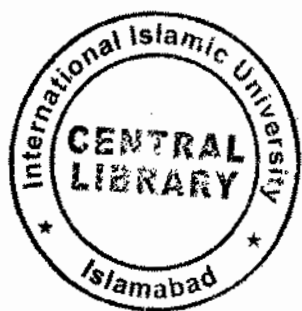


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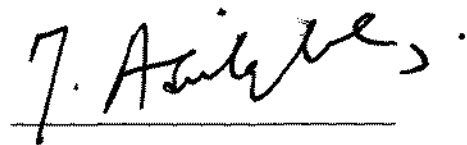
FINAL APPROVAL

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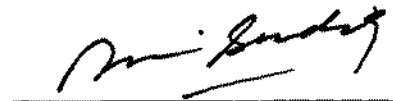
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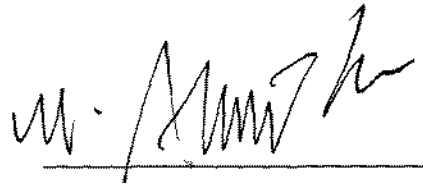
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DECLARATION

I HEREBY, declare that this thesis is original and has never been presented in any other university or institute of learning. I also declare that this thesis has never been copied and any secondary information used has been duly acknowledged in this thesis.

FAHEEM GUL

208-FSL/LLMCL/F08

June, 2015

DEDICATION

This thesis is dedicated to my family, who has always encouraged me to achieve everything that I am today, especially my mother and my wife for their unconditional love and support and also for their care and prayers.

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Firstly, I would like to gratefully acknowledge Allah Almighty, who is most merciful and helpful to complete this work successfully by His countless blessing. Allah almighty always supported me throughout my life in a number of ways and now also because of His blessing I have been able to complete this dissertation.

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I will extend my thanks to my internal supervisor Dr. Asim Iqbal for his guidance.

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FAHEEM GUL
June 2015

CERTIFICATE OF USE

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ABSTRACT

This research aims to introduce regime based/size based classification of companies to enhance statutory requirements for large companies and to facilitate the medium and small companies in Pakistan. Present legal framework of corporate structure in Pakistan has practically same statutory treatment for all companies irrespective of their size. Companies should be treated as per their size for filing and other statutory requirements. Present classification of companies is based on the status of companies i.e. private, public, single member company etc. and all filing requirements for such companies are same. However In Past efforts were made to introduce regime based companies through amendments in Schedules of the Companies Ordinance 1984 (the Ordinance). The proposed dissertation will discuss the present legal framework of the Ordinance and comparative analysis of legal frameworks in United Kingdom, Singapore and New Zealand. Thereafter, proposed corporate framework for companies shall be explained. This dissertation will also suggest reforms in the legal framework of Pakistan and introduction of the concept of regime/size based classification of companies. The proposed classification of companies shall elaborate the required statutory standards for new regime; furthermore it shall explain the annual filing requirements for each category.

CHAPTER NO. 1

INTRODUCTION: SIGNIFICANCE & SCOPE OF THE STUDY

Categorization of companies by Companies Ordinance, 1984 such as small, medium and economically significant companies is only for accounts requirements and said classification is not applicable for governance and disclosure issues, there is need to introduce regime/size based classification of companies for effective corporate governance, audit and disclosures for each category.

There are various types of company that can be formed/registered/incorporated in Pakistan under the Companies Ordinance, 1984. Originally, the Companies Ordinance, 1984 did not provide for regime based classification, however subsequently, regime based classification was introduced. The concept of small, medium and large companies has been widely accepted around the globe in different corporate jurisdictions. In this scheme of classification a company is required to mention its status in Articles of Association, whether it is public, private, guarantee or un-limited company. Presently the Companies Ordinance, 1984 offers almost similar treatment with respect to statutory requirements and filing requirements to all companies other than listed companies. There is need to introduce a less stringent mechanism for small and medium companies with respect to governance and regulatory requirements.¹

This research would begin with descriptive approach by knowing existing legal framework, its effects. Then while adopting a comparative approach, different corporate jurisdictions shall be discussed to know treatment of small, medium and large companies in those jurisdictions. At last, before the concluding chapter, proposed regime based classification of

¹ Concept Paper prepared by Corporate Law Review Commission, Established by Securities and Exchange Commission of Pakistan P.23.

companies would culminate this research by having evaluation of regime based classification of companies.

Companies Ordinance 1984 ("Ordinance") broadly divide companies into private , public, public listed and single member companies, however Schedule four and five of the Ordinance further classify companies into small, medium and economically significant companies. Categorization contained in Schedule four and five is for the purpose of preparation of accounts and it has no implication on governance and disclosure requirements for the companies, therefore, it is essential to introduce regime/size based classification of companies for effective corporate governance, audit and disclosures requirements for each category.

Fundamental characteristics of companies are same in all corporate jurisdictions, however each jurisdiction has different mechanism to deal with the affairs of companies falls under the respective category. Generally a listed public company is dealt through stringent laws whereas a public unlisted company has to follow comparatively less stringent laws.

There are various types of companies that could be incorporated in Pakistan under the Ordinance. Generally companies can be classified as for profit and not for profit. The companies for profit are further classified with respect to liability as company limited by guarantee, company limited by shares, company limited by guarantee & share capital. With respect to transfer of shares and issue of capital to public companies are classified as private and public companies. With respect to listing, companies are classified as listed and public unlisted companies. The ordinance also provides for registration of branch offices of foreign companies.

Originally, the Ordinance did not provided regime based classification of companies, however subsequently², regime based classification was introduced. The Ordinance as it stands today recognizes the concept of small and medium companies in fifth schedule but this classification is just for the preparation of accounts. Governance and disclosure requirements for all the companies are almost similar whether it is private or public limited company or whether share capital of a company is one hundred thousand or one billion. Present classification of companies and all regulatory and statutory requirements are not appropriate and suitable to encourage small and medium entrepreneurs to incorporate their businesses, so there is a need to extend the scope of regime based classification with respect to governance and disclosure requirements as well.

The concept of small, medium and large companies has been widely accepted around the globe in different corporate jurisdictions. Different corporate jurisdictions, having concept of small, medium and large companies have been discussed in this discussion paper to throw an idea towards the readers that this not an alien concept in corporate jurisdictions. The chosen jurisdictions do not depict classic or vibrant piece of legislation and as matter of fact we cannot follow any jurisdiction in totality however significant features from such jurisdictions may be adopted for our proposed regime. In regime based classification, a company is required to mention its status in articles of association, whether it is public, private, guarantee or un-limited company, however statutory requirements shall be based upon the size of company whether it's small, medium or large.

Ideally large companies would have to follow the stringent mechanism regarding statutory filings, other regulatory requirements whereas small and medium companies should be allowed to follow relaxed statutory filing environment to meet regulatory and statutory standards. Concept of regime/size based classification is widely accepted, however there is

² Securities and Exchange Commission of Pakistan Notification no.SRO859 (I)/2007, dated 21.08.2007.

need to envisaged threshold to determine the status of companies whether it is small, Medium or large company. Status determination threshold of companies could be based on total worth of assets of company, number of employees and total turnover etc.

Regime/size based classification of companies would encourage the entrepreneurs to incorporate their business because currently all companies irrespective of their size and status are required to fulfill same governance and disclosure requirements, however after introduction of new classification companies shall be required to follow standards of respective category only. Currently, entrepreneurs avoid to incorporate their business because of stringent governance and regulatory requirements or if they have already registered their business with the Securities and Exchange Commission of Pakistan (“SECP”) they remain under great stress and fiscal burden to meets the statutory filing requirements.³

Introduction of appropriate regime based classification of companies is necessary in present vibrant and dynamic corporate structures. Regime based classification should be the part of core company law, rather to deal through Schedules. The research paper is consisting of four chapters. In first chapter, exploration of existing provisions of the Ordinance has been carried out and in second chapter a comparative analysis of different corporate jurisdictions has been discussed. In third chapter regime based classification of companies and proposed concept and structure of regime/size based companies has been explained. Fourth chapter contains conclusion and recommendations.

³ Concept Paper prepared by Corporate Law Review Commission, Established by Securities and Exchange Commission of Pakistan P.13.

CHAPTER NO. 2

EXISTING LEGAL FRAME WORK OF PAKISTAN

1- CLASSIFICATION OF COMPANIES IN COMPANIES ORDINANCE 1984

1.1 Classification of Companies With Respect to Liability

1.1.1 Company limited By Shares

A company limited by shares is the type of company in which the liability of the members of the company is limited to the amount unpaid on the shares if any. As per section 2(8) of the Companies Ordinance 1984 ("Ordinance") "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.⁴

1.1.2 Company Limited by Guarantee

A company limited by guarantee is the type of company in which the liability of the members of the company is limited up to the amount undertaken by members to contribute in the event of winding up of the company. In simple words the liability of the members is limited up to the amount guarantee by them.⁵ Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its winding up.⁶

1.1.3 Company limited By Share and Guarantee

Ordinance also recognizes the concept of Hybrid Company or a company limited by guarantee and shares.

1.1.4 Un-limited Company

Unlimited company is the type of company in which the liability of the members of the company is unlimited. In simple words if the company is in the course of winding up then to settle creditors and other claims against the company there is no limit of contribution and

⁴ Companies Ordinance 1984, Sec. 2(8).

⁵<http://www.itnaconsultants.com/knowledge-center/38-types-of-companies-registered-in-pakistan-by-virtue-of-legal-form> (accessed February 12, 2013)

⁶ Companies Ordinance 1984, Sec. 2(9).

even the personal assets of the members can be ordered to be taken in custody for the purpose of settlements of winding up of the company.⁷

1.2 Classification of Companies with Respect Transferability and Issue of Shares

1.2.1 Private Company

As per Section 2(28) of Ordinance private company means a company which, by its articles,

- (i) Restricts the right to transfer its shares, if any;
- (ii) Limits the number 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.⁸

1.2.2 Public Company

A company that can issue shares through an initial public offering (IPO) and is traded on at least one stock exchange or in the over the counter market is called public company. As per Section 2(30) of Ordinance public company means a company which is not a private company.⁹

1.3 Classification of Companies With Respect to Listing

1.3.1 Listed Companies

As per Section 2(20) of Ordinance listed company, means a company or a body corporate or other body whose securities are listed.¹⁰

1.3.2 Un-listed Companies

A public company which does not float or offer its share through initial public offer to general public by listing on stock exchange or any private company is known as un-listed companies.

⁷<http://www.itnaconsultants.com/knowledge-center/38-types-of-companies-registered-in-pakistan-by-virtue-of-legal-form> by Hammad Qayyum Chartered Accountant (Accessed February 12, 2013)

⁸Companies Ordinance 1984.Sec.2(28)

⁹Ibid. sec.2(30)

¹⁰Ibid. sec.2(20)

2-STATUTORY REQUIREMENTS FOR COMPANIES IN COMPANIES ORDINANCE 1984

Statutory requirements includes all the standards maintained by the Securities and Exchange Commission of Pakistan (“Commission”) and filing of different forms and returns to indicate that companies have followed the procedure as per required by the Ordinance. All the Forms/returns or documents required to be filed with concerned authorities i.e. registrar, Commission and Stock Exchanges under various provisions of the Ordinance or rules/regulations made there under are termed as statutory returns or statutory requirements. Statutory return contains information about the affairs of company and which is required to be filed with the registrar of companies. Statutory returns are filed under any of the following three situations:

- i. Immediately after incorporation of the company
- ii. Periodical filings (annual, half yearly, quarterly)
- iii. Filing on the occurrence of any particular event.¹¹

The Commission has prescribed the formats of the statutory returns in the Companies (General Provisions and Forms) Rules, 1985 (“Rules”). Furthermore there are certain other specific forms for single member Companies prescribed under the Single Member Companies Rules, 2003 (“SMC Rules”).¹²

2.1 Different Statutory Returns

Annual return on Form A/B is required to be filed by the companies, in terms of section-156 of the Ordinance. An annual return is a snapshot of general information about a company giving details of its chief executive, directors, chief accountant, secretary, legal adviser and auditors, registered office address, shareholders and share capital. A company having a share capital files annual return on Form-A whereas the company not having a share capital files

¹¹<http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (Accessed March 15, 2013)

¹² Ibid.

annual return on Form-B with the registrar of companies. There may be two situations while filing annual returns:¹³

2.1.1 In case Annual General Meeting is held

If annual general meeting (“AGM”) is held by the company, then annual return should be filed within:

- i. 45 days from the date of AGM in case of listed company.
- ii. 30 days from the date of AGM in case of any other company.¹⁴

2.1.2 In case Annual General Meeting is not held

If no AGM is held in a year, the annual return is filed within:

- I. 45 days from the 31st December of that year in case of listed company i.e., on or before 15th Feb. of the following year.
- II. 30 days from the 31st December of that year in case of any other company i.e., 30th Jan. of the following year.

