO, 1984 does not differentiate among companies on the basis of their Size. Therefore, the definitions of small and medium-sized companies are being proposed. The SME Policy, 2007 of Pakistan has given the definition of SMEs, according to which, a company may have a number of employees up to 250, its paid-up capital is up to Rs. 25 Million and its annual sale is up to Rs. 250 million.[243] In order to test for determining the category within which the company falls, the criteria as given through definition by the SME Policy may be introduced in the CO, 1984. The definition for the small companies having paid-

---

[239] See *supra* note 186, s 204-A. See also rule 10 of the Companies (Single Member Private Limited Companies) Rules, 2003.

[240] See *supra* note 2, para 4.6

[241] Ibid., para 4.5

[242] See *supra* note 13.

[243] This definition was approved in the SME policy, 2007.

up share capital up to Rs. 2-3 Million, turnover up to Rs. 10-15 Million and employees up to fifty may be introduced in the CO, 1984.[244]

- The UK has proposed separate constitutions for public and private companies within the company law.[245] It is suggested that such (separate) constitutions may be made in the CO, 1984 for public and private companies.

- The Irani Report also recommends a system of e-filing of documents for speedily processing requests for registration and incorporation, minimizing physical interface and potential abuse of discretionary powers by the registering authorities.[246] It is worth mentioning that SECP has introduced a system[247] of e-filing of documents in Pakistan that would facilitate the functions of online availability of name, e-incorporation of companies and e-filing of statutory returns.[248] It is recommended that all these procedures may be more simplified and easily intelligible for general public.

- The procedures for the conversion of public companies into private companies[249] as well as the re-registration of unlimited companies as limited companies[250] are

---

[244] These definitions are just proposals. SECP may change them as it deems fit.

[245] See the CO, 1984, which contains model regulations for each type of company, however, the company may adopt these regulations to the extent it deems desirable.

[246] A system of e-filing is already in place in the UK.

[247] The eServices project is undertaken by SECP in collaboration with E-Government Directorate (EGD) within the overall framework of National IT Policy approved by the Federal Cabinet. The eServices project is an electronic data gathering and retrieval system that would perform automated collection, acceptance and forwarding of submissions by companies who are required by law to file forms and documents with SECP. Its primary purpose is to increase the efficiency of the corporate sector to facilitate the investors, companies, and the economy by accelerating the receipt, acceptance and dissemination of time-sensitive corporate information filed with SECP. The main objective of introducing the eServices project is to improve efficiency and effectiveness of the business processes of SECP due to speedy and transparent paperless environment and making it easier for the representatives of companies and the business community to interact with and obtain information from the SECP through electronic means. E-services will enable promoters to complete the registration process online, using the eServices portal, without visiting the Company Registration Office (CRO), and making it possible for companies to file their statutory returns with the registrars online. It will be a web-based system accessible from anywhere in the world via login ID and a password.

[248] See the Official News Letter (May, 2008)

[249] See *supra* note 186, ss 44-46.

[250] Ibid., ss 109-110

narrow in its scope, sketchy and heavily SECP dependent. The UK Reform Bill, 2005 provides a simple process of re-registration, which may be allowed after fulfillment of specified requirements.[251] It is recommended that the given procedure and a process of registration should be adopted in Pakistan while considering our own requirements.[252] There is a strong case for the requirements of incorporation and registration to be streamlined and made more cost effective and less cumbersome. It is also desirable that companies may be allowed to convert themselves into other forms of companies with ease and facility and upon meeting clearly defined requirements. Certainty and transparency in the procedures and requirements for conversion of companies will contribute to greater economic certainty and facilitate companies in adjusting their form to their business.[253]

- Under the sections of 158 and 159 of the CO, 1984, prior notification of 21 days is must for holding AGMs and EGMs. In the UK, for all sorts of meetings, the notice period of 14 days has been fixed. It is desirable that the time period of notices for holding meetings should be reduced for SPCs in Pakistan.

- The relaxation of rules for holding meetings may be considered for private companies. The UK Company Law Reform Bill, 2005 abolished the requirement of holding of annual general meetings by the private companies. The CA, 1985[254] allows for "elective resolutions" which means that the members of a private company may unanimously elect, by resolution in a general meeting, to dispense with certain requirements of company law (for example, the holding of AGMs, the laying of accounts and reports before general meetings and the requirement as

---

[251] See *supra* note 13, ss 90-110.

