



**CORPORATIZATION  
AND FILING REQUIREMENTS  
UNDER  
THE COMPANIES ORDINANCE, 1984**

**TAX HOUSE, KARACHI  
MAY 26, 2008**

PRESENTATION ON

**CORPORATIZATION ADVANTAGES**

By:

**MUHAMMAD ZEESHAN MERCHANT (Advocate High Court)  
M. M. MERCHANT & CO.**

Suite No.4, Business Centre,  
Ground Floor, Mumtaz Hasan Road,  
Off: I. I. Chundrigar Road, Karachi.  
Voice: +9221-2411769 – +9221-2419858  
Fax: +9221-2432199 – Cell: +92320-4223223

**CORPORATIZATION  
PROS & CONS!**

By:

**MUHAMMAD ZEESHAN MERCHANT (Advocate High Court)  
M. M. MERCHANT & CO.**

Suite No.4, Business Centre,  
Ground Floor, Mumtaz Hasan Road,  
Off: I. I. Chundrigar Road, Karachi.  
Voice: +9221-2411769 – +9221-2419858  
Fax: +9221-2432199 – Cell: +92320-4223223

INCOME TAX BAR ASSOCIATION - KARACHI

CORPORATIZATION – PROS & CONS !

**CONTENTS**

1. REGULATING LEGISLATION
2. WHAT IS A COMPANY ?
3. TYPES OF COMPANIES
4. LEGAL STAUTS OF A COMPANY
5. STATISTICS
6. CORPORATIZATION – PROS & CONS

*M. M. Merchant & Company*

## REGULATING LEGISLATION

Statute relating to Incorporation of a Company is governed by the **Companies Ordinance, 1984**.

The Companies Ordinance, 1984 is a giant octopus spreading its tentacles far and wide. It has 514 Sections and 8 Schedules and sub-legislative rules and regulations which gives an idea of the formidable proportion of the Law. It is wide, comprehensive but also more complex.

The Companies Ordinance, 1984 and its sub-legislative regulations as a whole is not only an adjective law but is also a substantive law.

**Substantive Law** creates, defines and regulates rights and duties of the parties whereas adjective, procedural law creates discipline in the conduct of the parties in respect of the rights and duties.

*M. M. Merchant & Company*

## WHAT IS A COMPANY ?

### JUDICIAL DEFINITION:

"A Company is an association of persons united for a common purpose."

*(Justice James)*

"A Company is an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising therefrom."

*(James Stephenson)*

### DEFINITION IN COMPANIES ORDINANCE:

"Company means a company formed and registered under the Companies Ordinance or an existing company."

*(Section 2(7) of Companies Ordinance)*

*M. M. Merchant & Company*

## WHAT IS A COMPANY ?

### EXPLANATION:

Company ordinarily means an association of a number of individuals formed for some common purpose. When a company is registered, it is clothed with a legal personality and has the same rights and powers as a human being. Its existence is distinct and separate from that of its members. The members may die or change but the company goes on (perpetual succession) till it is wound up.

**Artificial Judicial Person:** A Company registered under the existing corporate law is an artificial legal person having an entity and personality distinct from the members or shareholders constituting it. A Company is a legal person because in law it is capable of having rights and obligations just like a natural person. Like every other human being it can acquire and own property, transfer property, enter into contracts and sue and be sued in its own name.

*M. M. Merchant & Company*

## WHAT IS A COMPANY ?

### CONCLUSION:

A Company is an association of persons, registered under the law, having a distinctive name, recognized as a separate legal entity, with a common capital contributed by its members and comprising transferable shares of a fixed denomination, carrying limited liability and having a continuous existence and a common seal.

*M. M. Merchant & Company*

**WHAT IS A COMPANY ?**

**APPLICATION:**

The Companies Ordinance, 1984 applies to the following:

1. Companies formed under the Companies Ordinance, 1984 including companies formed under sub-legislative regulations (Insurance, Modarabas etc.).
2. Every existing company formed and registered under the repealed Companies Act, 1913.
3. Every existing company formed and registered under the repealed Companies Act prior to 1913 Act.
4. Companies established outside Pakistan establishing a place of business in Pakistan (*Permanent Establishment*).

**NON-APPLICATION:**

1. Trading corporation owned or controlled by a Province and carrying on business only within the Province.
2. Co-operative society.
3. University.

*M. M. Merchant & Company*

**WHAT IS A COMPANY ?**

**JURISDICTION:**

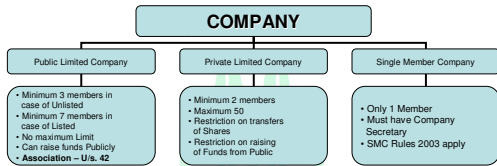
**SECURITIES EXCHANGE COMMISSION OF PAKISTAN (SECP):**

The regulating body which governs the powers and functions as specified in the Companies Ordinance, 1984 is SECP (*Registrar of Companies*). It ensures that the legislation is strictly followed by the corporate sector. In addition, SECP also perform powers as delegated by the Federal Government.

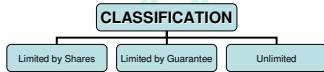
The Court Jurisdiction in respect of company matters shall lie with the High Court of the province in which the registered office of the Company is situated. The High Court shall deal with the matters provided for by the Companies Ordinance.