Listed company may file application to the registrar to seek extension and the registrar may for special reasons extend the period of filing of such return by a period not exceeding 15 days.¹⁵

2.1.3 Consequences for Non-Filing or Late Filing of Annual Returns

If any company files annual return late or not at all, the company and its officers may be fined as under:

- a) **In case of listed company:** fine up to Rs.10, 000/- and further up to Rs.200/- for every day during which default continues.
- b) **In case of any other Company:** fine up to Rs.2, 000/- and further fine up to Rs.50/- for every day during which default continues.¹⁶

¹³ <http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (accessed March 15, 2013)

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ <http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (accessed March 15, 2013)

2.1.4 Filing of Form 29 with the Registrar of Companies

In terms of Section-205 of the Ordinance, Form 29 is used to report the appointment of officers of the company i.e. director, chief executive, managing agent, secretary, chief accountant; auditors and legal advisor or ceasing of officers of the company (resignation, removal, death etc.) or any change in particulars/details of officers of the company, for example, a change of name or new residential address.

The company has to notify the particulars of officers, as well as change therein, on prescribed form 29 (in duplicate) within 14 days from happening thereof and file with register in duplicate.¹⁷ If any Company files Form-29 late or not at all, the company and its officers may be fined up to Rs. 500/- and further up to Rs. 50/- for every day during which default continues.¹⁸

2.1.5 Annual Audited Accounts

All the companies registered in Pakistan are required to maintain proper accounting records and prepare, circulate and approve the annual audited accounts in the AGM as required under section 230 to 233 of the Ordinance.¹⁹

2.1.6 The Companies Required to File Annual Audited Accounts

All companies are required to prepare the proper accounts of the company however, only following companies are required to file annual audited accounts with registrar of companies;

- a. All public companies (including associations not for profit and companies limited by guarantees); and
- b. Private companies having share capital of Rs. 7.5 Million or more.²⁰

As per section 242 of the Ordinance, every listed company is required to file with the registrar at least three copies duly signed/authenticated, whereas in case of other companies,

¹⁷<http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (accessed March 15, 2013)

¹⁸Ibid.

¹⁹Ibid.

²⁰<http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (accessed March 15, 2013)

at least two copies, within 30 days from the date of AGM. Moreover, in terms of section 233 of the Ordinance, every listed company is required to file 5 copies of annual accounts with the registrar and the Commission at least 21 days before AGM.²¹

2.1.7 Filing of Quarterly Accounts by Listed Companies

Section 245 of the Ordinance requires that every listed company shall file 1st, 2nd and 3rd quarter accounts within one month of end of the quarter.²² The annual and quarterly accounts are required to be approved by the directors and signed by the chief executive and at least one director. Where the chief executive is for the time being not present in Pakistan, then the balance-sheet and profit and loss account or income and expenditure account of the company should be signed by at least two directors present for the time being in Pakistan.²³

2.1.8 Consequences for Non-Filing / Late Filing of Important Returns

Six forms namely Form A, 29, 3, 7, 10 and 29 are very frequently filed by the companies. If company fails to submit such forms within stipulated time then it has to pay fine as per following table. The amount of fine of the said returns is as under:²⁴

<u>Name of Form</u>	<u>Maximum initial fine</u>	<u>Fine for continuing default</u>	<u>Other consequences</u>
A	Listed company Rs. 10,000/- Other than listed company Rs. 2,000/-	Rs. 200/- per day Rs. 50/- per day	
29	Rs. 500/-	Rs. 50/- per day	
3	Rs. 500/- per day	-----	
7	Rs. 100/- per day	-----	
10	Rs. 500/- per day	-----	The charge can only be registered with the leave of SECP u.s.131 of the Companies Ordinance, 1984
21	Rs. 200/- per day	-----	

²¹<http://www.secp.gov.pk/Guides/FilingofStatutoryReturnsnov29.pdf> Guide on Filing of Statutory Returns by Securities and Exchange Commission of Pakistan (accessed March 15, 2013).

²²Ibid.

²³Ibid.

²⁴Ibid.

3- DISCLOSURE & GOVERNANCE REQUIREMENTS FOR COMPANIES IN COMPANIES ORDINANCE 1984

3.1 Appointment of Auditors

An auditor is a person who is assigned the job to audit the financial statements of a company in accordance with the provisions of law and auditing standards as applicable in Pakistan. Appointment of an auditor is mandatory by every company, as required under the provisions of Section 252 of the Ordinance.²⁵

An audit under the Ordinance is conducted in accordance with the provisions of auditing standards as applicable in Pakistan and based on the audit, the company auditor expresses an opinion on such financial statements in accordance with requirements of Section 253(3) of the Ordinance. Further, the company auditor of a holding company is also required to report on consolidated financial statements in accordance with Section 237 of the Ordinance.²⁶

The directors appoint the first auditor of the company within sixty days of the date of incorporation of the company under section 252 (3) of the Ordinance. If the directors fail to appoint first auditor, the members in general meeting of the company may appoint the first auditor. In case, the first auditor is not appointed within one hundred and twenty days of the date of incorporation of the company, the Commission may appoint the auditor to fill the vacancy.²⁷

On the conclusion of first annual general meeting, first auditor stands retired. Thereafter, the auditor is appointed by the members at an annual general meeting and such auditor holds the office until the conclusion of the next AGM. A company is required to send intimation thereof to the registrar concerned, on Form-29 under section 205 of the Ordinance, within fourteen days from the date of appointment of an auditor, along with the consent in writing of the auditor concerned as per requirement of section 253 (5) of the Ordinance.²⁸The Form- 29

²⁵ *A Guide for Appointment of Statutory Auditors and Ancillary Matters.* (Islamabad: Registration Department, SECP).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

to be submitted to the Commission shall include particulars of auditor as required in section 205 of the Ordinance and Rule 14 C of the Rules.²⁹

3.1.1 Consequences for Non-Compliance With The Auditor Provisions By Companies

Section 259 of the Ordinance deals with the penal provisions, i.e., if default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and willfully a party to the default shall be punishable with a fine which may extend to fifty thousand rupees and in case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues.³⁰

3.1.2 Consequences for Non-Compliance with the Provisions by Auditors

Section 260 of the Ordinance deals with the penal provisions, i.e., if any auditor's report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 157, section 255 or section 257 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall, if the default is willful, be punishable with fine which may extend to one hundred thousand rupees.³¹ If the auditor's report to which sub-section 260 (1) applies is made with the intent to profit such auditor or any other person or to put another person to a disadvantage or loss or for a material consideration, the auditor shall, in addition to the penalty provided by that sub-section, be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one hundred thousand rupees.³²

A person who, not being qualified to be an auditor of a company, or being or having become subject to any disqualification to act as such, acts as auditor of a company shall be liable to fine which may extend to twenty five thousand rupees.³³

²⁹ *A Guide for Appointment of Statutory Auditors and Ancillary Matters.* (Islamabad: Registration Department, SECP).

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

3.2 Directors Responsibilities towards Commission and the Registrar

The law recognizes a company, as a legal person which in its own rights, is capable of owning property, making contracts, conducting litigations and also responsible for doing wrongs. When we look at these matters from practical angle, and at the way in which this artificial legal person functions; its corporate will is manifested, its decisions taken and its acts performed, we see that a company cannot do anything at all except through the human beings.³⁴

The business of a company is run and managed by its board of directors; which is headed by a Chief Executive. The companies appoint these officers as required by the Ordinance. The Ordinance necessitates the appointment of at least one director and a company secretary for a single member company, two directors for a private limited company, three directors for an unlisted public company and seven directors and a company secretary for a public listed company. The director, or directors, must manage the company's affairs in accordance with its memorandum and articles of association and the law. Certain responsibilities apply to all directors, whether executive or nonexecutive.³⁵

Every company director has a personal responsibility to ensure that all the statutory documents are filed with the Registrar and the Commission as and when required under the Ordinance. In particular:

- a. audited accounts (only for public limited companies including
- b. association not for profit); and private limited companies having paid up capital of Rs. 7.5 million or more);
- c. annual returns (Form A/B);
- d. particulars of directors or other officers (Form 29); and
- e. Notice of change of registered office (Form 21).³⁶

Failure to deliver documents on time is an offence under the Ordinance. On conviction, a director could be penalized with a fine and also debarred from becoming director. On average of more than 2,000 directors are adjudicated / prosecuted each year for failing to file accounts

³⁴<http://www.secp.gov.pk/Guides/DirectorsandSecretariesGuidenov29.pdf> Directors and Secretaries Guide by Securities and Exchange Commission of Pakistan, p.2(accessed April 11, 2013)

³⁵Ibid.

³⁶Ibid. p.9.

and other statutory returns with the Registrar within the prescribed time. Persistent failure to comply with the statutory requirements on time may also lead to a director being disqualified and the company may also be wound up under certain circumstances.³⁷

As a director of a public limited company, or a private limited company having the paid up capital of Rs. 7.5 million or more, normally have a maximum of 5 months from the close of accounting year for filing your company's audited accounts.³⁸

If the accounts or other returns are received late, the company will not only pay additional filing fee but the company and its officers can also be punished with fine. In addition to normal the additional fee will be payable as under:-³⁹

	<i>Period of delay</i>	<i>Additional Filing Fee</i>
a	If a document is filed with a delay of not more than fifteen days.	Additional fee equal to the usual fee specified for the document in the Sixth Schedule.
b	If a document is filed with a delay of more than fifteen days but not more than forty-five days.	Additional fee equal to two times of the usual fee specified for the document in the Sixth Schedule.
c	If a document is filed with a delay of more than forty-five days.	Additional fee equal to three times of the usual fee specified for the document in the Sixth Schedule.

³⁷ <http://www.secp.gov.pk/Guides/DirectorsandSecretariesGuidenov29.pdf> Directors and Secretaries Guide by Securities and Exchange Commission of Pakistan, p.9(accessed April 11, 2013)

³⁸ Ibid, p.10.

³⁹ Ibid.

3.3 Mandatory Filing by Companies with the Registrar of Companies

Under the Ordinance, companies are required to file different form and returns with the registrar to meet the statutory requirements. It is necessary for the companies to ensure compliance within the prescribed time, with all its statutory obligation not only pertaining to filing of its accounts and other statutory returns as required to be filed under the provisions of the Ordinance and the rules frame there-under but also with respect to:-⁴⁰

- i. Issuance of shares certificates to the shareholders. (S.74 to 75)
- ii. Transfer of shares. (S. 76 to 81)
- iii. Registration of Charges (S. 121 to 136)
- iv. Maintenance of Registered Office Address (S. 143)
- v. Holding of statutory meetings by a public company (S. 157)
- vi. Maintenance of Minute's Book (S. 173)
- vii. Election of Directors (S. 178 to 180)
- viii. Appointment of Chief Executive (S. 198 to 203)
- ix. Appointment of Company Secretary (where applicable) (S. 204A)
- x. Maintenance of books of accounts and other statutory register (S. 230)
- xi. Preparation, audit and presentation of accounts in the AGM (S. 233)
- xii. Preparation of quarterly accounts by a listed company S. 245)
- xiii. Payment of Dividends within the prescribed period (S. 248 to 251)
- xiv. Appointment of Auditor (S. 252 to 254)
- xv. Appointment of Legal Adviser (Companies Appointment of Legal Advisor's Act, 1974).⁴¹

As per the Ordinance only listed companies and SMC are required to have a whole time secretary.⁴² Company directors and secretaries are responsible for filing various returns containing information to the Commission and the Registrar. There are over 46 forms that companies could file. The following information deals only with the most common forms and documents that companies will use.⁴³

⁴⁰<http://www.secp.gov.pk/Guides/DirectorsandSecretariesGuidenov29.pdf> Directors and Secretaries Guide by Securities and Exchange Commission of Pakistan, p.11(accessed April 11, 2013)

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.p.20.

3.3.1 Accounts

All limited companies, whether trading or not, must keep accounting records but only public companies (including associations not for profit, and by guarantees) are required to file annual audited accounts with the Registrar. Listed companies are also required to send quarterly accounts to the Commission and the Registrar. The accounts will include:

- a. directors' report signed by the chief executive and a director;
- b. a balance sheet signed by the chief executive and a director;
- c. a profit and loss account (or income and expenditure account if the company is not trading for profit);
- d. an auditors' report signed by the auditor;
- e. notes to the accounts; and
- f. Consolidated accounts (if applicable).