[252] See *supra* note 2, para 4.14.

[253] Ibid. para 4.15. This para states further that it is also desirable that companies may be allowed to convert themselves into other forms of companies with ease and facility and upon meeting clearly defined requirements. Certainty and transparency in the procedures and requirements for conversion of companies will contribute to greater economic certainty and facilitate companies in adjusting their form to their business.

[254] See the CA, 1985, s 379-A.

to majorities in order to authorize meetings at a short notice)[255]. This approach is considered desirable in principle, however, only small companies (so designated in accordance with prescribed criteria) may be allowed to exercise this option. For all companies, the option of passing a resolution by circulation may be prescribed in the CO, 1984.[256]

- The powers and duties of the BODs may be clarified in the CO, 1984.[257] The regime for election of directors provided in the CO, 1984 prescribes a proportional representation system and cumulative voting process. In the UK and India, the manner in which directors may be elected is left to be determined by the company in its Articles. In the Pakistani context, however, it is recommended that the proportional representation system should be retained.[258]

- The provisions of the CO, 1984 pertaining to audit[259] and accounts[260] are elementary but are burdensome. Exemptions from certain disclosures may also be considered and relaxations, if any required, in respect of compliance with Accounting Standards may be provided for small companies while notifying the Accounting Standards.

---

[255] See *supra* note 13. The UK Company Law Reform Bill, 2005 seeks to do away with the requirement of unanimity for passing a written resolution (Norton Rose Briefing on the Company Law Reform Bill, December 2005, p 10).

[256] See *supra* note 2, para 4.30.

[257] The powers and duties of the BODs are mixed with the general powers and duties of the directors. It is desirable that they may be separately set out in the CO, 1984. The UK law provides a two fold test to assess the extent of a director's duty towards the company: the two fold test operates by stipulating an objective standard as a minimum standard of care required by a director (as by a reasonable person in the position of a director) as well as a higher subjective standard which is applied where the director has a particular skill or expertise. The most important aspects to be considered in respect of the BODs are (a) the extent of fiduciary duty of the directors and (b) their individual liability for the decisions of the BODs. The UK Law stipulates that directors must act bona fide in what they consider is in the interest of the company, which is known as the "business judgment rule". This rule results in harm to the company. In order to introduce greater flexibility in the exercise of directors' powers, it is recommended that the exercise of such powers may not be restricted to meetings. The English law does not contain any restriction in this regard, whereas the Indian law is far more flexible and allows for the delegation of powers by the Board to individual directors or to directors' committees. It is recommended that similar provisions may be included in the Pakistani law.

[258] Ibid., para 4.23

[259] See *supra* note 186, ss 252-260.

[260] Ibid., ss 230-247

- The power of SECP to penalize companies for offences in relation to books of accounts required to be maintained by companies may be reassessed. The extent of disclosures required to be made by companies may also be examined: while it may be desirable to increase disclosures to include matters such as a list of policies and manuals, the staff turnover ratio and average increments in salary, it may also be appropriate to relax the requirements for private companies and SPCs.[261]

- Offences are spread throughout the CO, 1984 and the penalties prescribed for these offences are often not commensurate with the enormity of the offence. All the offences may be consolidated on one place. Penalties may also be rationalised in line with the severity of the offence. The *Irani Report* also recommends a system of self-regulation for companies, with penalties to follow if the system fails to deliver.[262] A similar approach is recommended for the Pakistani law.[263]

- Investigations may be carried out under the CO, 1984 primarily in pursuance of sections 263 and 265 thereof. The provisions relating to investigation may be examined to be more effective and less cumbersome. The offences in relation to which investigations may be carried out may be specified.[264]

- The jurisdiction of the courts with regard to company matters has been set out in the CO, 1984.[265] Despite the provisions of court's jurisdiction mentioned in the

---

[261] See *supra* note 2, para 4.32

[262] See *supra* note 35, Chapter XII, para 2.

[263] See *supra* note 2, paras 4.48-49.

