



A SINGLE MEMBER CORPORATION

BY  
MS. KERDKAN SUKASEM

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL  
FULFILLMENT OF THE REQUIREMENT FOR  
THE DEGREE OF MASTER OF LAWS  
(BUSINESS LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

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Independent Study Title : A Single Member Corporation  
Author : Ms. Kerdkan Sukasem  
Major : Master of Laws (Business Law)  
Advisor : Mr. Sthianrapab Naluang


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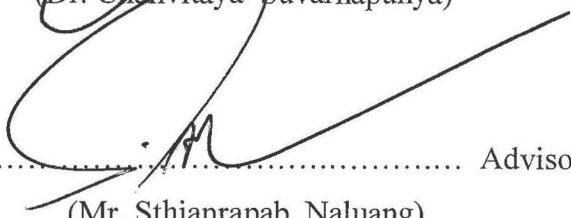
Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.

  
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## ABSTRACT

The Civil and Commercial Code of Thailand states that the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing the profits. I have studied the single member corporation in many countries. I believe that the single member company system is very advantageous for Thai business and investment in Thailand with many reasons. This research studies how to apply the single member corporation to Thailand. It will study the history of single member corporation and will examine the rules and regulations governing it, currently in force in other countries.

In addition to this, it will analyze the problems, and compare the advantages and disadvantages of the single member corporation. The scope of this research includes close study of the Laws of Partnership, Corporation and Association in the People's Republic of China, the United Kingdom and French Republic, and how they could be adopted for use in Thailand. The methodology employed is document research, to identify the problems of such companies, to understand the principles and theories the advantages and disadvantages of introducing this concept into Thailand. Research results indicate that it is possible to introduce single member companies into Thailand. It is a particularly useful type of business organization, for small and medium-sized enterprises, as well as for those requiring craftsmanship and special skills.

The single member corporation system gives the opportunity for specialists in many careers to have their own business. The law governing single member corporation will help only one shareholder to manage his business. The shareholder of the single member corporation can reap the greatest benefit from the company

because the owner will carefully control and manage his/her company. The single member corporation system allows the freedom to trade for the international business organization. The single member corporation act will limit the liability in the company. The single member corporation law will manage taxation of the sole member.

At last, Thai Company Law should be introduced and enacted for a new type of single member corporation, by applying a principle of partnership and corporation. There should be a specific provision of single member corporation, as a part of relationship with third persons, dissolution and liquidation of corporations. Moreover, the Single Member Corporation in Thailand should be a legal person because it should be useful for the shareholder defining, his responsibility in liability and taxation.

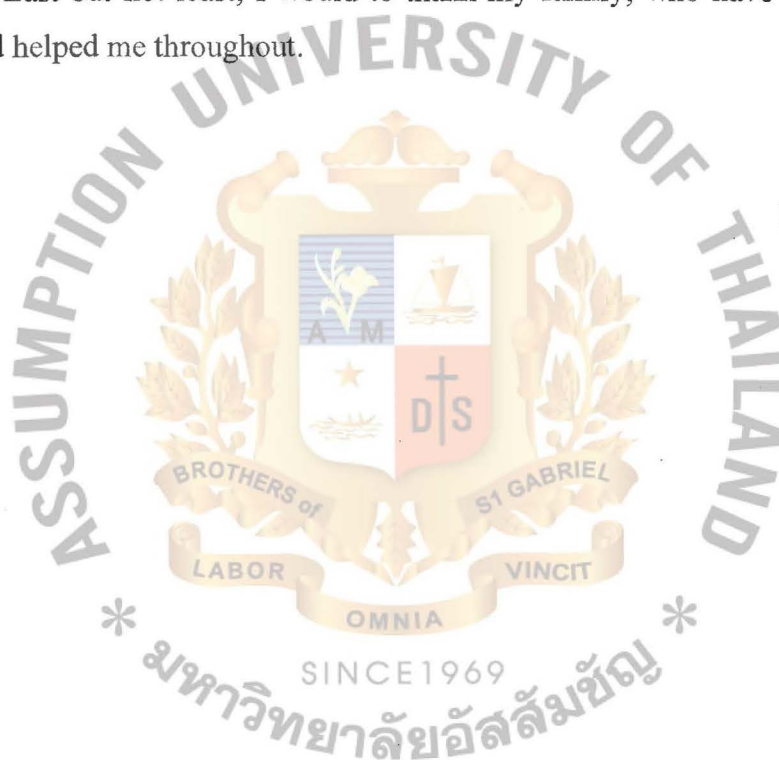


## ACKNOWLEDGEMENT

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Last but not least, I would to thank my family, who have always supported. Me and helped me throughout.