Directors are personally responsible for ensuring that accounts are prepared and delivered to the Commission and the Registrar. Failure to do so may result in a criminal conviction for the director(s) and financial penalties as well.⁴⁴

3.3.2 Annual returns (Form A/B)

An annual return is a snapshot of general information about a company giving details of its chief executive, directors, chief accountant, secretary, legal adviser and auditors, registered office address, shareholders and share capital. If you file the annual return late or not at all, the company and its director(s) and secretary can be prosecuted under the Ordinance.⁴⁵

3.3.3 Change of Registered Office - Form 21

Every company must have a registered office: it is the 'home' of the company to which all official documents, notices and court papers have to be sent by law. The address must be a physical location, not just a post office box. This is because people have the right to visit company office to inspect certain registers and documents, and to deliver documents. A company can change its registered office address by filing a notice for change on Form 21 with the Registrar within 28 days of such change.⁴⁶

⁴⁴<http://www.secp.gov.pk/Guides/DirectorsandSecretariesGuidenov29.pdf> Directors and Secretaries Guide by Securities and Exchange Commission of Pakistan, p.21 (accessed April 11, 2013)

⁴⁵Ibid.

⁴⁶Ibid.

3.3.4 Particulars of Directors and Other Officers – Form 29

Form 29 is used for:-

- I. the appointment of an officer (Chief Executive, Director, Company Secretary, Chief Accountant, Chief Financial Officer, Auditor, Legal Adviser)
- II. an officer ceasing to act (resignation, removal, death etc.)
- III. a change in particulars of an officer, for example, a change of name or new residential address.
- IV. a change in particulars of an officer, for example, a change of name or new residential address.

All changes in particulars of directors and other officers must be sent to the registrar within 14-days of the change.⁴⁷

3.3.5 Allotments of Shares - Form 3

This form should be sent to Registrar within 30 days of the shares being allotted.⁴⁸

3.3.6 Mortgages and charges – Forms 10, 11, 13, 14, 16 and 17

Particulars of any mortgage or charge created by the company, modification or satisfaction thereof must be sent to Registrar within 21 days of its creation or satisfaction.⁴⁹

3.3.7 Special Resolutions – Form 26

The special resolution passed by a company is to be filed with the registrar within 15 days from the date of passing.⁵⁰

3.3.8 Quarterly accounts of a Company

Section 245 of the Ordinance lays down the provisions for the preparation and transmission of quarterly accounts to the Members, Stock Exchanges, Registrar and the Commission. Non-compliance with this statutory requirement attracts imposition of heavy penalties. As such, it is important that the directors, CEO, CFO, company secretary and any other persons responsible for preparation, approval and filing of quarterly accounts are aware of the filing

⁴⁷<http://www.secp.gov.pk/GuidesDirectorsandSecretariesGuidenov29.pdf> Directors and Secretaries Guide by Securities and Exchange Commission of Pakistan, p.22(accessed April 11, 2013)

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

deadlines and other related legal requirements.⁵¹ Section 245 of the Ordinance sets out the provisions relating to transmission of quarterly accounts by listed companies. According to the said section every listed company shall:⁵²

(a) Within one month of the close of first, second and third quarter of its year of account, prepare and transmit to the members and the stock exchange in which shares of the company are listed, a profit and loss account and a balance-sheet as at the end of that quarter, whether audited or otherwise; and

(b) Simultaneously with the transmission of the quarterly profit and loss account and balance-sheet to the members and the stock exchange, file with the Registrar and the Commission at least three copies of the same.⁵³

If a company fails to comply with any of the requirements of section 245 of the Ordinance, every director, including chief executive and chief accountant of the company would be liable to a fine not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues.⁵⁴

3.4 International Accounting Standard 34

International Accounting Standard (IAS)-34 (the "Standard") prescribes the contents of an interim financial report, including minimum disclosure requirements. It also identifies the accounting recognition and measurement principles that should be applied in an interim financial report. IAS-34 permits the companies to either publish a complete set of financial statements in conformity with IAS-I or a set of condensed financial statements with selected explanatory notes. Minimum contents of an interim financial report as per Para 8 of the Standard are as under:

- a) condensed balance sheet;
- b) condensed income statement/profit and loss account;

⁵¹http://www.secp.gov.pk/SECGuideSeries/pdf/Guidelines_Quarterly_Accounts.pdf; pdf Guide series Quarterly Accounts by Securities and Exchange Commission of Pakistan, p.01 (accessed April 11, 2013)

⁵² Ibid.p.2.

⁵³ Ibid.

⁵⁴ Ibid.p.3.

- c) condensed statement showing either (i) all changes in equity, or (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- d) condensed cash flow statement;
- e) Selected explanatory notes.⁵⁵

3.5 Public Sector Companies (Corporate Governance) Rules, 2013 and Code of Corporate Governance

In 2013 SECP has introduced Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules) to regulate corporate governance issues of public listed companies. Previously Code of Corporate Governance (the Code) was the only document to deal with Corporate Governance issues. After introduction of in case of any conflict between Code and Rules, Rules shall prevail.⁵⁶

Code of Corporate Governance (the "Code") enforced through the stock exchange regulations also lays down provisions to be followed by the listed companies while preparing quarterly accounts.⁵⁷ Clause (xx) of the Code requires that the quarterly financial statements of listed companies shall be published and circulated along with director's review on the affairs of the listed company for the quarter. All listed companies shall ensure that half-yearly (second quarter) financial statements are subjected to a limited scope review by the statutory auditors in such manner and according to such terms and conditions as may be determined by the Institute of Chartered Accountants of Pakistan and approved by the Commission. Only statutory auditors appointed to conduct the annual audit of a listed company can carry out a limited scope review of the company's half-yearly (second quarter) accounts.⁵⁸

As per clause (xxxiii) of the code, audit committee shall review the quarterly financial statements of the listed company, prior to their approval by the Board, focusing on:

- a) major judgmental areas;
- b) significant adjustments resulting from the review;

⁵⁵<http://www.secp.gov.pk/Guides/DirectorsandSecretariesGuidenov29.pdf> (accessed April 11, 2013)

⁵⁶ *Public Sector Companies (Corporate Governance) Rules, 2013*. (Islamabad: Securities and Exchange Commission, 2013).

⁵⁷ http://www.secp.gov.pk/SECGuideSeries/pdf/Guidelines_Quarterly_Accounts.pdf; pdf Guide series Quarterly Accounts by Securities and Exchange Commission of Pakistan, p.07 (accessed April 11, 2013)

⁵⁸ *Ibid.*

- c) the going-concern assumption;
- d) any changes in accounting policies and practices;
- e) compliance with applicable accounting standards; and
- f) compliance with listing regulations and other statutory and regulatory requirements.⁵⁹

3.5.1 Time Period to Keep Previous Company Accounts Record

The books of account of every company relating to a period of not less than ten years immediately preceding the current year should be preserved in good order. However, in the case of a company incorporated less than ten years before the current year, the books of account for the entire period preceding the current year must be preserved.⁶⁰

3.5.2 Annual Accounts Time Duration

The period to which the annual accounts relate shall not exceed twelve months. This period can, however, be extended with the special permission by the registrar. For this purpose, an application is required to be made to the Registrar under Rule 30 of the Rules.⁶¹

3.5.3 Quarterly Accounts

The period to which the quarterly accounts relate shall not exceed three months.

3.5.4 Time Period for Submission of Quarterly Accounts

Every listed company is required to prepare and circulate its quarterly accounts within one month of the close of first and third quarter of its year of account, to the members and the stock exchange in which the shares of the company are listed a profit and loss account and a balance-sheet as at the end of that quarter, whether audited or otherwise. For the second quarter, the period within which the quarterly accounts shall be submitted with limited scope review is two months. Moreover, three copies of the quarterly accounts are also required to be transmitted to the Stock exchanges, the Registrar and the Commission within the aforesaid period. Stock exchanges also require the listed companies to submit additional copies of

⁵⁹http://www.secp.gov.pk/SECGuideSeries/pdf/Guidelines_Quarterly_Accounts.pdf; pdf Guide series Quarterly Accounts by Securities and Exchange Commission of Pakistan, p.07 (accessed April 11, 2013)

⁶⁰http://www.secp.gov.pk/SECGuideSeries/PDF/accounting_guide.pdf GuideSeries on accounting by Securities and Exchange Commission of Pakistan, p. 03(accessed April 11, 2013)

⁶¹Ibid.

quarterly accounts for which the listing regulations of the stock exchange where the company is listed, may be referred.⁶²

3.5.5 Extension of Time Allowed for Laying Accounts

Annual Accounts

Period for delivering accounts can be extended by a maximum period of two months. For this purpose, an application is required to be made to the Commission to extend the time for laying and delivering annual accounts if there is a special reason for doing so. For example, if there has been an unforeseen event which was outside the control of the company and its auditors. The application must be made under Rule 14 and 30 of the Rules to the Commission in the case of a listed company and to the Registrar in the case of other companies not less than thirty days before the last date on which the annual accounts are to be laid before the AGM.⁶³

However, in the case of a listed company, the Commission, and in any other case, the registrar, may, for any special reason, extend the period for delivering accounts for a term not exceeding two months from the due date of holding of annual general meeting and presentation of accounts therein.⁶⁴

Quarterly Accounts

In the case of quarterly accounts, the period cannot be extended.

3.5.6 Late Submission of Accounts

Annual Accounts

If a company fails to deliver accounts on time then every director, including chief executive and chief accountant of the company who has knowingly by his act or omission, caused such default shall be liable for punishment in respect of a listed company, with imprisonment for a term which may extend to one year and with fine which would not be less than twenty thousand rupees nor more than fifty thousand rupees, and with a further fine which may extend to five thousand rupees for every day after the first during which the default

⁶²http://www.secp.gov.pk/SECGuideSeries/PDF/accounting_guide.pdf GuideSeries on accounting by Securities and Exchange Commission of Pakistan, p. 04(accessed April 11, 2013)

⁶³Ibid.p.5.

⁶⁴Ibid.p.6.

continues; and in respect of any other company, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to ten thousand rupees.⁶⁵

Quarterly Accounts

Similarly, if a company fails to deliver its quarterly accounts on time then every director, including chief executive and chief accountant of the company who has knowingly by his act or omission caused such default would be liable to a fine not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues.⁶⁶

3.6 Penalties for Improper Issue, Circulation or Publication of Accounts

If any copy of a balance-sheet is issued, circulated or published without there being annexed thereto a copy each of (i) the profit and loss account or income and expenditure account, (ii) any accounts, reports, notes or statements referred therein, (iii) the auditor's report, and (iv) the directors report, the company and every officer of the company who is knowingly and willfully in default is to be punished with fine which may extend to five thousand rupees.

3.6.1 Filing Exemption for Private Companies

Generally SMCs and other private companies are not required to file their annual and quarterly accounts with the Commission or the Registrar. However every private company having paid up capital of more than 7.5 million rupees is required to file accounts with the Registrar.

4- CLASSIFICATION OF COMPANIES IN SCHEDULED FOUR & FIVE OF COMPANIES ORDINANCE 1984

Schedule four and five contains the regime based classification of companies based on their status and this classification is only with respect to preparation of accounts. In schedule four listed companies regime for preparation of accounts has been incorporated by the Commission whereas in fifth schedule companies has been classified into unlisted, private and public companies, small, medium and economically significant companies.

⁶⁵http://www.secp.gov.pk/SECGuideSeries/PDF/accounting_guide.pdf GuideSeries on accounting by Securities and Exchange Commission of Pakistan, p.06(accessed April 11, 2013)

⁶⁶Ibid.

5- THRESHOLD OF COMPANIES CLASSIFICATION IN FOURTH & FIFTH SCHEDULE

5.1 Small Sized Companies

As per schedule five of the Ordinance small sized company means a company that:

- a) has a paid up capital plus undistributed reserves not exceeding Rs. 25 million;
- b) has employees not exceeding two hundred and fifty at any time during the year; and
- c) has annual turnover not exceeding Rs. 250 million, excluding other income.⁶⁷

The company meets all the above three requirements shall be treated as small company and such company has to meet the minimum statutory and filing requirements required by the companies ordinance 1984.

5.2 Medium-Sized Company

As per schedule five of the Ordinance, medium sized company means a company that:

- a) is not a listed company or a subsidiary of a listed company;
- b) has not filed, application for Issue of shares to SECP;
- c) does not hold assets in a fiduciary capacity for a broad group of outsiders, such as a bank, insurance company, etc.;
- d) is not a public utility;
- e) is not economically significant
- f) is not a small-sized company⁶⁸

5.3 Economically Significant Company

As per schedule five of the Ordinance economically significant company means a company that:

- a) Turnover in excess of Rs. 1 billion, excluding other income;
- b) Number of employees in excess of 750;
- c) Total borrowings (excluding trade creditors and accrued liabilities) in excess of Rs. 500 million.⁶⁹

⁶⁷ Companies Ordinance 1984, Schedule V, Requirements as to balance sheet and profit and loss account of listed companies.

⁶⁸ Ibid.