[264] Ibid., para 4.50

[265] See *supra* note 186. Under section 7 of the CO, 1984, the High Court (HC) in whose jurisdiction the company has its registered office will have jurisdiction. This jurisdiction is "original civil jurisdiction," and this includes winding up proceedings. In fact, the HC has jurisdiction wherever the question of jurisdiction is not clearly settled. The Chief Justice (CJ) of the HC will constitute a Company Bench(es) under section 8 of the CO, 1984. The Bench so constituted will exercise jurisdiction conferred on the HC. Section 9 fixes the time for the expeditious disposal of cases and states this period should not extend beyond 90 days. Section 9 (3) provides that a summary procedure will be followed, but the procedure has to be fair. In this respect, the original civil jurisdiction is different from that conferred by section 15 of the Civil Procedure Code (CPC), 1908. The form of petitions and the detailed procedure are provided in the Companies

CO, 1984, company matters remain pending in courts long after the prescribed ninety (90) day period, due to the fact that the practice of forming company benches has not been uniformly and consistently followed, there is a lack of technical expertise amongst the judges and the overwhelming backlog of cases endemic in the system. In order to expedite the decision-making process, HCs may be urged to form company benches as prescribed, on the one hand, and the powers of the SECP vis-à-vis the HCs, as provided in the CO, 1984, be assessed on the other hand.[266] India has established the National Company Law Tribunal (NCLT) to deal with the company matters.[267] It is recommended that the similar Tribunals may be established in Pakistan in order to ensure that only more complex matters may be referred to these Tribunals, with the provision that only questions of law arising out of decisions rendered by such Tribunals, if any, may be referred to HC.

- The CO, 1984 just mentions the methods of ADR but does not address them in proper manner.[268] In the UK, referral to arbitration is still a voluntary exercise; however, advisers are required to consider every case for its ADR suitability. In the Pakistani context, where the regulatory regime is inadequate and centers of professional training have not yet been formed, compulsory reference to ADR is not desirable. However, the option may be given to parties to commercial disputes, whilst at the same time; attention may be paid to developing the necessary ADR infrastructure.[269]

(Courts) Rules, 1997. These rules include a number of forms that are to be used for various purposes. Section 10 of the CO, 1984 provides that an appeal from the decision of the court will lie to the Supreme Court (SC). The appeal lies before the SC "where company ordered to be wound up has paid-up share capital of not less than one million rupees; and where company ordered to be wound up has paid-up share capital of less than one million rupees...such appeal would lie only if SC had granted leave to appeal." Reference may be made to s 476(4) in terms of which a court not inferior to a sessions court has jurisdiction to try criminal offences specified in the CO, 1984.

[266] See *supra* note 2, paras 4.52 and 4.54.

[267] See Indian Companies Bill, 2008; See also *supra* note 150.

[268] See *supra* note 186, s 283. Though this section deals with the arbitration procedure for parties where they are at variance, however, it is pertinent to introduce arbitration procedure for the dispute between regulator (SECP) and company or parties.

[269] See *supra* note 2, paras 4.55-56.

CHAPTER 5

Conclusion and Recommendations

The corporate sector plays a pivotal role in the economy of a country. In this era, the importance of this sector has increased and countries have paid serious attention to make their Company Law efficient, updated and flexible to the changing environment. Broadly speaking, there are mainly two types of companies, that is, public and private companies. History of the company law demonstrates that the major company legislation has been drafted and enacted with a view to deal with the needs and requirements of the public companies. However, with the passage of time it was realised that SPCs have played the major part in increasing the economic growth vis-à-vis the large companies. The concept of corporatization with the privilege of the limited liability gave a way to an enterprise to perform better than the earlier. Thus, the requirements and needs underwent the changing process with the changing conditions and so the company law.

From 1998 to 2008, the UK government has toiled to make the company law viable, efficient, flexible, up-to-date and acceptable while taking keen interest in its corporate sector. The UK Company Law has brought the tremendous legislation regarding SPCs while separating their legislation from the public companies through the 'integrated approach'. This legislation has become model for other countries, especially for those which are following the UK company legislation such as Pakistan and India.

The private companies have been liberated through deregulation process and exemptions and relaxations in order to ease their burdens of stringent and inflexible legislation and sketchy and lengthy procedures that were unjustifiable for SPCs. Nevertheless, they were provided with simplified registration and incorporation process, easy communication through electronic media and guidelines, the facility for financial assistance and with exemptions from appointing CS and auditors, holding a meeting and filing statutory

accounts and audit reports. Consequently, the legislation for the SPCs has been separated from the public companies.