Kerdkan Sukasam



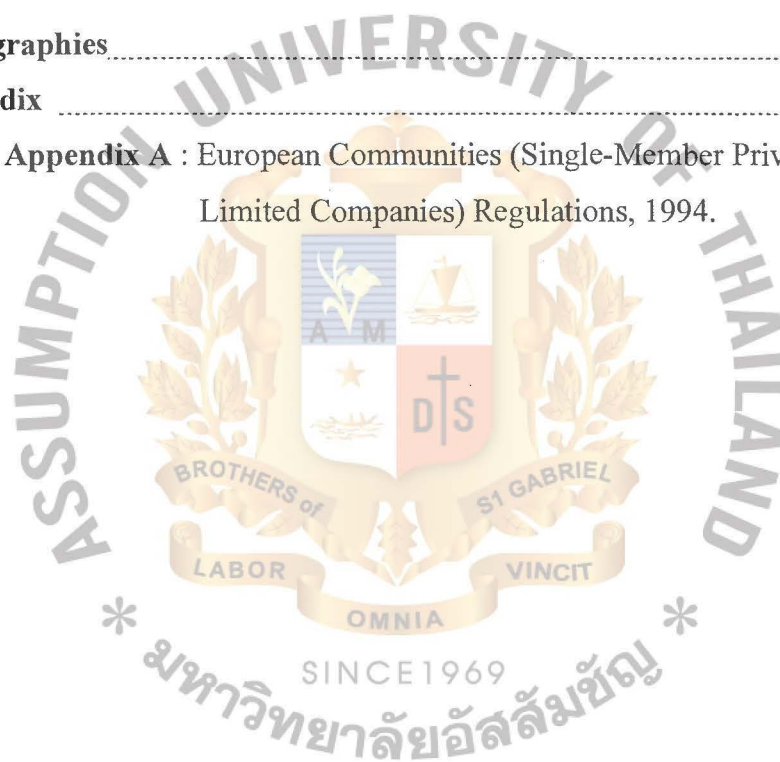


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**Appendix A : European Communities (Single-Member Private  
Limited Companies) Regulations, 1994.**



# Chapter 1

## Introduction

### A. The Historical Background on the Problems

A single member corporation is a limited incorporated with one member, or whose membership is reduced to one person. The word Single Member Corporation means that one person may, by subscribing his/her name to a Memorandum of Association and otherwise, complying with the requirements of the Companies Acts and these Regulations relating to registration, form an incorporated company, being a private company limited by shares. All power exercisable by a company in general meetings under the Companies Acts shall, be exercisable in the case of a single member corporation, by the sole member without the need to hold a meeting. Nowadays, the global economy is one of the most important facts for life. To meet the challenge of globalization and to become an economic power in South-east Asia, Thailand needs to develop its business organizations law to reach modern corporation law system. A single corporation system has been introduced by several countries; for example, the United State of American, Europe (the United Kingdom, France) and China, etc.

In this research paper focuses on a strategy whether Thailand should adopt the single member corporation system or not and how does the country apply the system to its existing corporation law?

At present, the Civil and Commercial Code of Thailand, section1012 provides “A contract for the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing the profits which may be derived therefore.” and section 1097 states “Any three or more persons may, by subscribing their names to a memorandum and otherwise complying with provisions of this Code, promote and form a limited company.” These provisions indicate that a corporation system of the Kingdom of Thailand is a several member corporation system. These provisions do not pave the way to incorporate single member corporations in this country. In addition, other provisions of the Code



have not designed for applying to the systems. To change in the exiting corporation system is a big problem for the country.

The researcher considers this is a vital problem; therefore, it should be studied to seek appropriate ways to solve the problem raised by this research.

## **B. Hypothesis**

To introduce a single member corporation law in Thailand would be very useful. At the present, a corporation established by three or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company. In Thailand, there are many especially small or medium corporations hold and managed by one person. In addition there are many sole enterprises operated throughout the country. The single member corporation will be useful for these types of business, because the system can increase number of small and medium size business in the country. The cause operation business in form of corporation can limit the member's liabilities but he can control management in business.

## **C. Objectives of the Research**

1. To study advantages and disadvantages of a single company system.
2. To study problems on establishment of a single company legislation.
3. To study appropriate law in single company system.