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To come under the ambit of economically significant regime companies has to meet only two of above stated thresholds.⁷⁰

6- PROS AND CONS OF COMPANIES CLASSIFICATION IN COMPANIES ORDINANCE, 1984

As we have already discussed in detail classification of companies in this chapter therefore we may say that broadly in Pakistan companies has been divided into two main kinds;

- a) Public Limited Companies
- b) Private Limited Companies

Present regime of public companies whether listed or un-listed under companies ordinance 1984 follow strict statutory and regulatory mechanism for all return and other filings with the Commission. The only reason behind this strict mechanism is that those companies have acquired the status of public listed or un-listed company and irrespective of actual worth of such companies presumption of great economic impact and huge public investment is attached with such companies.

As matter of fact in Pakistan hundreds of private companies are more significant than public companies because such private companies are engaged in business volumes billions of rupees annually however, such companies are not bound to present their annual accounts or quarterly returns to the commission and by doing this such companies are under less stringent regime which is harmful for effective corporate governess and corporate social responsibility.

It is important to discuss that if a private company is having billions of rupees transactions in Pakistan but those transactions are not within the knowledge of regulator or corporate registry just because that private companies are not required to submit its accounts and other returns with the commission then how legality or otherwise of such activities could be determined.

⁶⁹ Companies Ordinance 1984, Schedule V, Requirements as to balance sheet and profit and loss account of listed companies.

⁷⁰ Ibid.

In my view this classification of companies may be in favor of private entrepreneurs however it is against the transparency, good corporate governess rules and corporate social responsibilities therefore irrespective of status of companies a stringent mechanism should be developed for the companies with huge business activities and less stringent mechanism for the companies having low volume of business.

7- PROS AND CONS OF COMPANIES CLASSIFICATION IN FOURTH & FIFTH SCHEDULE

Classification contained in fourth and fifth schedule of the Ordinance could not be considered ideal model, however by keeping in view this core step we can move forward to achieve and prosper, healthy and well organized corporate sector for better and economically strengthen Pakistan.

Classification of schedule four and five is only for the purpose of preparation of accounts and it has nothing to do with the filing of such accounts. As per fourth and fifth schedule public or listed companies are required to comply with all the statutory and regulatory requirements of filings with the registrar or the Commission however other companies are not required for any such filing. All other companies below the paid up capital of 7.5 Million are exempted for such filing. Classification contained in Schedules is not relevant for the purpose of meetings, disclosure requirements and other corporate governess issues.

8- CONCLUSION OF THE CHAPTER

In this chapter classification of Companies contained in the Ordinance has been explained and statutory and regulatory requirements have been elaborated. It has also been explained that the categorization of companies in Schedule V of the Ordinance such as small, medium and economically significant companies was inserted just for preparation of accounts and it has no application on governance and disclosure issues.

CHAPTER NO.3

COMPARATIVE ANALYSIS OF DIFFERENT CORPORATE JURISDICTIONS

In this chapter comparative analysis of different corporate jurisdiction shall be carried out. In all jurisdictions regime based classification has gained vital position and it has been concluded that for economic prosperity and growth of corporate structures regime based statutory requirements shall be introduced. After this chapter we shall be in position to understand current regime based scenario of regime based classification of companies.

1- CLASSIFICATION OF COMPANIES IN UNITED KINGDOM

The following are the various types of companies in United Kingdom under the companies Act 2006, wherein different treatment of small, medium and large companies have been introduced.⁷¹

1.1 Private Companies Limited by Shares

The vast majority of trading companies are private companies limited by shares. There are over two million such companies registered at Companies House.⁷² A private company limited by shares must have the word 'Limited' or 'Ltd' at the end of its name. The main advantage of trading through a limited company is to have limited liability.⁷³ Many private companies are very small. There is no minimum capital requirement for a private company and it is commonly less than £100.⁷⁴ Approximately 90% of private companies are small or medium sized companies which mean that they can file modified (i.e. simplified) accounts at Companies House, rather than full accounts. As per section 755 of Companies Act 2006 a private company may not offer shares or debentures to the public.⁷⁵

⁷¹ Alan dignam and John Lowery, *Company Law*.8th.ed.(nl: OUP Oxford, 2014).

⁷² Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st.ed. (nl: The Law Society, 2007).

⁷³ Saleem Sheikh, *A Guide to The Companies Act 2006*.1st.ed. (nl: Routledge-Cavendish , 2008).

⁷⁴ Arad Reisberg, "Corporate Law in the UK after Recent Reforms: The Good, the Bad and the Ugly." Oxford University Press, 2010, Vol. 63, p. 315-374.

⁷⁵ <http://www.communitycompanies.co.uk/sharecompanies.shtml>,By Company Law Solutions group of companies (accessed July 01, 2014)

1.2 Public Limited Companies (PLC)

A small proportion of companies in UK are public companies. Such a company must have a name ending in the words 'public limited company' or 'PLC'.⁷⁶ This type of company is appropriate for larger businesses where shares are intended to be available to the general public. Most public companies are not set up as such but are converted from private ones.⁷⁷

A public company must have a minimum share capital of £50,000, of which at least one-quarter plus any share premium must be paid up before the company can obtain its trading certificate from Companies House and start trading.⁷⁸ This is the only type of company which may raise capital by offering securities (shares or debentures) to the public. This is usually done by obtaining a listing on the Stock Exchange or another public market such as the Alternative Investment Market.⁷⁹ Public companies are subject to more stringent legal requirements than private companies on a wide range of matters, but especially in relation to share capital, directors and accounts.⁸⁰

1.3 Property Management Companies

A property management company is a type of private limited company. Such a company will be set up in order to hold an interest in property which is divided into units, each unit being owned separately.⁸¹ A typical example is a large house divided into a number of flats, each flat being owned by one or two people. Most property management companies are private companies limited by shares with appropriate articles of association, though some are limited by guarantee.⁸²

1.4 Companies Limited by Guarantee

A company limited by guarantee is private company, very like a private company limited by shares, but it does not have a share capital. It is widely used for charities, clubs, community

⁷⁶ Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st.ed. (nl: The Law Society, 2007).

⁷⁷ Alan dignam and John Lowery, *Company Law*. 8th.ed. (nl: OUP Oxford, 2014).

⁷⁸ Saleem Sheikh, *A Guide to The Companies Act 2006*. 1st.ed. (nl: Routledge-Cavendish , 2008).

⁷⁹ Jennifer Payne, "Legal Capital in the UK Following the Companies Act 2006." Hart Publishing, October 2008.

⁸⁰ Ian Havercroft and Arad Reisberg, "Directors' Duties Under the UK Companies Act 2006 and the Impact of the Company's Operations on the Environment." December 15, 2010.

⁸¹ Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st.ed. (nl: The Law Society, 2007).

⁸² Alan dignam and John Lowery, *Company Law*. 8th.ed. (nl: OUP Oxford, 2014).

enterprises and some co-operatives.⁸³ The vast majority of such companies are non-profit distributing, but they do not have to be.⁸⁴

A company limited by guarantee is registered at Companies House, has articles of association, directors, etc., and is subject to all the requirements of the Companies Acts (except those relating to shares).⁸⁵ There are no shares and so no shareholders, but such a company does have members, who meet and control the company through general meetings. A company limited by guarantee confers limited liability as effectively as a company limited by shares. The articles state that the members guarantee to pay its debts, but only up to a fixed amount each.⁸⁶

1.5 Unlimited Companies

In private unlimited company members accept complete liability for the company's debts. If the company needs money to pay its debts a call can be made on each of the shareholders to contribute a fixed amount on each share held by them.⁸⁷ An unlimited company has all the other features of a private company limited by shares. It is registered at Companies House, has members (usually shareholders), directors, articles, etc. Its one major advantage is that it is not required to register annual accounts at Companies House. This type of company is suitable for a business where the risk of insolvency is very low or non-existent, or where it is important not to put the company's accounts on the public register at Companies House⁸⁸.

1.6 Limited Liability Partnerships (LLPs)

The limited liability partnership is a comparatively new type of business structure which became available in 2001. It is a hybrid between a private company limited by shares and a partnership.⁸⁹ An LLP is a separate legal entity conferring full limited liability on its members. It is created by registration at Companies House. There must be at least two members, but there is no upper limit. An LLP is subject to the same rules as a private limited

⁸³ Anthony Joseph D'Erasmus, *The Companies Act 2006*. March 4, 2010.

⁸⁴ http://www.companylawclub.co.uk/topics/types_of_companies.shtml, By Company Law Solutions group of companies (accessed January 12, 2014)

⁸⁵ Alan dignam and John Lowery, *Company Law. 8th.ed.*(nl: OUP Oxford, 2014).

⁸⁶ Jennifer Payne, "Legal Capital in the UK Following the Companies Act 2006." Hart Publishing, October 2008.

⁸⁷ *The ICSA Companies Act 2006.2nd.rev.ed.*(nl:Linklaters&Paines Publisher ICSA Publishing Ltd,2009).

⁸⁸ Sebastian v.Thunen Bielefeld, *Basics of ENGLISH COMPANY AND EMPLOYMENT LAW*.

http://www.jurawelt.com/sunrise/media/mediafiles/14240/english_company_law.pdf (accessed March 11, 2014)

⁸⁹ *The ICSA Companies Act 2006.2nd.rev.ed.*(nl:Linklaters&Paines Publisher ICSA Publishing Ltd,2009).

company for the registration of accounts at Companies House, and the auditing of its accounts.⁹⁰

The Act does not impose a structure for the management of an LLP. There are no statutory provisions for general meetings, directors, company secretary, share allotments, etc. As with a common law partnership, these are matters for the LLP agreement.⁹¹ The LLP is treated for tax purposes as an ordinary partnership: i.e. each partner is liable to income tax for his or her share of the profits, and to Capital Gains Tax in respect of any gains made on the disposal of assets by the LLP.⁹²

1.7 Community Interest Companies (CICs)

Community Interest Companies are a relatively new type of company (from 2005) which can only be registered for objects which are for the good of the community. The Companies (Audit, Investigations and Community Enterprise) Act 2004 ('the Act'), and The Community Interest Company Regulations made under the Act, establish the legislative framework for CICs.⁹³

Apart from having to have objects that benefit the community, the two main features that distinguish CICs from 'normal' companies are the asset lock and the Community Interest Statement and Report. Under the asset lock provisions, the assets and profits must be permanently retained within the CIC, and used solely for community benefit, or transferred to another organization which itself has an asset lock, such as a charity, or another CIC.⁹⁴ With every application to form a CIC, a Community Interest Statement must be lodged, with the usual documents, when seeking company registration. This statement, signed by all the directors, must describe the company's objects and certify that the company is formed to serve the community rather than for private profit. CICs can be limited by shares or by guarantee.⁹⁵

⁹⁰http://www.companylawclub.co.uk/topics/types_of_companies.shtml, By Company Law Solutions group of companies (accessed January 12, 2014)

⁹¹*The ICSA Companies Act 2006*. 2nd. rev. ed. (nl: Linklaters & Paines Publisher ICSA Publishing Ltd, 2009).

⁹²Jennifer Payne, "Legal Capital in the UK Following the Companies Act 2006." Hart Publishing, October 2008.

⁹³Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st. ed. (nl: The Law Society, 2007).

⁹⁴Saleem Sheikh, *A Guide to The Companies Act 2006*. 1st. ed. (nl: Routledge-Cavendish, 2008).

⁹⁵Arad Reisberg, "Corporate Law in the UK after Recent Reforms: The Good, the Bad and the Ugly." Oxford University Press, 2010, Vol. 63, p. 315-374.

1.8 Charitable Incorporated Organizations (CIOs)

This new type of company became available for registration in England and Wales from 10th. December 2012. It has been available in Scotland since 1st. April 2011. Charitable Incorporated Organizations (CIOs) were brought into being by the Charities Act 2006.⁹⁶ CIOs have to register as both a company limited by guarantee and as a charity. Using a CIO should be simpler to incorporate and run as it will be registered with just one body (the Charity Commission) and will only have to submit one annual return and one set of accounts per year.⁹⁷

2- THRESHOLD FOR REGIME OF BASED COMPANIES IN UNITED KINGDOM

2.1 Threshold for Small Sized

The small companies regime in UK applies to a company for a financial year in relation to which the company qualifies as small (sections 382 and 383 of CA 2006) and is not excluded from the regime section 384 of CA 2006).⁹⁸ A company qualifies as small in relation to its financial year if the qualifying conditions are met in that year in which it satisfies two or more of the following requirements:-⁹⁹

- | | |
|------------------------|---------------------------------|
| 1. Turnover | Not more than £6.5 million |
| 2. Balance sheet total | Not more than £3.26 million |
| 3. Number of employees | Not more than 50 ¹⁰⁰ |

For a period that is a company's financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted. The balance sheet total means the aggregate of the amounts shown as assets in the company's balance sheet. The number of employees means the average number of persons employed by the company in the year, determined as follows:-

⁹⁶ Alan Dignam and John Lowery, *Company Law*. 8th ed. (nl: OUP Oxford, 2014).

⁹⁷ Andrew McGee, *Shares and Share Capital under the Companies Act 2006*. (nl: ISBN, 2009).