*M. M. Merchant & Company*

**TYPES OF COMPANIES**



**CLASSES OF COMPANIES**



*M. M. Merchant & Company*

**LEGAL STATUS OF THE COMPANY**

A Company is a separate legal entity and is quite distinct and separate from its members. All the assets and liabilities in a business are of its own. No member can either individually or jointly claim any ownership rights in the assets of the Company during its existence or on its winding up. The principle of legal entity of the company was judicially recognized in a famous case *Salomon Vs. Salomon & Company Ltd.*

**DOCTRINE OF CORPORATE VEIL:**

A Company is a person distinct and separate from its member.  
*[Salomon Vs. Salomon & Co. Ltd. (1897) A. G. 22]*

Doctrine of Corporate Veil has been considered in several cases in Pakistan.

- PLD 1971 SC585                      The President Vs. Mr. Justice Shaukat Ali
- PLD 1985 SC97                      Chairman CBR Vs. S.I.T.E.
- 1993 SCMR 468
- 2004 CLD 695

*M. M. Merchant & Company*

**STATISTICS:****COMPANIES REGISTERED UPTO 22-MAY-2008**

	Total
Public Listed Companies	617
Public Unlisted Companies	2209
Private Companies	47394
Single Member Companies	741
Associations under section 42	393
Companies under section 43	64
Trade Organizations	205
Public Unlimited Companies	3
Private Unlimited Companies	0
Foreign Companies	717
Companies under section 503(2) (Enacted by Special Laws like insurance etc.)	5
AJK Listed Companies	3
<b>Total</b>	<b>52351</b>

Source: SECP

*M. M. Merchant & Company***STATISTICS:****COMPANIES REGISTERED UPTO 22-MAY-2008**

	31-12-2006	30-06-2007	31-12-2007	22-05-2008
Public Listed Companies	617	617	617	617
Public Unlisted Companies	2083	2136	2182	2209
Private Companies	40987	43651	45461	47394
Single Member Companies	503	606	674	741
Associations under section 42	339	358	380	393
Companies under section 43	63	63	64	64
Trade Organizations	204	204	204	205
Public Unlimited Companies	3	3	3	3
Private Unlimited Companies	0	0	0	0
Foreign Companies	644	675	698	717
Companies under section 503(2)	5	5	5	5
AJK Listed Companies	3	3	3	3
<b>Total</b>	<b>45451</b>	<b>48321</b>	<b>50291</b>	<b>52351</b>

Source: SECP

*M. M. Merchant & Company***STATISTICS:****Sector - Group Wise Companies Upto 22-May-2008**

	Total
AGRICULTURAL AND LIVE STOCK FARMING	768
SUGAR AND ALLIED	163
JUTE	21
FOOD AND ALLIED	2445
TEXTILES	5265
CARPETS AND RUGS	86
LEATHER GOODS	423
SPORT GOODS	156
CEMENT	110
STEEL AND ALLIED	425
MINERALS AND MINING	421
ENGINEERING	1647
FINANCIAL SECTOR	1033
OIL AND GAS SECTOR	987

*M. M. Merchant & Company***STATISTICS:**

HEALTH	368
INSURANCE	287
TRAVEL AND TOURISM	4653
HOTELS	405
CHEMICAL AND FERTILIZERS	1398
PHARMACEUTICAL	921
TELECOMMUNICATIONS AND ISP	1986
INFORMATION TECHNOLOGY	1788
CONSTRUCTION COMPANIES	2135
REAL ESTATE DEVELOPMENT	1143
PAPER AND PRINTING	958
ENERGY AND POWER GENERATION	386
SERVICES	5355
GENERAL TRADING	5511
TRANSPORTATION	1002

Source: SECP

*M. M. Merchant & Company*

**CORPORATIZATION – PROS & CONS!****PROS:**

1. **OWNERSHIP:**
  1. Independent Legal Entity
  2. Perpetual Succession
  3. Limited Liability
  4. Easy Transferability of Shares
  5. Separation of Ownership and Management
- **TAX BENEFITS:**
  - Reduce Rate of Tax in case of Small Company
  - Benefits to Directors / Share holders
  - Set off of Business Loss – Amalgamation
  - Group Taxation
  - Group Relief
  - Disposal of business by Individual/AOP – Gains not Taxable

*M. M. Merchant & Company***CORPORATIZATION – PROS & CONS!****PROS:**

3. **CORPORATE GOVERNANCE:**
  1. Accountability and Responsibility
  2. Security of Share-holder's Money
  3. Benefit of affiliation with Foreign Companies
4. Easy Access to Capital and Equity Market
5. Easy to Raise Funds
6. Inflow of Foreign Investment
7. Part of Regulated and Documented Economy
8. Democratic way of doing Business
9. Instrumental in creating more Employment
10. Business Status

*M. M. Merchant & Company***CORPORATIZATION – PROS & CONS!****CONS:**

1. No Certificate of Incorporation – No Business!
2. Winding up – Lengthy Procedure
3. Lifting of Corporate Veil
4. High Tax Rate
5. Increase in Filing Requirements – SECP
6. Automatically becomes Withholding Agent of FBR – Not by Choice but by Legislation
7. Mandatory filing of returns and statements Electronically (e-Filing)
8. Requirement of External Audit
9. Maintenance of Secretarial Records
10. Filing of Audited Statements of Accounts with SECP
11. Appointment of Legal Advisor and Company Secretary
12. Increase in Cost of Doing Business

*M. M. Merchant & Company***CORPORATIZATION – PROS & CONS!****CONCLUSION:**

In my personal opinion, being a Corporate Entity will have more Pros than Cons!

Bigger horizons can be achieved if working in a Corporate Structure which are rare to achieve when working as an Individual/Aop.

Not incorporating could turn out to be the most expensive choice in the long run. Limiting your liability is priceless, protect your personal assets from business obligations!

*M. M. Merchant & Company*