## **D. Scope of the Research**

This research paper is a study of the law of Partnership, Corporation and Association which the topic is "Thailand should have a single member corporation system or not? In order to find the advantage and disadvantage of single member corporation in Thailand and to know and find out the information or document research on single member corporation in foreign countries such as China, Australia and UK. Furthermore, to see the reason why they have single member corporation in

their countries. It will also be shown of comparison of law that involves the single member corporation from domestic and international law. All of this information will then be analyzed around the issues of single member corporation to find out the best way to adapt single member corporation in Thailand.

## **E. Research Methodology**

This Independent Study is undertaken by the methodology of documentary research, obtaining information from both domestic and globalized databases. The research information and analysis of many books, article and laws, used in this research paper are the Thai Civil and Commercial Code, The Company Act 1985 and Insolvency Act 1986 of UK.

## **F. Expectation of the Research**

The study result could be use for appropriate law in single member corporation system in Thailand. The study of advantages and disadvantages of a single member corporation system will be used for establishment single company legislation in Thailand.

## **Chapter 2**

### **Basic Principles and Historical Background of Company Law**

#### **A. Background**

The single member corporation is a corporation established by a particular individual, or one originally composed of many members by shareholder pressure. The basic form of business organization is a sole proprietorship. However, as commerce and industry started to develop, this form was found to be unsuitable. Large organizations needed large sums of capital and often took on high risk, and thus more complex business structures began to emerge. In the 13<sup>th</sup> century, the joint stock company was devised to handle the problems of capital and to reduce the risk of failure. This was very popular, because it enabled large numbers of people to invest, and to enjoy the benefits of economic success. And, for the first time, the stockbroker played a role in the economic system.

During the Industrial revolution, inventors needed capital to be invested in their business. Thus, they went into partnership with wealthy individuals who provided money, but did not involve themselves in the management of the business. Because they did not play an active role, they were known as 'sleeping partners'. This arrangement was popular throughout Europe, although there was a great deal of speculative risk involved. In the 18<sup>th</sup> century, in France and the United Kingdom, joint stock holders had to obtain the permission of the government or the King to operate commercially. In 1844 the Registration Company Act was passed in Britain, limiting the liability of the company shareholder was small groups of individuals were now able to form and operate companies, based on the principle of limited liability

#### **B. The Principal of Single Member Corporation**

The single member corporation is the concept of the one-man shareholder, who both manages his or her and owns organization and alone bears legal responsibility



for the organization. He or she alone will have limited liability for all the debts of the business. A corporation provides limited liability for the investors. Except as indicated below, none of the shareholders in a corporation is obligated for the debts of the corporation; creditors can look only to the corporation's assets for payment. The corporation files its own tax return and pays taxes on its income. If the corporation distributes some of its earnings in the form of dividends, it does not deduct the dividend in computing its taxes, but the shareholder recipients must pay taxes on those dividends even though the corporation has paid taxes on its earnings. A corporation has some tax benefits, such as deductibility of health insurance premiums.

### **C. Business Organizations**

In business, entrepreneurs aim to run their business efficiently and profitably. They hope that their businesses will grow and expanded, and these are the measures of success. They also aim to provide goods and services which benefit the community.

Such businesses are started by people who invest their own capital. Managers are brought in to run the business, and a workforce is employed. The entrepreneur runs risks but also expects to make hands one profits from the venture. At present, there are two main types of business organization: 1) Single member business organization and 2) Several member business organizations.

#### **1. Single Member Corporation**

A sole enterprise is a business that is owned by one person. The owner takes sole responsibility for any risks that might apprise from all investments. This business can be easily established. The establishment of a Sole Enterprise depends on types of business under control by the Commercial Registration Act of 1956; the business must be registered as follows,

- a. The entrepreneur in the rice mill and sawmill business in which machines are used
- b. The entrepreneur who runs any business that sell any goods costing up to 20 baht in one day/ or the goods for sale costing up to 500 baht or over

c. An owner or its representative who runs any business, no matter if there is one or many, and sells the goods costing up to 20 baht in a day

d. An entrepreneur running ocean liners, vessels, boats, trains, railways, or bus transportation

## **2. Several Member Corporation**

### **a. Partnership**

In business partnership, the company must have access to the share capital to run their business activities.

There are two kinds of partnership on the following;

(1) Ordinary partnership: in this form, all partnership bear unlimited liability for the company's debts. There are two kinds of ordinary partnership.