⁹⁸ *The ICSA Companies Act 2006*. 2nd rev. ed. (nl: Linklaters & Paines Publisher ICSA Publishing Ltd, 2009).

⁹⁹ <http://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime/database> delivered by The National Archives (accessed December 11, 2013)

¹⁰⁰ Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st ed. (nl: The Law Society, 2007).

(a) Find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),

(b) Add together the monthly totals, and

(c) Divide by the number of months in the financial year.¹⁰¹

A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group. The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements:-¹⁰²

- | | |
|----------------------------------|---|
| 1. Aggregate turnover | Not more than £6.5 million net (or £7.8 million gross) |
| 2. Aggregate balance sheet total | Not more than £3.26 million net (or £3.9 million gross) |
| 3. Aggregate number of employees | Not more than 50 |

The small companies regime does not apply to a company that is, or was at any time within the financial year to which the accounts relate;-

(a) a public company,

(b) a company that is an authorized insurance company, a banking company, an e-money issuer, a or a UCITS management company, or carries on insurance market activity.

(c) a member of an ineligible group.¹⁰³

A company is a small company if it qualifies as small in relation to its last financial year ending on or before the end of the financial year to which the accounts relate. As per section 477 of Companies Act 2006 a company that qualifies as a small company in relation to a financial year is exempt from the requirements of the audit of accounts for that year.¹⁰⁴

¹⁰¹ Alan dignam and John Lowery, *Company Law*.8th.ed.(nl: OUP Oxford, 2014).

¹⁰² Saleem Sheikh, *A Guide to The Companies Act 2006*.1st.ed. (nl: Routledge-Cavendish , 2008).

¹⁰³ Andrew McGee, *Shares and Share Capital under the Companies Act 2006*. (nl: ISBN ,2009).

¹⁰⁴ <http://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime>,database delivered by The National Archives (accessed December 11, 2013)

2.2 Threshold for Medium-Sized Companies

As per section 465 of Companies Act 2006 a company qualifies as medium-sized in relation to if The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

1. Turnover not more than £25.9 million
2. Balance sheet total not more than £12.9 million
3. Number of employees not more than 250¹⁰⁵

2.3 Filing Obligations of Small Companies Regime

As per section 444 of the Companies Act 2006 The directors of a company subject to the small companies regime must deliver to the registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and may also deliver to the registrar;-¹⁰⁶

- (i) a copy of the company's profit and loss account for that year, and
- (ii) a copy of the directors' report for that year.

The directors must also deliver to the registrar a copy of the auditor's report on the accounts (and any directors' report) that it delivers. This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.¹⁰⁷

2.4 Filing Obligations of Medium-Sized Companies Regime

As per section 445 of Companies Act 2006 the directors of a company that qualifies as a medium-sized company in relation to a financial year (see sections 465 to 467) must deliver to the registrar a copy of the company's annual accounts, and the directors' report. They must also deliver to the registrar a copy of the auditor's report on those accounts (and on the directors' report). This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.¹⁰⁸

¹⁰⁵ Martin Mann, *Blackstone's Guide to the Companies Act 2006*. 1st.ed. (nl: The Law Society, 2007).

¹⁰⁶ <http://www.icpa.org.uk/sect/04250000.pdf> Reporting Requirements of Small Companies 2011 Mercia Group Ltd, Best House, Grange Business Park, Enderby Road, (accessed March 12, 2014)

¹⁰⁷ Andrew McGee, *Shares and Share Capital under the Companies Act 2006*. (nl: ISBN ,2009).

¹⁰⁸ Saleem Sheikh, *A Guide to The Companies Act 2006*. 1st.ed. (nl: Routledge-Cavendish , 2008).

3-CLASSIFICATION OF COMPANIES IN SINGAPORE

3.1 Private Company Limited by Shares

The Private Company Limited by Shares is the most common business structure used in Singapore. The company is a separate legal entity in its own right, and so shareholders are not liable for its debts. The maximum number of shareholders allowed is 50.¹⁰⁹ Although 100% foreign ownership is allowed, at least one director must be a Singapore citizen, resident or employment pass holder. Newly set-up companies can benefit from a reduced corporate income tax rate of 0% to 8.5% on chargeable income of up to SGD300,000 in their first three years.¹¹⁰

The Private Company Limited by Shares must register with the Accounting and Corporate Regulatory Authority (ACRA). An annual tax return must be filed with both ACRA and the Inland Revenue Service of Singapore (IRAS) within one month of the company's annual general meeting.¹¹¹

3.2 Exempt Private Company

An Exempt Private Company (EPC) has a maximum of 20 shareholders, none of which may be a corporation (either directly or indirectly).¹¹² An EPC with annual turnover of up to SGD5m (Singapore dollar five Million) is not required to audit its accounts; audit requirements apply to those with annual turnover above SGD5m. Accounts do not need to be filed with ACRA, although an Exempt Company Certificate declaring the EPC's solvency status must be submitted. An annual tax return must be filed with both ACRA and the IRAS within one month of the company's annual general meeting.¹¹³

¹⁰⁹Peter Watts and Neil Campbell, *Singapore Company Laws and Regulations*. (Washington DC:International Business Publications USA, 2009).

¹¹⁰<http://lowtax.net/information/singapore/singapore-private-company-limited-by-shares.html>, Delivered by Wolters Kluwer TAA Limited (accessed March 12, 2014)

¹¹¹Peter Watts and Neil Campbell, *Singapore Company Laws and Regulations*. (Washington DC:International Business Publications USA, 2009).

¹¹²"A Balanced Scorecard Approach to Survey Corporate Governance Practices in Singapore's Listed Companies: STI Companies and Government-Linked Companies." Business Law Series; National University of Singapore, May 1, 2006.

¹¹³Peter Watts and Neil Campbell, *Singapore Company Laws and Regulations*. (Washington DC:International Business Publications USA, 2009).

3.3 Public Company Limited by Shares

A Public Company Limited by Shares is a locally incorporated company. There is no limit on the maximum number of shareholders, and it must have the word "Limited" as part of its name. Such companies are often listed on a stock exchange and raise capital by issuing shares and debentures.¹¹⁴ The company must register a prospectus with the Monetary Authority of Singapore before making public offers of shares and debentures. The company must register with ACRA. Accounts must be audited annually and filed with ACRA. An annual tax return must also be filed with both ACRA and the IRAS within one month of the company's annual general meeting.¹¹⁵

3.4 Company Limited by Guarantee

A Company Limited by Guarantee carries out non-profit-making activities for the public or national interest. It has no share capital, and therefore usually consists of members rather than shareholders. The company must register with ACRA. Accounts must be audited annually and filed with ACRA. An annual tax return must also be filed with both ACRA and the IRAS within one month of the company's annual general meeting.¹¹⁶

3.5 Limited Liability Partnership

A Limited Liability Partnership has separate legal identity much like a Private Company Limited by Shares, whereby the partners are not liable for the partnership's debt. However, a partner may be held personally liable for losses resulting from his or her wrongful act or omission; but, unlike in a General Partnership, a partner cannot be held liable for the wrongful act or omission of another partner. Limited Liability Partnerships must register with

¹¹⁴"A Balanced Scorecard Approach to Survey Corporate Governance Practices in Singapore's Listed Companies: STI Companies and Government-Linked Companies." Business Law Series; National University of Singapore, May 1, 2006.

¹¹⁵Angelo Capuano, "The Realist's Guide to Piercing the Corporate Veil: Lessons from Hong Kong and Singapore." Australian Journal of Corporate Law, Vol. 23, No. 1, 2009.

¹¹⁶"A Balanced Scorecard Approach to Survey Corporate Governance Practices in Singapore's Listed Companies: STI Companies and Government-Linked Companies." Business Law Series; National University of Singapore, May 1, 2006.

ACRA. The partnership must lodge an annual declaration with ACRA stating whether it is solvent or insolvent; it is not required to lodge its accounts with ACRA.¹¹⁷

4- THRESHOLD FOR REGIME OF BASED COMPANIES IN SINGAPORE

In Singapore a company would qualify as small company if it is a private company and fulfils two of the following criteria.¹¹⁸

Criterion One	Criterion Two	Criterion Three
Total annual revenue of not more than S\$10 million.	Total gross assets of not more than S\$10 million.	Number of employees not more than 50. ¹¹⁹

4.1 Filing Requirements for Companies in Singapore

All locally incorporated companies are required to hold their Annual General Meeting (AGM) and file their annual returns under S175, S197 and S201 of the Companies Act. At the AGM, directors shall present a true and fair view of the company's accounts to their shareholders.¹²⁰

The Companies Act does not prescribe the minimum level of qualifications for the person preparing the accounts. However, it will be the responsibility of the directors to appoint individuals with the required level of expertise for preparation of such accounts. Statutory and filing requirements for companies in Singapore are as followed;

¹¹⁷Angelo Capuano, "The Realist's Guide to Piercing the Corporate Veil: Lessons from Hong Kong and Singapore." Australian Journal of Corporate Law, Vol. 23, No. 1, 2009.

¹¹⁸Peter Watts and Neil Campbell, *Singapore Company Laws and Regulations*. (Washington DC:International Business Publications USA, 2009).

¹¹⁹Angelo Capuano, "The Realist's Guide to Piercing the Corporate Veil: Lessons from Hong Kong and Singapore." Australian Journal of Corporate Law, Vol. 23, No. 1, 2009.

¹²⁰..A Balanced Scorecard Approach to Survey Corporate Governance Practices in Singapore's Listed Companies: STI Companies and Government-Linked Companies." Business Law Series; National University of Singapore, May 1, 2006.

	Requirements	Companies Act
Annual General Meeting (AGM)	<p>1. A company is required to hold its first AGM within 18 months after its incorporation.</p> <p>2. Subsequent AGMs must be held every calendar year and the interval between AGMs should not be more than 15 months.</p>	Section 175
Filing Annual Return	The Annual Return must be filed with the Registrar within one month after the AGM.	Section 197
Audited / Unaudited Accounts	<p>For a public company listed or quoted on a securities exchange in Singapore:</p> <p>Accounts presented at the AGM shall be made up to a date not more than 4 months before the AGM.</p> <p>In the case of any other company:</p> <p>Accounts presented at the AGM shall be made up to a date not more than 6 months before the AGM.¹²¹</p>	Section 201

5- CLASSIFICATION OF COMPANIES IN NEW ZEALAND

Classification of companies in New Zealand is the most suffocated and simple. A company is defined as a business that is a separate legal entity from the people who have a financial interest in the business, who are known as shareholders and are taxed separately from the company on the income they receive from it.¹²²

There is no limit on the number of shareholders. A company can have, however the process of raising funds from the public and it is regulated principally by the Securities Act 1978.¹²³

¹²¹"A Balanced Scorecard Approach to Survey Corporate Governance Practices in Singapore's Listed Companies: STI Companies and Government-Linked Companies." Business Law Series; National University of Singapore, May 1, 2006.

¹²²Susan Watson, *Company and Securities Law in New Zealand*. 2nd ed. 2009.

¹²³Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd ed. (New Zealand: CCH New Zealand Limited, 2011).

Incorporation, management and liquidation of companies is governed by the Companies Act 1993.¹²⁴

5.1 Main Types of Companies in New Zealand

There are two types of companies in New Zealand, private and public. Private companies have their shares owned within a private group, like a family for example, so they can retain control. Public companies have their shares publicly listed on the stock exchange so they're available to be bought by the general public and other companies.¹²⁵

Regardless of whether it's a private or public company, shareholders have what is called limited liability. This means they can lose the value of their shares in the business, but that's all. They're not responsible for any other debts or liabilities the company owes. As the company is a separate entity, it owns all the assets and all the liabilities itself. This separation also means the company is not tied to one individual or one generation of owners, so it can last for as long as it remains viable. As matter of fact we may say that Companies in New Zealand may be classified as listed or un-listed.¹²⁶

5.2 Other Types of Companies in New Zealand

5.2.1 Co-operative Company

A co-operative company is a company incorporated under the Companies Act 1993 that applies for registration as a co-operative company under the Co-operative Companies Act 1996. Application can be made on incorporation or at a later time. A co-operative company is one formed to carry on a co-operative activity, as defined in its constitution, as its principle activity with not less than sixty percent of the voting rights being held by transacting shareholders. Co-operative activity is defined in the Act.¹²⁷

¹²⁴<http://www.business.govt.nz/companies/help-support/glossary>(accessed March 17, 2014)

¹²⁵Susan Watson,*Company and Securities Law in New Zealand*.2nd.ed.2009.