India has also brought reforms in its Company Law and the Companies Bill, 2008 has been presented in the Parliament. 'The Irani Report, 2005' acknowledges SPCs, being different from the public companies, should not suffer from the requirements which are actually meant for public companies. Indian Company Law has mostly appreciated the recommendations of the UK's private company law reforms.

Inasmuch as Pakistan is concerned, it is dilemma with our country that the futile attempts carrying no ultimate results are carried out. However, there is no doubt that the effort made by the CLRC in 2006 as to the development and regulation of the corporate sector is appreciable. In the 'Concept Paper' given by SECP, no work on the separate legislation for private companies within the company law has ever been done, which is actually the need of the hour. It is high time for Pakistan to progress on this particular matter so SPCs could run smoothly and efficiently.

It is pertinent to state that the area of corporate governance in the sidelines of the main company law cannot be ignored. The problems of SPCs such as lack of coherence in labour laws, lack of credit facilities, want of institutional resources, shortage of power supply, high costs of leasing, heavy taxes, tariff rates, lack of technology and smuggling are the root causes in the growth and performance of SMEs. These problems need serious attention and it is recommended that these should be addressed through effective policies and legislation and the government should cater for such problems and take effective steps in making and implementing the best standards of corporate governance and regulations and provide facilities and maximum relaxations to SPCs while playing its responsible role.

Bibliography

Books

DuBois, AB. *The English Business Company after the Bubble Act 1720–1800.* UK: Oxford University Press, 1938.

Hansmann, Henry. and Reinier Kraakman, *The Anatomy of Corporate Law.* New York: Oxford University Press, 2004.

Lacy, John De. *The Reform of United Kingdom Company Law.* Great Britain: Cavendish Publishing Limited, 2002.

Macmillan, Fiona. *International Corporate Law: Volume 1.* USA: Hart Publishing, 2000.

Micklethwait, John. and Adrian Wooldridge, *The Company: A Short History of a Revolutionary Idea.* New York: A Modern Library Chronicles book, 2003.

Milman, David. Regulating Enterprise Law and Business Organisations in the UK. UK : Hart Publishing, 1999.

Nyazee, Imran Ahsan Khan. *Company Law.* Rawalpindi: Federal Law House, 2008.

Shaheen, Nazir Ahmed. *Practical Approach to the Companies Ordinance, 1984.* Rawalpindi: Federal Law House, 2008.

Sheikh, Saleem. *A Guide to the Companies Act 2006.* United Kingdom: Routledge-Cavendish Publishing, 2008.

Talbot, LE. *Critical Company Law.* United Kingdom: Routledge-Cavendish Publishing Publishers, 2008.

Weatherill, Stephen. *Better Regulation.* USA: Hart Publishing, 2007.

Zaidi, S. Akbar. *Issues in Pakistan's Economy.* Karachi: Oxford University Press, 1999.

Articles

Arshad, Rana Aneel. "Brief History of Company Law," *Corporate Law Decisions (Journal)*, (2004)

"A Strong Conceptual Basis for Company Law Reform," *The Hindu* (13th June, 2005)

Cillers, HS. et al., "Close Corporations Law," (1998)

Davies, Paul. and Jonathan Rickford, 'An Introduction to the New UK Companies Act,' ECFR 2008, 48–71

Evans, Martin. et al., "Impact of Company Law Reforms on Small Companies,"

Ferran, Eilis. "Company Law Reform in the UK." (2001) 5 *Singapore Journal of International and Comparative Law* 516.

Fletcher, I. "A Small Business Perspective on Regulation in the UK," (2001) 21 *Economic Affairs* 17.

Freedman, J. "Limited Liability: Large Company Theory and Small Firms," (2000) 63 MLR 317.

Freedman, J. and Godwin, "Incorporating the Micro Business: Perceptions and Misperceptions," in Hughes and Storey (eds) *Finance and the Small Firm* (London: Routledge, 1995)

Freedman, J. 'Small Businesses and the Corporate Form: Burden or Privilege?' MLR 57 (4) 1994, 555–84.