(a) Non-registered ordinary partnership non-juristic person: they were established by one or more persons get the contact to joint the investment. All of the partners are liable for any obligations.

(b) An Ordinary partnership must be legally registered. Any two or more persons divide p the shares in their business or share the profit. All partners must bear unlimited liability.

In the Commercial Law, the ordinary partnership is a kind of partnership in which all the partners whose liability is unlimited

(a) All the partners are liable for the third persons for any obligations incurred by the partnership and the partnership management. The obligation base on contract or negligence.

(b) All the partners are unlimitedly liable for all the obligations of the partnership.

The ordinary partnership is a kind of the enterprise which was easy to be established by two or more persons. Its structure are the same as the sole-enterprise, but not same as a limited company. That is to say, the ordinary partnership is a sole-enterprise which shares their partners with another person.

For the partnership management, all the partners can manage the partnership as a sole-enterprise. But the result of management was related to the other partner. All the partners are jointly and unlimitedly liable for all the obligations of the partnership.

(2) Limited partnership: it is a kind of partnership of which there are two kinds. Firstly, there is a limited partnership in which one or more partners, whose liability is limited to such as amount as they may respectively undertake to contribute to the partnership. Secondly, there is an unlimited partnership, in which there are one or more partners who are jointly and unlimitedly liable for all the obligations of the partnership.

Normally a limited partnership has only one partner, who been unlimited liable for all the obligation of the partnership and manage the limited partnership.

## **b. Corporations**

### **(1) Public Company**

A company whose stock is traded on a public market or a company in the process of registering its stock for public sale, a public company usually refers to a company that is permitted to offer its registered securities (stock, bonds, etc.) for sale to the general public, typically through a stock exchange, but also may include companies whose stock is traded over the counter (OTC) via market makers who use non-exchange quotation services such as the OTCBB and the Pink Sheets.

The term “public company” may also refer to a government-owned corporation. This meaning of a “public company” comes from the tradition of public ownership of assets and interests by and for the people as a whole (public ownership). This is often found in Europe but is virtually unknown in the United States.

A “Publicly owned company” can also have either meaning, although in the United Kingdom it will usually be interpreted as meaning a company in the public sector (being owned by national, regional or local government). The term “public limited company” or simply “PLC”, as used in the UK and Ireland, refers to a form of incorporation, and does not imply anything about the ownership of the company.

### **(2) Private Company**

A private company is any registered company that is not a public company. The shares of a private company may not be offered to the public for sale. The legal requirements for such a company are less strict; for example, there is no



minimum issued or paid-up share capital requirement and small and medium-sized companies need not file full accounts.

### **Limited Companies**

There are many definitions of “Limited Companies”:

1) “Limited Companies” is a type of company which is formed with a capital divided into equal shares, and the liability of the shareholders is limited to the amount, if any, unpaid on the share respectively held by them.

2) “Limited Companies” is a type of business organization which may be formed with capital divided into equal shares. Anyone may become a shareholder, but their liability is limited to the amount they have invested. There are two kinds of “Limited Company” a private company and a public company.

### **D. There are two systems of corporations**

#### **1. Several members**

The most important legal characteristic of a registered company is that it is ‘incorporated’ and so has what is known as ‘legal personality’. This is provided for in Companies Law, which refers to the formation of ‘incorporated company’ by complying with the law’s requirements in respect of registration. The principal requirement of the law in respect of registration is that the persons who wish to register a company must sign a memorandum of association, and deliver it to the registrar of companies.

Describing a registered company as ‘incorporated’ means it is a corporation or ‘body corporate’. The extraordinarily useful feature of a corporation is that it is an artificial entity which is treated in law as having the capacity to enter into legal relationships, such as being the owner of property, being a party to a contract or being a claimant or defendant in legal proceedings.

The law is concerned with relationships, such as contracts, ownership of property and duties of care, which are entered into by ‘persons’, who have the duties and rights attached to the relationships they enter into. The types of relationship studied in law are based on the transactions and activities of human beings, who are described as ‘natural’ or ‘real’ persons. But legal principles are concerned with the

nature of a legal relationship, such as a contract or the ownership of property, and can be applied not only when a human being enters into the relationship, but also when any other entity does. So the law can recognize that entities other than human beings can enter into, at least, some legal relationships. For the purposes of the relationships in which their participation is recognized, entities other than human beings are said to have 'legal' personality.