¹²⁶SilvanaSchenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*.2nd.ed. (New Zealand: CCH New Zealand Limited, 2011)

¹²⁷<http://www.business.govt.nz/companies/help-support/glossary>,Ministry of Business Innovation & Employment (accessed March 17, 2014)

5.2.2 Holding & Subsidiary Company

Companies Act 1993 does recognize the concept of holding and subsidiary companies.¹²⁸ A company is a subsidiary of another company if, it controls the composition of the board of the company; or is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or the company is a subsidiary of a company that is that other company's subsidiary.¹²⁹

5.2.3 Large Company

A company shall be treated as large company if balance date of the accounting period for which financial statements are required, the total assets (including intangible assets) of the company and its subsidiaries (if any) reported in the statement of financial position or consolidated statement of financial position (as the case may be) exceeds \$10,000,000 or the accounting period for which financial statements are required, the total turnover of the company and its subsidiaries (if any) exceeds \$20,000,000 or the balance date of the accounting period for which financial statements are required, the company and its subsidiaries (if any) have 50 or more full-time equivalent employees.¹³⁰

5.2.4 Limited Liability Company

A Limited Liability Company is a company similar in structure to a partnership however, its members are not personally liable for the entity's debts and liabilities.¹³¹ Shareholders of a limited liability company are not liable for the business debts of the company (subject to any personal guarantees given) - they are only liable (to the liquidator) for any unpaid money

¹²⁸Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed. 2009.

¹²⁹Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd.ed. (New Zealand: CCH New Zealand Limited, 2011)

¹³⁰PKF – Accountants and Business Advisors “Doing business in New Zealand”

¹³¹Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed. 2009.

owing on their shares. If they have fully paid for their shares prior to the company being placed in liquidation, they will have no further liability to the company's creditors.¹³²

5.2.5 Overseas Company

An overseas company is defined in the Companies Act 1993 as "a body corporate that is incorporated outside New Zealand" (section 2(1)). An overseas company can operate in New Zealand in one of three ways:

- a) By establishing a wholly owned New Zealand subsidiary company and registering on the New Zealand register under Part II of the Act (sections 11 to 15).
- b) By establishing a branch operation and registering as an overseas company on the overseas register under Part XVIII of the Act (sections 332 to 337).
- c) By transferring its incorporation from the country in which it is registered to New Zealand under Part XIX of the Act and becoming a New Zealand company by registering under Part II of the Act (sections 344 to 349 and 11 to 15).¹³³

5.2.6 Unlimited Company

Companies can be formed with the shareholders having unlimited liability. Unlimited companies are registered in the same way as limited liability companies but with a constitution providing for unlimited liability and they have a name that does not end in Limited or Tapui (Limited).¹³⁴

5.2.7 Exempt company

As per Section 6A of Financial Reporting Act 1993 an exempt company is a company, other than an issuer or an overseas company to which at least two of the following subparagraphs apply:

As at balance date the value of the total assets of the company in the statement of financial position did not exceed NZ\$1,000,000;

¹³²<http://www.business.govt.nz/companies/help-support/glossary>, Ministry of Business Innovation & Employment (accessed March 17, 2014)

¹³³Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed. 2009.

¹³⁴Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd.ed. (New Zealand: CCH New Zealand Limited, 2011)

1. In the accounting period the turnover of the company did not exceed NZ\$2,000,000
2. As at balance date the company has five or fewer full-time employees;

And, as at balance date the company:

1. was not a subsidiary of another body corporate or association of persons; and
2. did not have any subsidiaries.¹³⁵

6- THRESHOLD FOR COMPANIES IN NEW ZEALAND

Financial reporting requirements split between different statutes. The financial reporting requirements for specific entities will be contained in the statutes which govern those entities. For example, the financial reporting obligations for "FMC reporting entities" will be included in the Financial Markets Conduct Act 2013.¹³⁶ For companies which are not "FMC reporting entities", the financial reporting obligations will be included in the Companies Act 1993.¹³⁷

A New Zealand company may be required to file accounts with the Companies Office if it falls under one of the following categories:

- a. Under section 19(1)(b) Financial Reporting Act 1993 If it is a 'large' company in which 25 percent or more of the voting shares are held by ;-
 - i. A company or body corporate incorporated outside New Zealand; or
 - ii. A subsidiary of a company or body corporate incorporated outside New Zealand; or
 - iii. A person not ordinarily resident in New Zealand.
- b. Under section 19 (1)(c) Financial Reporting Act 1993 If it is a subsidiary of a company or body corporate incorporated outside New Zealand.¹³⁸

¹³⁵Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd.ed. (New Zealand: CCH New Zealand Limited, 2011).

¹³⁶<http://www.business.govt.nz/companies/help-support/glossary>, Ministry of Business Innovation & Employment (accessed February 13, 2014)

¹³⁷Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed. 2009.

¹³⁸<http://www.business.govt.nz/companies/learn-about/updates/financial-reporting/new-zealand-companies>, Ministry of Business Innovation & Employment (accessed January 11, 2014)

6.1 FMCA Reporting Entities

Listed companies and other entities regulated by the Financial Markets Authority under the FMCA (including those companies already regulated as “issuers”, such as registered banks and licensed insurers) will be required to prepare, audit and publicly disclose general purpose financial statements within four months of their balance date.¹³⁹

6.2 Large Overseas Companies Requirements

Large overseas companies carrying on business in New Zealand (applying a threshold of either NZ\$20m in assets or NZ\$10m in revenue during each of the past two accounting periods) must prepare, audit and publicly file their financial statements with the New Zealand Companies Office.¹⁴⁰ In addition, the overseas company's New Zealand branch must also prepare, audit and file financial statements for the branch alone if its operations amount to a “large” branch. A “large” New Zealand branch is one that satisfies the same thresholds, ie it had either NZ\$20m in assets or NZ\$10m in revenue during each of the past two accounting periods. It is therefore possible that an overseas company carrying on business in New Zealand through a branch may only need to file financial statements for the overseas company itself (but not for the branch) if its branch operations did not meet the “large” threshold.¹⁴¹

Overseas companies will only be required to prepare financial statements if they are an “FMC reporting entity” or a “large overseas company”. In determining whether an overseas company is “large”, the same thresholds apply as to New Zealand incorporated subsidiaries of overseas companies (i.e. the \$20 million asset threshold or \$10 million revenue threshold).¹⁴²

Fewer companies will be required to register financial statements, with the registration requirement only applying to “FMC reporting entities”, “large overseas companies” and “large” New Zealand companies with 25% or more overseas ownership. The timeframe for

¹³⁹Susan Watson, *Company and Securities Law in New Zealand*. 2nd ed. 2009.

¹⁴⁰Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd ed. (New Zealand: CCH New Zealand Limited, 2011)

¹⁴¹<http://www.buddlefindlay.com/Fllegal-update-on-banking-and-commercial-law-december-2013>, By John Smith a senior Chief Accountant Officer at Dominate Group of Companies (accessed March 13, 2014)

¹⁴²Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd ed. (New Zealand: CCH New Zealand Limited, 2011)

preparing and filing financial statements has been reduced from five months and 20 working days after the balance date to four months.¹⁴³

Financial statements for a parent company do not need to be prepared if group financial statements are prepared. The External Reporting Board will determine any parent company reporting obligations.¹⁴⁴

6.3 Public Disclosure of Financial Statements

The following companies will need to register audited financial statements with the Companies Office for public disclosure within five months of their balance date:

- a. large overseas companies, including the separate financial statements for the New Zealand branch, if that branch is “large” (in each case applying a threshold of either NZ\$20m in assets or NZ\$10m in revenue during each of the past two accounting periods)
- b. large New Zealand-incorporated companies in which 25% or more of the shares are ultimately owned by foreign interests.¹⁴⁵

6.4 Group Financial Statements

There will no longer be a requirement for companies to prepare stand-alone parent company financial statements if that company prepares group financial statements encompassing its subsidiaries.¹⁴⁶

6.5 Filing Timeframes

The standard timeframe to prepare, audit and file financial statements has been reduced from five months and 20 working days after a company's balance under the FRA 1993 to five

¹⁴³Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed.2009.

¹⁴⁴<http://www.bellgully.co.nz/resources/resource.03617.asp>, Financial and corporate Advisors (accessed March 13, 2014)

¹⁴⁵Susan Watson, *Company and Securities Law in New Zealand*. 2nd.ed.2009.

¹⁴⁶Silvana Schenone, *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. 2nd.ed. (New Zealand: CCH New Zealand Limited, 2011)

months after its balance date for all companies except reporting entities under the FMCA (which have four months to do so).¹⁴⁷

There are also changes to sector-specific legislation including the legislation covering registered charities, retirement villages and building societies. If your organization currently has financial reporting obligations, the new rules could affect your compliance requirements.¹⁴⁸

7- COMPARATIVE ANALYSIS OF INTERNATIONAL REGIMES WITH COMPANIES ORDINANCE, 1984

The basic classification and regulatory/statutory requirements of companies around the globe are almost same; however there is slight difference in treatment of different regime/sized based companies. As per the above stated corporate regimes including Pakistan we could say that ordinary classification of companies in all regimes is almost the same, however there is difference of treatment for the companies having large and small scale business.

New Zealand has a different corporate structure there are two main types of companies in New Zealand, private and public and further public companies are divided into public listed and public unlisted. Large and listed companies are under stringent regulatory mechanism however private companies have to follow minimum requirements.

United Kingdom and Singapore have almost same legal regime as in Pakistan however in both jurisdictions all companies are required to submit their annual accounts and other statutory/regulatory returns with the concerned office at the end of each financial year. However in United Kingdom small companies have been facilitated and relaxed to follow all the statutory filing requirements.

As matter of fact in the all jurisdiction discussed above has same processes and procedure to treat the companies, however each jurisdiction has slight difference of treatment for large and small companies.

¹⁴⁷<http://www.lexology.com/library/detail.asp>, A world Leading Corporate Law Consultant Firm (accessed March 13, 2014)

¹⁴⁸Susan Watson, *Company and Securities Law in New Zealand*.2nd.ed.2009.

8- CONCLUSION OF THE CHAPTER

In the light of above stated different corporate jurisdiction and treatment of companies we could say that every jurisdiction has pros and cons. Each jurisdiction has evolved system as per their needs and requirements and it would be illogical to recommend or adopt any of the above stated jurisdictions for Pakistan. However new concepts from modern company laws could be incorporated in proposed corporate regime in Pakistan.

CHAPTER NO.4

PROPOSED REGIME BASED CLASSIFICATION OF COMPANIES IN PAKISTAN

Classification of companies on the basis of their size/regime is not an alien concept for corporate sector in Pakistan. This concept was introduced in Pakistan in fourth and fifth Schedule of Companies Ordinance, 1984 ("the Ordinance") however such classification is not appropriate in its application. This chapter is the most significant and vital part of this research paper wherein present regime based classification of companies contained in the Ordinance shall be discussed and at the end proposed regime shall be discussed.

1- APPLICABILITY OF REGIME BASED CLASSIFICATION OF COMPANIES IN PAKISTAN

Regime based classification of companies has been introduced in Pakistan through Fifth Schedule of the Ordinance. Originally, the Ordinance did not provided regime based classification, however subsequently, through notification no.SRO859 (I)/2007; dated 21.08.2007 the regime based classification was introduced. Although certain provisions of regime based classification has been made part of law through fourth and fifth schedule of the Ordinance however there is need to introduced regime based classification of companies in core company law and such classification should not be confined to the extent as provided at present rather it should provide mechanism for governance and disclosures well .

Existing disclosure requirements for all companies existing under the present company law are not appropriate and well organized. There is need to relax small and medium companies to comply with the higher standard of accounting, auditing and disclosure. Amendments

should be made in existing law or in proposed new law, regime based classification should be incorporated. Furthermore small companies should allow to prepare their accounts annually and there should be no requirements to submit such accounts before registrar of companies. Further there should be no mandatory annual filing for small companies if there is no change in particulars of companies. Filing requirements for small companies should be contingent upon happening of some event i.e. if director is replaced or company address is changed. However regulator must be given power to exercise right of forensic or surprise inspection of books of companies whether small or medium.

Corporate governance is an important and significant guideline for listed companies under the prevailing company law; however there is need to make it mandatory for all large companies in proposed law and it should be made part of core company law. India has incorporated all important governance provisions in companies Act 2013 including independent directors and remuneration committee. Small and medium companies should be encouraged to follow corporate governance provisions however it should not be mandatory.

Regime/size based classification is necessary for growth of corporate sector in Pakistan, however there is need to carefully determine the threshold for small, medium and large companies. It would be important to ensure strong enforcement mechanism for implementation of regime based classification of companies. Although the Ordinance recognizes the concept of small and medium companies however it has limited meaning and scope wherein such classification is only for the purpose of preparation of accounts .In proposed law classification of companies should be for all purposes such as governance, accounts, audit and disclosure.

2- REGULATORS POINT OF VIEW ABOUT REGIME BASED CLASSIFICATION OF COMPANIES

Concept of regime based classification of companies is contained in Schedule IV and V annexed with the Ordinance, hence it is not part of core company law rather it was a first effort of regulator to introduce this concept. In Pakistan regime based classification is also known as size based classification because it has been categories in small, medium and economically significant companies.