Henning, JJ. "The Five-Act Approach to Entrepreneurial Law Reform in South Africa," (1999) 1 *International and Comparative Corporate Law Journal* 63, 76-86.

"Is There Need For A New Company Law?," *The Hindu Business Line* (21st June, 2005)

Khawaja, Shahab. "Unleashing the Potential of the SME Sector with a focus on Productivity Improvements," (n.d., 2006)

Kitching, J. "A Burden on Business? Reviewing the Evidence Base on Regulation and Small Business Performance," (2006) 24 *Environment and Planning C: Government and Policy* 799.

Kothari, Vinod. and Samik Mukherjee, "Irani Committee Report - An Analysis of Corporate Law Reform In India: Are We Keeping Pace With The World?," (n.l: n.p., n.d.)

Lall, Sanjaya. "Strengthening SMEs for International Competitiveness," for *the Egyptian Centre for Economic Studies Workshop*. Cairo: (March 6-8, 2000)

Levi, M. and M. Suddle, "White-Collar Crime, Shamelessness, and Disintegration: The Control of Tax Evasion in Pakistan," *Journal of Law and Society*, Vol. 16, Number 4, (1989)

"Red Tape Reform Could Lower Standards," *The Times (18th March, 2005)*

United Kingdom Legislation

The Companies Act, 1907

The Companies Act, 1908

The Companies (Consolidation) Act, 1908

The Companies Act, 1913

The Companies Act, 1948

The Companies Act, 1967

The Companies Act, 1976

The Companies Act, 1980

The Companies Act, 1981

The Companies Act, 1985

Income and Corporation Taxes Act, 1988

The Companies Act, 1989

The Companies Act (Audit Exemption) (Amendment) Regulations, 2000

The Company Law Reform Bill, 2005-2006

The Companies Act, 2006

Indian Legislation

The Companies Act, 1956

The Companies (Amendment) Act, 1960

The Companies (Amendment) Act, 1974

The Companies (Amendment) Bill, 2003

The Companies Bill, 2008

Pakistani Legislation

Civil Procedure Code, 1908

The Companies Act, 1958

Securities and Exchange Ordinance, 1969

The Companies (Managing Agency and Election of Directors) Order, 1972

The Companies (Shifting of Registered Office) Ordinance, 1972

The Foreign Private Investment (Promotion and Protection) Act, 1976

The Companies Ordinance, 1984

Protection of Economic Reforms Act, 1992

The Finance Act, 1995

Securities and Exchange Commission of Pakistan Act, 1997

The Companies (Courts) Rules, 1997

Small and Medium Enterprises Development Authority Ordinance, 2002

The Companies (Amendment) Ordinance, 2002

Companies (Single Member Private Limited Companies) Rules, 2003

Miscellaneous Legislation

European Communities Act, 1972

The South African Close Corporations Act, 1984

The New Zealand Companies Act, 1993

The European Communities (Single Member Private Limited Liability Companies) Regulations, 1994

Reports, Papers, Theses, Speeches and Policies

Bari, Faisal. and others, "SME Development in Pakistan: Analyzing the Constraints to Growth," Pakistan Resident Mission Working Paper No. 3. Islamabad: Asian Development Bank, (2005)

Better Regulation Executive, "A Bill for Better Regulation: Consultation Document," (London: Cabinet Office, 2005).

Better Regulation Task Force, "Regulation—Less is More: Reducing Burdens, Improving Outcomes," (London: Better Regulation Task Force, 2005).

Bhutta, Muhammad Saleem. "Engineering Subcontracting and Enterprise Development in Pakistan," Phd. Thesis, Bahuddin Zakaria University. (2000).

Boltan Report (1971) Cmnd 4811: "Report of the Committee of Inquiry on Small Firms," (London: HMSO, 1971).