## 2. Single member

"A one-man limited company is a vehicle for a single individual who may be both a director and company secretary. The law requires the company to have two directors (or one director and a separate company secretary) but it is not necessary for the other director to take an active part in the business. One becomes the director and shareholder of one's own limited company which enables one to enjoy the advantages of tax efficiencies and expense allowances."<sup>1</sup>

A "One-Man Limited Company, we have to describe the legal character of the limited company briefly at the second stage. A limited company should be defined with the concept of "corporate" as the original, which was described as "a collection of many individuals united into one body, under a special denomination, having perpetual succession under an artificial form., with the capacity of acting as an individual". In accordance with the literal interpretation of this definition, it is clear that the limited company, as one form of the incorporate enterprise, should comply with the minimum requirement of the members of the legislation"<sup>2</sup>

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<sup>1</sup> Recruitment & Employment Confederation. 2004.

<sup>2</sup> Jow & Ray Legal Office, Customs & Foreign Trade, available at <http://www.jowandray.com/webs/newsinfo.php?newsid=2&chanel=1>. (last visited 1 December, 2008).

## **E. Thai Corporation Laws**

### **The Concept of Several Members Corporations**

#### **Members**

Thai Civil and Commercial Code, section 1012 states that “A Contract for the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing the profits which may be derived therefrom.”

Thai Civil and Commercial Code, section 1097 states that “Any three or more persons may, by subscribing their names to a memorandum and otherwise complying with the provision of this Code, promote and form a limited company.”<sup>3</sup>

Therefore, a company can be at least 3 persons for the convenience of business operation and shareholders’ meeting.

#### **Members required**

1. Must have three or more persons
2. These persons have to make the contract to share capital
3. To do same activities
4. To share the profit of income from the activities.

#### **Incorporations**

Thai Civil and Commercial Code, section 1096 states that “A limited company is that kind of which is formed with a capital divided into equal shares, and the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them”

The corporation is formed with a capital divided into equal shares, and the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.

#### **Operations**

Thai Civil and Commercial Code, section 1144 states that “Every limited company shall be managed by a director or directors under the control of the general meeting of shareholders and according to the regulations of the company”

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<sup>3</sup> Act Amending the Civil and Commercial Code (No.18) B.E.2551.



The corporation shall be managed by one or more director under the control of the general meeting of shareholders by agreeing to the regulation of the corporation. The company management is controlled by the directors, who are elected by shareholders at the company's annual general meeting. In large companies, a list of directors is proposed before the company's general meeting, which then must be approved by the shareholders.

### **Dissolution**

4820 e.1

Thai Civil and Commercial Code, section 1236 states that:

A Limited Company is dissolved:

- (1) In the cases, if any, provided by its regulations.
- (2) If formed for a period of time, by the expiration of such period.
- (3) If formed for a single undertaking, by the termination of that undertaking.
- (4) By a special resolution to dissolve.
- (5) By the company becoming bankrupt.

Thai Civil and Commercial Code, section 1237 states that

"A limited company may also be dissolved by the Court on the following grounds:

- (1) If default is made in filing the statutory report or in holding the statutory meeting.
- (2) If the company does not commence its business within a year from the date of registration or suspends its business for a whole year.
- (3) If the business of the company can only be carried on at a loss and there are no prospects of its fortunes, being retrieved.
- (4) If the numbers of shareholders is reduced to less than three"



## Chapter 3

### Single Member Corporation in other countries

This chapter will explain single member corporation law and system of the United States of America, focusing on Delaware, the European Union, focusing on the United Kingdom law and France law, and close with study of corporation law of the People's Republic of China.

#### A. Single Member Corporations of the European Union

As a result of the EC Council Directive no.89/667/EEC permitting single member private companies with limited liability status, "The Companies (Single Member Private Limited Companies) Regulations 1992" was made effective in the UK on 15 July 1992. The regulations effectively permit single member companies in the UK and therefore amend the relevant sections of the Companies Act 1985 and the Insolvency Act 1986.<sup>4</sup>

##### 1. Single Member Corporation in United Kingdom

In the United Kingdom, the concept of a single member company is well established. Although, older versions of company law stated a company must consist of two or more persons, in fact single member corporation constitute the vast majority of business organizations. Thus, company law has brought single member companies into being. A "One Man Company" or a "Single-Member Private Limited Company" is a company with a single shareholder who is responsible for the company's management and is the sole beneficiary.