2.1 Financial Reporting Framework

Financial reporting framework and standards for different companies in Pakistan has been introduced in fourth and fifth Schedule, which are as follows;

2.2 Requirements of Fourth Schedule

As per Fourth Schedule all listed companies and their subsidiaries whether private or non-listed public companies are required to comply with the requirements of the Fourth Schedule in preparing their annual financial statements. In preparation of financial statements and accounts such companies are required to comply with all the requirements contained in core company law and annexed Schedules. Further, requirements of the Fourth Schedule are mandatory for the preparation of consolidated financial statements of every holding company irrespective of the holding company being a private or a public company. IFRSs that are notified by the Commission form part of the financial reporting framework for:

- I. Listed companies;
- II. Subsidiaries of listed companies;

- III. Holding companies preparing consolidated financial statements; and
- IV. Non-listed companies that are neither Medium-Sized companies nor Small-Sized companies.¹⁴⁹

The above mentioned mechanism is for listed companies under the Ordinance, however it is recommended that it should be adopted for large companies under proposed regime of classification of companies.

2.3 Requirements of Fifth Schedule

As per Fifth Schedule, all other companies which are neither listed nor subsidiaries of a listed company are required to comply with the requirements of the Fifth Schedule in preparing their annual financial statements. The Fifth Schedule categories all other companies as follows:

- Small-Sized companies
- Medium-Sized companies
- Economically Significant companies

Medium-Sized companies and Small- Sized companies are required to follow the Accounting and Financial Reporting Standards (AFRS) for Medium-Sized companies and Small-Sized companies respectively, as issued by the Institute of Chartered Accountants of Pakistan. The requirements of using these standards was first introduced through S.R.O. 860 (I)/2007 in August 2007 which has now been made part of the Fifth Schedule.¹⁵⁰

It is important to note that in the Fifth Schedule, Medium-Sized companies and Small-Sized companies have been encouraged to follow the IFRS. Although the term IFRS used here is not restrictive to only those IFRSs that have been notified by the SECP in this respect, we

¹⁴⁹ Companies Ordinance 1984, Schedule IV.

¹⁵⁰ Ibid. Schedule V.

understand that the intention is only to have those IFRSs being encouraged for application that have been notified by the SECP. Also, such application will be of all the notified IFRSs as a whole, and not on specific selective basis. Medium and small companies should not be under stringent and mandatory statutory, regulatory requirements. However there should be incentive for such small and medium companies who voluntarily adopt those requirements.

2.4 Threshold of Small Companies

Fifth Schedule has given the threshold for Small-Sized companies. A company shall be treated as small company if it qualifies the following:

- I. Company has a paid up capital plus undistributed reserves (total equity after taking into account any dividend proposed for the year) not exceeding Rs. 25 million; and
- II. Company has annual turnover not exceeding Rs. 250 million, excluding other income.¹⁵¹

2.5 Threshold of Medium Companies

A company shall be treated as Medium-Sized Company, if it qualifies the following requirements of Fifth Schedule:

- I. is not a listed company or a subsidiary of a listed company;
- II. has not filed, or is not in the process of filing, its financial statements with the Securities and Exchange Commission of Pakistan (SECP) or other regulatory organization for the purpose of issuing any class of instruments in a public market;

¹⁵¹ Companies Ordinance 1984, Schedule V.

- III. does not hold assets in a fiduciary capacity for a broad group of outsiders, such as a bank, insurance company, securities broker / dealer, pension fund, mutual fund or investment banking entity;
- IV. is not a public utility or similar company that provides an essential public service; and
- V. is neither Economically Significant nor a Small Sized Company.¹⁵²

2.6 Threshold of Economically Significant Companies

An Economically Significant company is a company that has any two of the following on the basis of previous year's audited financial statements:

- I. turnover in excess of Rs. 1 billion, excluding other income;
- II. number of employees in excess of 750; and
- III. total borrowings (excluding trade creditors and accrued liabilities) in excess of Rs. 500 million.

An Economically Significant company can be excluded from this category if it does not fall under the aforementioned criteria for two consecutive years.¹⁵³

3- CORPORATE LAW REVIEW COMMISSION AND REGIME BASED CLASSIFICATION OF COMPANIES

The corporate sector in Pakistan is regulated primarily by the Ordinance¹⁵⁴. 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,

¹⁵² Companies Ordinance 1984, Schedule V.

¹⁵³ Ibid.

¹⁵⁴ Prior to independence, companies were regulated by The Indian Companies Act, 1913 which was a replica of the English Companies (Consolidation) Act, 1908 save certain minor variations. Post-independence, Pakistan adopted The Companies Act, 1913 after making certain necessary amendments thereto. In 1959, a Company Law Commission was formed to review The Companies Act, 1913. The Company Law Commission published its report in 1962 and the recommendations made therein culminated in the promulgation of the Companies Ordinance, 1984.

protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith”¹⁵⁵.

In November 2005 Securities and Exchange Commission of Pakistan (“the SECP”) established the Corporate Laws Review Commission (“the CLRC”) under the leadership and guidance of Chief Justice of Pakistan (Retd.) Ajmal Mian and comprising, *inter alia*, eminent members of the legal, business and accountancy community to examine, assess and ultimately amend the Ordinance or to draft a new law for the regulation of the corporate sector, as may be necessary. CLRC has taken the task and deliberations were made to introduce sized based classification of companies in core company law. Furthermore it was also decided that stringent mechanism of audit, governance and disclosure regime shall be applicable to all listed companies and all those companies not falling under the definition of small and medium. Small and medium entities should be encouraged by reforming the laws which are simpler, facilitative and afford protection to small investors.

4- POSSIBILITY OF SHIFT FROM ORDINARY CLASSIFICATION TO REGIME BASED CLASSIFICATION

Albeit efforts are in full swing to introduced new company law in Pakistan, however there is no timeline for proposed law. In present corporate law regime it would be difficult rather impossible to introduced size based categorization in core company law, so we should gear up for such classification in proposed company law. Ordinary classification of companies contained in the Ordinance is not helpful to treat companies as per their size and worth. In proposed law companies should be classified as:-

- i. Small Companies
- ii. Medium Companies

¹⁵⁵The first recital of the Preamble to the Companies Ordinance, 1984.

iii. Large Companies

The proposed law should address the issue of threshold of the companies classified into small, medium and large. The new law may promote and endorse a strong framework of corporate governance to effectively balance the interests of the different stakeholders in large companies. Furthermore it should be made flexible to address new issues and provide for corresponding legal requirements dictated by changes in the economic and corporate environment .

Proposed regime based classification shall facilitate the process of incorporation of new companies and streamline the statutory filing requirements for all the existing companies. It is therefore, necessary to carry out a holistic examination of the Ordinance in order to assess:

- (a) The relevance of proposed classification of companies in the current economic environment.
- (b) Capacity of current law to cope with the proposed classification of companies and threshold to determine the status of such companies.

In recognition of the fact that the primary purpose of any law is to facilitate the stakeholders and bearing in mind the current international standards there is need to introduce higher standards for large companies to safeguard the interest of investors and creditors whereas flexible mechanism should be brought forward for small and medium companies. The Commission being apex regulator of corporate sector has the role to regulate the entities i.e. it has to monitor whether companies are complying with the statutory requirements and filing requirements or not.

Recognition of different threshold for the determination of status of companies is not a strange concept because UK Companies Act 2006 distinguished amongst small companies, medium sized companies and other companies in respect of accounting disclosures and filing requirements. The factors distinguishing between small, medium and large companies 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.

The indiscriminate imposition of audited accounts on all companies is unjustified and burdensome, therefore power of the Commission to penalize companies for violations in relation to books of accounts required to be maintained by companies may be reassessed as per proposed size based classification. The extent of disclosures required to be made by large companies may be also be enhanced and all accounts of large companies may be prepared in accordance with International Accounting Standards. Furthermore it would be appropriate to relax the requirements for small and medium companies in proposed classification of companies.

In the light of above discussion we could safely say that there is need to make shift from present corporate regime towards new regime wherein companies are classified on the basis their volume of business. Classification of companies into small, medium and large is most suitable classification as far as our corporate strength is concern. We are developing nation and low volume economy, therefore it is necessary to protect our small and medium business and provide them a flexible corporate structure.

5- PROPOSED CORPORATE STRUCTURE

In the light of discussion made hereinbefore I proposed that existing classification of companies shall be abolished and new corporate regime be introduced. Proposed corporate structure could be divided into following three kinds;

1. Small Companies
2. Medium Companies
3. Large Companies

There shall be no classification of companies into private. Public, listed, unlisted in proposed law and every company shall be treated as per size of the company.

5.1 Small Companies

A company shall be treated as small if it comes within the criteria defined by the new company law. Criteria to establish status of small company could be as under;-

- | | | |
|------|---------------------|--------------------------|
| i. | Paid up Capital | Up to 0.5 Million Rupees |
| ii. | Number of Employees | Maximum 50 Persons |
| iii. | Annual turnover | Maximum 1 Million Rupees |

A company shall qualify as small in relation to its financial year if it satisfies two or more of the above mentioned requirements.

5.2 Requirements for Small Companies

5.2.1 Accounts Preparation

Small companies like any other company shall prepare the accounts reflecting business activities and financial strength. Minimum standard of qualification for a person having responsibility of preparation of accounts is that he should possess at least basic knowledge of

accounting and finance. Small companies shall keep books of accounts at its registered office and shall maintain 5 years previous record of accounts if any.

5.2.2 Accounts Audit

Small companies shall not be required to audit their accounts from any certified chartered accountant and mere preparation of profit & loss account and balance sheet would be suffice for the purpose of audit.

5.2.3 Accounts Filing

Small companies shall not be required to file accounts with the regulator, however companies shall keep record at its registered office and shall be open to inspection of regulator or any other interested third party for verification or any other lawful purpose desired or required under the law of land.

5.2.4 Statutory Forms Filing

No annual filing of statutory forms shall be required by small companies. Filing shall event based and shall be mandatory if any change in object, directors, capital or registered office of the company took place. Filing by small companies shall be contingent upon happening of any new event in the life of company.

5.2.5 Corporate Governance

Requirements and issues related to corporate governance is not the subject of small companies primarily, however to promote best business practices and transparency in transaction small companies would be encouraged to follow the corporate governance requirements.

5.3 Medium Companies

A company shall be treated as medium if it comes within the criteria defined by the new company law. Criteria to establish status of medium company could be as under;-

- i. Paid up Capital Between 0.5 Million to 1 Million Rupees
- ii. Number of Employees Between 50 to 100 persons
- iii. Annual turnover Between 1 to 2 Million Rupees

A company shall qualify as medium in relation to its financial year if it satisfies two or more of the above mentioned requirements.

5.4 Requirements for Medium Companies

5.4.1 Accounts Preparation

Medium companies like shall prepare the accounts reflecting business activities and financial strength. Minimum standard of qualification for a person having responsibility of preparation of accounts is that he should possess at least basic knowledge of accounting and finance. Medium companies shall keep books of accounts at its registered office and shall maintain 5 years previous record of accounts if any.

5.4.2 Accounts Audit

Medium companies shall be required to audit their books of accounts from any certified chartered accountant and shall obtain a clearance certificate from the chartered accountant stating the fact that companies accounts reflects true and fair picture of accounts.

5.4.3 Accounts Filing

Medium companies shall not be required to file audited accounts with the regulator, however companies shall keep record at its registered office and shall be open to forensic inspection of

regulator or any other interested third party for verification or any other lawful purpose desired or required under the law of land.

5.4.4 Statutory Forms Filing

No annual filing of statutory forms shall be required by medium companies. Filing shall event based and contingent upon happening of any new event in the life of company i.e. any change in object, directors, capital or registered office of the company.

5.4.5 Corporate Governance

Corporate governance requirements shall be mandatory for medium companies to the extent of disclosure of accounts and preparation of accounts, however to promote best business practices and transparency in transaction medium companies would be encouraged to follow the corporate governance requirements.

5.5 Large Companies

A company shall be treated as large if it comes within the criteria defined by the new company law. Criteria to establish status of large company could be as under;-

- i. Paid up Capital Above 1 Million Rupees
- ii. Number of Employees Above 100 persons
- iii. Annual turnover Above 2 Million Rupees

A company shall qualify as large in relation to its financial year if it satisfies two or more of the above mentioned requirements.

5.6 Requirements for Large Companies

5.6.1 Accounts Preparation

Large companies shall be required to prepare the books of accounts reflecting business activities and financial strength keeping in view high standards being followed around the globe. The Person or the entity having responsibility of preparation of companies accounts must be eligible and qualified to prepare accounts of the large companies as per best recognized international accounting standards. Large companies shall maintain 10 years previous record of accounts if any.

Large companies shall keep record at its registered office and shall be open to forensic inspection of regulator or any other interested third party for verification or any other lawful purpose desired or required under the law of land.