Chaudary, Muhammad Shahid. "Country Paper Pakistan on Strategic Partnership in Promoting Technology Incubation system for SMEs," SMEDA, GoP: (October 18, 2004)

Cohen Report (1945) Cmd 6659: "Report of the Committee on Company Law Amendment," (London, HMSO, 1945)

Company Law Reform Bill, "Regulatory Impact Assessment," (November 2005)

Company Law Reform, "Small Business Summary," (London, DTI, 2005)

Deloitte, "Response to Company Law Reform Bill," (7th November, 2005)

Department of Trade and Industry, "A New Form of Incorporation for Small Firms," (1981) Cmnd 8171 (London, HMSO, 1981)

Department of Employment, "Building Businesses...Not Barriers," (Cmnd 9794, London, HMSO, 1986)

Department of Trade and Industry, "Burdens on Business," (London, HMSO, 1985)

Department of Trade and Industry, "Deregulation: Cutting Red Tape," (London, HMSO, 1994)

Department of Trade and Industry, "Releasing Enterprise," (Cm 512, London, HMSO, 1988)

Department of Trade and Industry, "Small and Medium-sized Enterprise (SMEs) Statistics for the UK, 2000," (DTI Small Business Service press release, 21 June 2001)

Department of Trade and Industry, "White Paper: Company Law Reform," (2003)

Department of Trade and Industry, "White Paper: Company Law Reform," (March 2005) (Cmnd 6456)

Department of Trade and Industry, "White Paper: Modernising Company Law," (July 2002) (Cm 5553–1)

Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC

Directive 2009/49/EC of the European Parliament and of the Council of September 2009 amending Council Directive 78/660/EEC

Edmonds, Timothy. "The Company Law Reform Bill [HL] Bill 190 2005–2006," Research Paper 06/30, 2 June 2006.

Expert Committee on Company Law, "The Irani Report on Company Law," (May, 2005)

Faegre & Benson, "The Company Law Reform Bill," (28th November, 2005)

First Company Law Directive, 68/151/EEC (OJ Sp Ed 1968)

Fourth Company Law Directive, 78/660/EEC (OJ L222, 14.8.1978)

Greene Report (1926) Cmd 2657: "Company Law Amendment Committee Report," (London, HMSO, 1926)

Hassan, Dr. Tariq. "Benefits of Corporatization," Islamabad (20 November 2003)

Hicks, Drury and Smallcombe, "Alternative Company Structures for Small Businesses," Association of Chartered Certified Accountants (1995) Research Report 42 (London, ACCA, 1995)

HM Treasury, Budget 2006: "A Strong and Strengthening Economy: Investing in Britain's Future," (London, 2006)

HM Treasury/Small Business Service, "Enterprise Britain: a Modern Approach to Meeting the Enterprise Challenge," (London, TSO, 2002)

Jenkins Report (1962) Cmnd 1749: "Report of the Company Law Committee, " (London, HMSO, 1962)

Jonathan Rickford, "A Practitioner's Guide to the Company Law Review," (n.l: n.p., n.d.), p 1.

Khan, Taimoor Ali. "Legal Framework for Foreign Direct Investment in Pakistan in Perspective of the Emerging International Regime." Llm Thesis, International Islamic University, 2007.

Law Society, Memorandum by the Society's Standing Committee on Company Law, "A New Form of Incorporation for Small Firms," (1981) No 79 (London, The Law Society, 1981)

Loreburn Report Appendix (1906) Cd 3053: "Appendix to Report of the Company Law Amendment Committee," (London, HMSO, 1906)

Loreburn Report (1906) Cd 3052: "Report of the Company Law Amendment Committee," (London, HMSO, 1906)

Merchant, Muhammad Zeeshan. "Corporatization: Pros and Cons," Karachi. (May 26, 2008)

Ministry of Company Affairs: "Concept Paper on Company Law," (4th August, 2004)

Modern Company Law for a Competitive Economy: Capital Maintenance: Other Issues (URN 00/880) – Published June 2000.

Modern Company Law for a Competitive Economy: Company Formation and Capital Maintenance (URN 99/1145) – Published October 1999.

Modern Company Law for a Competitive Economy: Company General Meetings and Shareholder Communication (URN 99/1144) – Published October 1999.

Modern Company Law for a Competitive Economy: Completing the Structure (URN 00/1335) –Published November 2000.

Modern Company Law for a Competitive Economy: Developing the Framework (URN 00/656) –Published March 2000.

Modern Company Law for a Competitive Economy: Final Report Volume 1 (URN 01/942) –Published July 2001.

Modern Company Law for a Competitive Economy: Final Report Volume 2 (URN 01/943) – Published July 2001.

Modern Company Law for a Competitive Economy – Published March 1998.