Twelfth Council Company Law Directive of 21 December 1989 on single-member limited liability company (89/667/EEC) was used in the U.K. with the Company (Single Member Private Limited Companies) Regulation, 1992 (1992 No.1699). The United Kingdom's Company Law, the single member corporation can be the private

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<sup>4</sup> Janja Bedrac, What makes a good company? Employee interest representation in European company law (Maribor : University of Maribor Press) 46-48 (May 2006).

company, which was established by one person as the sole shareholder or a public company.<sup>5</sup> The Company Act 1985 Section 24 says that<sup>6</sup> :

a. If a company, other than a private company limited by shares or by guarantee, carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that so carries on business after those 6 months:

(1) Is a member of the company, and

(2) Knows that it is carrying on business with only one member, is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

b. For the purposes of this section references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.

Moreover, single member corporation in U.K. can be subsidiaries or holding corporations. Company Act 1989 Section 144 states that;

a. A company is a “subsidiary” of another company, is a “holding company”, if that other company;

(1) Holds a majority of the voting rights in it, or

(2) Is a member of it and has the right to appoint or remove a majority of its board of directors, or

(3) Is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting right in it, or it is a subsidiary of a company which is itself a subsidiary of that other company.

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<sup>5</sup> Dragana Radenkovic Jovic, A Single Member Company Convenient or not for the Founders (Cambridge: Cambridge Press) 209-210 (2005).

<sup>6</sup> Guide to running a UK company – single member companies: information from company registration online, available at <http://www.companyregistration.co.uk/single-member-companies.asp>. (last visited 20 April 2008).

b. According to the UK Companies wholly Act (1948) if a) the parent company holds more than half of its equity share capital. b) The parent company controls the composition of its Board of Directors.

The lowest authorized capital of single member corporation was not limited. Thus, the share capital of a person could be £1 in value. The company's management must have a director, who is not a company secretary. Thus, the secretary of a single member corporation should be its officer or an employee. At shareholders meetings, the single member corporation uses the Company Act 1985 Section 382B:

a. Where a private company, limited by shares or by guarantee, has only one member and he takes any decision which may be taken by the company in a general meeting, and which comes into effect as if agreed by the company in a general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

b. If the sole member fails to comply with subsection (1) he shall be liable to a fine.

c. Failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.

The corporation's contract with the shareholders must be in writing, according to the Company Act of 1985 Section 322B:

a. Subject to subsection (2), where a private company limited by shares or by guarantee having only one member, enters into a contract with the sole the company shall, unless the contract is in writing, ensure that the term of the contract are either set out in a written memorandum, or are recorded in the minutes of the meeting of the directors of the company, following the making of the contract.

b. Subsection (1) shall not apply to contracts entered into in the ordinary course of the company's business.

c. For the purpose of this section, a sole member who is a shadow director is treated as a director.

d. If a company fails to comply with subsection (1), the company and every officer in it who is in default, is liable to a fine.



e. Subject to subsection (6), nothing in this section shall be construed as excluding the operation of any other enactment or rule of the law applying to contracts, between a company and a director of that company.

f. Failure to comply with subsection (1) with respect to a contract shall affect the validity of that contract.

A corporation's accounting and auditing procedures adhere to the same rules as the multi member corporation, Company Act 1989. But the wholly owned subsidiary, which is a single member corporation, is exempt from the requirement to prepare group accounts, if it is itself a subsidiary undertaking, and its immediate parent undertaking is established under the law of a member State of the European Economic Community.

As a result of the EC Council Directive no.89/667/EEC permitting single member private companies with limited liability status, "The Companies (Single Member Private Limited Companies) Regulations 1992" came into force in the UK on 15 July 1992. The regulations effectively permit single member corporations in the UK and therefore amend the relevant sections of the Companies Act 1985 and the Insolvency Act 1986.

The Companies Act 1985

"Section 1

(1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

The regulations effectively permit single member corporations in the UK and therefore amend the relevant sections of The Companies Act 1985 and the Insolvency Act 1986. The principle areas of amendment are:

#### **a. Company formation**

The regulation inserts an additional subsection (3A) to section 1 of The Companies Act 1985, which effectively facilitates the incorporation of single member companies. Section 1(3A) "Notwithstanding subsection (1), one person may, for a



lawful purpose, by subscribing his name to a memorandum of association and otherwise and otherwise complying with the requirements of this Act in respect of registration, for an incorporated company being a private company limited by shares or by guarantees.