5.6.2 Accounts Audit

Large companies shall be required to audit their books of accounts from any certified chartered accountant or chartered accountant firm having experience of audit of large companies. Auditor of company shall be required to check the accounts of company in detail to ensure that all the business and financial transaction were carried out at arm's length. International audit standards shall be followed by the auditor during audit of the company. Auditor shall state the true and fair status of company accounts and shall issue a certificate in this regard.

5.6.3 Accounts Filing

Large companies shall be required to file audited accounts with the regulator, furthermore copies of audited accounts shall be sent to the members and other stakeholders of the company. Regulator shall have the power to require the company to handover its audited

accounts to any third party for re-audit, if it is not satisfied with the independent audit process of the company. Accounts filing of large companies shall be quarterly, half yearly and annual.

5.6.4 Statutory Forms Filing

Large companies shall be required to file all the statutory forms with the registrar annually or upon any change in object, directors, capital or registered office of the company.

5.6.5 Corporate Governance

Corporate governance requirements shall be mandatory for large companies. Salient features of corporate governance regime for large companies shall be;-

- i. There should be at least one independent director. However, it will be preferred that one-third of the total members of the Board to be independent Directors.
- ii. Maximum number of Executive Directors on the Board should be one-third of elected Directors including CEO.
- iii. Number of maximum directorships in other large companies that a director can hold at the same time should be 7.
- iv. The Directors should attain certification mandatorily under any director training Program offered by any institution within or outside Pakistan.
- v. The appointment, remuneration and terms and conditions of employment of the Chief Financial Officers (CFO), Company Secretary (CS) and the head of internal audit (IA) shall be determined by the Board rather than CEO.
- vi. A formal and transparent procedure should be followed regarding remuneration of Directors and disclosure of aggregate remuneration should be made in the annual report.

- vii. The Chairman of the audit committee shall mandatorily be an independent Director, who shall not be the Chairman of the Board. Audit Committee shall also comprise of only non-executive Directors.
- viii. The secretary of Audit Committee should either be the Company Secretary or Head of Internal Audit. The CFO should not be appointed as the secretary to the Audit Committee.
- ix. Human Resources and Remuneration Committees shall be introduced. India has successfully introduced this concept in Companies Act 2013.
- x. No large company shall appoint a person as an external auditor or a person involved in the audit of a company who is a close relative, i.e., spouse, parents, dependents and non-dependent children, of the CEO, the CFO, an internal auditor or a Director of the company.¹⁵⁶

6- LISTING REQUIREMENTS FOR COMPANIES

In proposed corporate regime a company having interest in listing would have to comply the listing requirements of Stock Exchange. Every company shall be entitled to list its securities on stock exchange after completion of all statutory requirements. It shall be mandatory for every listed company, which is not large company to follow statutory requirements of large companies along with listing requirements.

7- CONCLUSION OF THE CHAPTER

In the aforementioned circumstances it is therefore necessary to make a shift from the existing corporate regime towards the new desirable corporate regime wherein companies should be recognized on the basis and their size. The concept of small, medium and large companies may be provided in the law and the test for determining the category within

¹⁵⁶ The Irani Report, Chapter XII, paragraph 2.

which a company falls may also be specified. It is strongly recommended that classification of companies contained in fourth and fifth Schedule may be made a part of core company law i.e. the Ordinance. It is further recommended that companies may not be considered as associated with each other simply by virtue of a single common director and instead the UK model of dominant influence be adopted. It is further recommended that companies may be allowed to convert from one status to another with minimum procedural requirements and the method prescribed in the UK Companies Act 2006 may be adopted in this regard.¹⁵⁷

There is dire need to that the requirements of disclosures may be amended to be made more meaningful for large companies, whereas they may be relaxed for medium and small companies. Accounts of all large companies may be prepared according to International Accounting Standards, whereas small and medium companies should be under exempted regime. However regulator may have the power to stipulate any additional requirements for any class of companies and this power should be used with due care and on case to case basis. The regulator may also be empowered to conduct a special audit of companies in special specified circumstances. In short, new proposed regime/size based classification of companies should have the following points to moderate and flexible corporate regime in Pakistan.

The classification of companies may be clear, concise and flexible.

- i. Classification of companies may be made part of statute/core company law rather to elaborate it in Schedule.
- ii. The law may classify companies on the basis of size, number of members, control, nature of liability and the manner of access to

¹⁵⁷ Alan dignam and John Lowery, *Company Law*.8th.ed.(nl: OUP Oxford, 2014).

capital.

- iii. The law must state the threshold for the determination of status of the companies.
- iv. The law may allow for self-regulation of companies in the future, while providing adequate safeguards for the protection of shareholders and other stakeholders.¹⁵⁸

In proposed regime/size classification, requirements of disclosures may be amended to be made more meaningful for large companies, whereas they may be relaxed for medium and small companies. Accounts of all large companies may be prepared according to International Accounting Standards, whereas small and medium companies should be under exempted regime. However regulator may have the power to stipulate any additional requirements for any class of companies and this power should be used with due care and on case to case basis. The regulator may also be empowered to conduct a special audit of companies in special specified circumstances.

¹⁵⁸ Concept Paper prepared by Corporate Law Review Commission, Established by Securities and Exchange Commission of Pakistan P. 23.

CHAPTER NO.5

CONCLUSIONS AND RECOMMENDATIONS

Pakistan is a common wealth country and most of its existing laws have been inherited from British regime at the time of independence in 1947. Companies Ordinance 1984 is a true copy of its predecessor Companies Act 1913. Around the globe corporate laws have been evolved and improved over the years and new concepts have been introduced for smooth operation of corporate entities, however in Pakistan no such efforts have been made to bring any substantial change however, few changes have been brought in Companies Ordinance 1984 but those efforts failed to cope the requirements required for a vibrant corporate environment, for instance categorization of companies by Companies Ordinance, 1984 such as small, medium and economically significant companies have been introduced only for preparation of accounts and said classification has no application for governance and disclosure issues of companies. Time has come to introduce size based classification of companies for effective corporate governance, audit and disclosures for each category.¹⁵⁹

Originally, concept of size based classification of companies was not the part of law, however subsequently¹⁶⁰, the regime based classification was introduced in fifth Schedule of the Ordinance.¹⁶¹ The Ordinance as it stands today recognizes the concept of small and medium companies in fifth schedule but it is confined to the preparation of accounts only. Governance and disclosure requirements for all companies are almost similar whether it is private or public company or whether share capital of a company is one hundred thousand or one billion

¹⁵⁹ Corporations at the Crossroads, Paper presented at the Meredith Lectures, McGill University, Montreal, Canada, 1995 unpublished), P. 1, quoted in UK DTI Paper: "Modern Company Law for a Competitive Economy (August 1998), P. 34.

¹⁶⁰ Securities and Exchange Commission of Pakistan Notification no.SRO859 (I)/2007, dated 21.08.2007.

¹⁶¹ See chapter three, heading 3.1 Applicability of Regime Based Classification of Companies in Pakistan.

rupees. Present classification of companies and their respective statutory requirements are not appropriate and suitable to encourage entrepreneurs to incorporate their businesses. There is a need to extend the regime based classification of companies as per the size of company.

Concept of regime/size based classification is widely accepted around the globe because small and medium based companies are under less stringent mechanism as compare to large companies. It is very important to envisaged and mechanism or threshold to determine the status of companies whether it is small, Medium or large company and for this purpose total worth of assets, number of employees and total turnover could be threshold for Small and medium.¹⁶²

Present legal framework of companies classification is not effective to attract entrepreneur to get incorporate their small and medium sized businesses because it does not differentiate between small, medium and large companies with respect to audit, disclosure and governance requirements. The Ordinance offers almost similar regulatory treatment to all companies other than listed companies.¹⁶³

There is need to introduce a less stringent mechanism for small and medium companies with respect to governances and statutory requirements. Companies should only be divided into small, medium and large and such classification shall be governed by threshold of turnover, number of employees and gross assets for each category.¹⁶⁴

¹⁶² SRO 23(I) of 2012 issues by the Securities and Exchange Commission in exercise of the powers under sub-section (3) of section 234 of the Companies Ordinance, 1984 and in supersession of its Notification No. S.R.O. 860(1)12007 dated August 21, 2007.

¹⁶³ Concept Paper prepared by Corporate Law Review Commission, Established by Securities and Exchange Commission of Pakistan P. 10.

¹⁶⁴ <http://www.conciseaccountancy.com/accounting/small-and-medium-sized-company-thresholds.html> by Concise Accountancy Services Limited (Accessed on 13 January 2015)

In the aforementioned circumstances it is therefore necessary to make a shift from the existing corporate regime towards the new desirable corporate regime wherein companies should be recognized on the basis and their size. The concept of small, medium and large companies may be provided in the law and the test for determining the category within which a company falls may also be specified.¹⁶⁵

The requirements of disclosures may be amended to be made more meaningful for large companies, whereas they may be relaxed for medium and small companies. Accounts of all large companies may be prepared according to International Accounting Standards, whereas the regulator may have the power to stipulate any additional requirements. Proposed classification of companies is not possible within the scope of the Ordinance therefore we recommend to introduce size based classification of companies in new company law. New law should cover and focus the following points to moderate and flexible corporate regime in Pakistan.

- i. Classification of companies should be simple, clear and flexible;
- ii. Classification of companies should be made the part of core company law;
- iii. The law may classify companies on the basis of size, number of members, control, nature of liability and the manner of access to capital;
- iv. the law may promote a framework of strong corporate governance structure for large companies and flexible procedure for small and medium companies.¹⁶⁶

¹⁶⁵ See chapter 03, heading 3.6, Conclusion of The Chapter.

¹⁶⁶ Concept Paper prepared by Corporate Law Review Commission, Established by Securities and Exchange Commission of Pakistan P. 23.

In new company law requirements of disclosures for large companies may be made more meaningful, whereas they may be relaxed for medium and small companies¹⁶⁷.

After the above stated facts and circumstances on the subject we recommend the following measures to be taken by the government and "SECP" to introduced new classification of companies in Pakistan as elaborated in core theory of the thesis;

Firstly, there is need to introduce and redefine the classification of companies, we recommend that a company should be treated as company irrespective of its size and ordinary classification of companies such as private and public may be eliminated. Therefore it is suggested that a company should be recognized as per its size and all the statutory filing requirements should be determined on the basis of its size.

Secondly, size based classification of companies would be an ideal concept in new company law, however classification of companies such as small, medium and large may be introduced in the Ordinance with major amendments. It is therefore recommended that such classification may be introduced in new company law or amendments may be introduced in the Ordinance with respect to classification of companies and such amendments should be in core company law.

Thirdly, different statutory and regulatory requirements for each category of companies may be introduced. Small and medium companies should be dealt through less stringent legal framework than the large companies.

¹⁶⁷ See Chapter 03, heading 4, Possibility of shift from ordinary classification to regime based classification.

Fourthly, It is recommended that every company whether it is small ,medium or large should be allowed to list its securities on stock exchange after fulfillment of listing and all other required requirements.

It would be important to ensure strong enforcement mechanism for implementation of regime based classification of companies in the Ordinance or in proposed company law. Existing disclosure requirements for all companies existing under the present company law are not appropriate and well organized. There is need to relax small and medium companies to comply with the higher standard of accounting, auditing and disclosure. Appropriate and required amendments should be made in existing law or provisions related to size based companies should be incorporated in new company law.

Small and medium companies should be allowed to prepare their accounts annually and there should be no requirements to submit such accounts before regulator. Corporate governance is an important and significant guideline for listed companies under the prevailing company law, however there is need make it mandatory for all large companies in proposed law and it should be made part of core company law. India has incorporated all important governance provisions in companies Act 2013 including independent directors and remuneration committee. Small and medium companies should be encouraged to follow corporate governance provisions however it should not be mandatory rather optional.

Furthermore there should be no annual filing for small and medium companies if there is no change in particulars of companies or its directors, however regulator must be given power to exercise right of forensic or surprise inspection of books of companies whether small or medium.¹⁶⁸

¹⁶⁸ See Chapter 03, heading5, Proposed corporate structure.

Size based classification regime is necessary for the growth of corporate sector in Pakistan; however there is need to carefully determine the threshold for small, medium and large companies. Although Schedule Five have threshold for small and medium companies but it has limited meaning and scope wherein such threshold is only for the purpose of preparation of accounts .In proposed law threshold to determine the status of company should be appropriate so that it may cover all important aspects regarding governance, accounts, audit and disclosure.¹⁶⁹

Therefore, in the end, I would like to suggest that, although introduction of new concepts is not an easy task in an orthodox style economy where change is not generally accepted, however for better future and smooth functioning of corporate sector it would be a beneficial step towards improvement of corporate sector working. There is dire need for a just and appropriate mechanism to deal the companies on the basis of their size and volume of business so that the interest of investors and corporatization may be safeguarded.

¹⁶⁹ See chapter 03 , heading 2,Requirements of Fifth Schedule.

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