Modern Company Law for a Competitive Economy: Registration of Company Charges (URN 00/1213) – Published October 2000.

Modern Company Law for a Competitive Economy: The Strategic Framework (URN 99/654) –Published February 1999.

Modern Company Law for a Competitive Economy: Trading Disclosures (URN 01/542) – Published January 2001.

Nigel Griffiths, '*Parliamentary Debate on Small Businesses,*' (Department of Trade and Industry, 2000)

Norton Rose: Briefing on the Company Law Reform Bill, 2005 (December 2005)

Rana, Arif Iqbal. and Usman Asad, "A survey report on the health of SMEs in Pakistan: SME Pulse Entrepreneur and Small and Medium Enterprise Center," (2007)

Report No. 16 of the Law Commission: Company Law Reform: Transition and Revision. Sealy, 'Small Company Legislation' (1993) Law Society Gazette, 8 December.

Securities and Exchange Commission of Pakistan, "Concept Paper for the Development and Regulation of the Corporate Sector," (2006)

Simmons and Simmons Newsletter: Company Law Reform: Latest Developments (August 12, 2005)

Small Business Service, A Government Action Plan for Small Business (London, Small Business Service, 2004).

Small Business Service, Business Plan 2006 (London, DTI, 2006).

Small Business Service, Think Small First (London, Small Business Service, 2001); Small Business Service.

Statutory Audit Requirement for Smaller Companies, A Consultative Document (London, DTI, October 1999) (URN No 99/1115)

The Bhabha Committee, 1950

The Companies Act Amendment Committee Report, 1957

The Concept Paper 'New Company Law,' (2004)

The Dalmia Jain Inquiry Commission Report, 1956

The Eradi Committee Report, 2002

The Irani Report, 2005

The Law Applicable to Private Companies (London, DTI, November 1994) Document (URN 94 529)

The OECD Report, "Regulatory Reform for Smaller Firms," (1999)

"The Quest for an Ideal Legal Form for Small Businesses" in Rider and Andenas (eds) Developments in European Company Law Volume 2 (London, Kluwer Law International, 1997)

The Sachar Committee Report, 1956

The SME Policy, 2007

The Task Force Report on Corporate Tax Policy Islamabad. (April 14, 2005)

Twelfth Company Law Directive, 89/667/EEC (OJ L395, 30.12.1989)

White Paper, Company Law Reform (1973) Cmnd 5391 (London, HMSO, 1973)

Wrenbury Report (1918) Cd 9138: Report of the Company Law Amendment Committee, London, HMSO, 1918

Websites

http://www.dti.gov.uk/
http://www.parliament.uk/
http://www.lawcom.gov.uk/
http://www.companieshouse.gov.uk/
http://www.westlaw.uk/
http://www.parliament.the-stationery-office.co.uk/
http://tinyurl.com/
http://www.lawsociety.org.uk/
http://dca.nic.in/
http://www.watchoutinvestors.com/
http://ww.nfcgindia.org/
http://www.mca.gov.in/
http://www.sebi.gov.in/
http://www.hlbi.com/
http://www.ssrn.com/
http://www.smepolicy.net.pk/
http://www.sme.gov.eg/
http://www.emeraldinsight.com/
http://www.secp.gov.pk/
http://www.enterprise-impact.org.uk/

http://ec.europa.eu/
http://www.sme.gov.eg/
http://en.wikipedia.org/
http://www.pakistan.gov.pk/
http://www.oecd.org/
http://ravi.lums.edu.pk/
http://www.smeda.org.pk/
http://www.ons.gov.uk/
http://www.mof.gov.sg/
http://www.europa.eu.int/
http://www.fsa.gov.uk/
http://www.corporatewatch.org.uk/
http://www.wikipedia.com/
http://www.google.com.pk/
http://www.scholar.google.com.pk/
http://books.google/com.pk
http://www.sbp.pk/
http://www.encyclopedia.com/
http://emeraldinsight.com/
http://www.findlaw.com/
http://www.4shared.com/
http://www.oxfordjournals.org/
http://www.hecdigitallibrary.com/
http://www.jstor.com.org/
http://www.blackwell-synergy.com/
http://www.library.cnu.edu/
http://www.free-ebooks-download.net/
http://www.finance.gov.pk/
http://www.fbr.gov.pk/