**b. Minimum membership for carrying on business**

Under section 24 of The Companies Act 1985, if a company carried on business without having at least two members, for more than six months, the company effectively lost its limited liability status. However, “The Companies (Single Member Private Limited Companies) Regulations 1992”, amended this section by not applying s.24 to “a private company limited by shares or by guarantee”.

**c. Contracts with sole members who are directors**

The regulations in section 322 paragraph (B) required contracts with sole member who is also directors. The required disclosure is as follows:

(1) Subject to subsection (2), where a private company, limited by shares or by guarantee having only one member, enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company, following the making of the contract.

(2) Subsection (1) shall not apply to contracts entered into, in the ordinary course of the company's business.

(3) For the purposes of this section a sole member who is a shadow, is treated as a director.

(4) If a company fails to comply with subsection (1), the company and officer to of it who is in default, is liable to a fine.

(5) Subject to subsection (6), nothing shall be construed as excluding the operation of any other enactment or rule of law, applying to contracts between a company and a director of that company. Note that if the sole member is also the sole director, as a director, he must still declare his interest in the contract to himself. In addition, the provision of section 320 of the Companies Act 1985 will need to be considered.

(6) Failure to comply with subsection (1) with respect to a contract shall not affect the validity of the contract.

(7) In section 741 of The Companies Act 1985 (“director” and “shadow director”), in subsection (3) after “sections 320 to 322 (substantial property transactions involving directors)”, delete “and” and insert “section 322B (contracts with sole members who are directors).”

**d. Company secretarial disclosure of single member status**

The fact that the company become a single member corporation or ceases to be a single member corporation must be stated on the member’s register.

The Companies Act 1985 is amended with an additional insertion to section 352, with read:

(1) If the number of members of a private company limited by shares or by guarantee falls to one, there shall upon the occurrence of that event be entered in the company’s register of members, with the name and address of the sole member.

(a) A statement that the company has only one member, and

(b) The date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members, there shall upon the occurrence of that event be entered in the company’s register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member, together with the data on which that event occurred.

(3) If a company makes default in complying with this section, the company and every officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

**e. Meeting**

Section 370 of the Companies Act 1985 states that “the quorum for a Single Member Company is one member present in person or by proxy”.

**f. Recording of decisions by the sole member**

(1) Where a private company, limited by shares or by guarantee, has only one member and he takes any decision which may be taken by the company in a general meeting and which has effect, as if agreed by the company in a general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of the decision.



(2) If the sole member fails to comply with subsection (1) he shall be liable to a fine.

(3) Failure by the sole member to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.

**g. Registration of single member corporations**

Section 680 of the Companies Act 1985 is amended to allow registration of single member corporations as a private company limited by shares or guarantee.

**h. Circumstances in which a company may be wound up**

Under section 122(E) of The Insolvency Act 1986, a company may be wound up if its members are reduced below 2. The Companies (Single Member Private Limited Companies) Regulation 1992 alters this to apply only in the case where a company is not a private company limited by shares or by guarantee.

**2. Single Member Corporation in France**

In France, company law has three functions in establishing business. It defines the rights and responsibilities of shareholders, the company management and the use of capital. The single member corporation is a type of limited company, and is called “une entreprise unipersonnelle a responsabilité limitée” (E.U.R.L). The Company Act for single member corporations is the same as the one for multi-member corporations, except that the law has specific criteria for single member corporations. The Act of Congress No.66-537, July 24, 1966 was the first law passed, governing single member corporations. At the present time, the Act of Congress No.85-697 of July 11, 1985 is enforced. This act support small and medium-sized companies. There are two way establishing single member corporations in France. The first is for a particular individual to found a company; the second is for all the shares to belong to one person only. This person cannot wind up the company. Thus the single member must separate his or her own liability and property from the company’s liability and property. The assets of a single member corporation may be transferred to a multi-member corporation.<sup>7</sup>

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<sup>7</sup> Somsak Nayatrakonpisut, “Single member company in French law,” Nitisart Journal (January 2001): 384-397.

The single person's authorized capital is limited to 50,000 francs. If the shareholders offer property rather than money, a "commissaire aux apports" would be set up to do the accounting. The sole member may be a natural person, or a legal person, who can be a shareholder in another multi-member company, but is not permitted to be the shareholder in another single member corporation.

At shareholders' meetings, these must be the correct documentation, and it must be sent to the chief district officer. Shares may be transferred to a third party, but any transfer must be in writing, and the relevant document must be sent to the contact is the same as for a multi-member corporation. If the sole member is a natural person, then financing will be for natural persons. If the sole member is a member of the judiciary, financing will be governed by this, and it must be administrated by a third party. The winding-up of a single member corporation is done in the same way as for a multi-member corporation.

There are three main company structures in France:

1. Public Limited Company (Société Anonyme : SA)
2. Private Limited Company (Société à Responsabilité Limitée : SÀRL)
3. Sole Trader Private Limited Company (Entreprise Unipersonnelle à Responsabilité Limitée : EURL)

### **Corporation Structures in France**

SÀRL - Société à Responsabilité Limitée. Private Limited Company is used in France and other French speaking countries for small companies. Minimum 2 partners. Maximum 50 partners. Minimum capital €7,500, 20% released on incorporation and remainder within 5 years.

SAS - Société par Actions Simplifiée. Joint Stock Company is a new company type with an expanding future. 1 person, personal or professional body. Minimum capital €37,000, at least 50% released on incorporation and remainder within 5 years.

SA - Société Anonyme. Public limited Company is for both large even, listed companies and much smaller ones too. Minimum 7 shareholders. Minimum capital €37,000, at least 50% released on incorporation and remainder within 5 years.



EURL - Entreprise Unipersonnelle à Responsabilité Limitée. Sole proprietorship with Limited Liability. 1 person. Minimum capital €7,500, 20% released on incorporation and remainder within 5 years.

SCI - Société Civile Immobilière is a Partnership.

### **EURL - Entreprise Unipersonnelle à Responsabilité Limitée**

An Entreprise Unipersonnelle à Responsabilité Limitée - EURL, is a private limited company with one shareholder. The EURL is run by a manager who may be either the sole partner, or a third party. The manager's appointment and powers are detailed in the Articles of Incorporation.

#### **The Characteristics of EURL<sup>8</sup>:**

1. Only a nominal capital requirement - minimum capital of 1 euro.
2. One shareholder. This can be a company or an individual.
3. Up to 50 partners are permitted.
4. For small enterprises based on one person.
5. Simple to set up and operate for a closed structure, procedures are less formal.
6. Transfer of the shareholdings to family members is usual.
7. Fiscal transparency is usual although company tax can also be levied, depending on the facts and agreements with the French fiscal authorities.
8. Subject to transfer tax in the event of the sale of shares.

### **B. Single member corporation in Australia**

Australia is a federation of eight different States and Territories. The Corporations Act of 1989 established the concept of an 'Australia company'. This Act is administered by the Australia Securities and Investment Commission (ASIC), with one computer system containing records for all companies operating throughout Australia. To establish a

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<sup>8</sup> Nicholas Foster, "Company Law Theory - England and France," *American Journal of Comparative Law*, 48 (November 2000): 573-621.

company in Australia, investors may choose to either found a company themselves or to purchase a 'shelf company', being a company that is not traded.<sup>9</sup>

As commerce developed, Australia tried to standardize company legislation, using different methods including the Co-operative Scheme in 1980s and the Corporation Act 1989. But the latter was held to be unconstitutional by the High Court. However, a special solution was finally found, after a general agreement was arrived at between the Attorneys-General of the Commonwealth and the six states. The Corporations Law came into force on 1 January 1991. In order to make it more rational, many of the older laws were incorporated into it, so that it "is unique in the world in that it contains in a single statute the laws relating to companies, accounts, securities markets, takeovers and insolvency". It became incredibly complex with 22 chapters, two schedules and 1,362 sections. In 1991, there were 892,749 companies, of which 10,402 were public companies and the number of the listed companies was only 1,096. However, the Corporations Law applied ally to all these 892,749 companies, regardless of size.

There was really a need for reform. As a consequence, the Labor Attorney-General established in 1993 a Corporations Law Simplification Task Force, to introduce the Corporate Law Simplification Program. Thus was replaced in May 1997 by a Liberal Federal Treasurer's Corporate Law Economic Reform Program (CLERP). Both the two programs have made substantive changes to the Corporations Law. Is the Corporations Law still too complicated?

The objective of the Corporate Law Simplification Program was to render the Corporations Law "capable of being understood, so that users can act on their rights and carry out their responsibilities". Accordingly, the Simplification Task Force targeted seven priority areas including small business, share buy-backs, capital rules, annual reporting, registers, company names and meetings. It also identified three components for simplification, which were simplification of content, clarification of drafting and comprehensive consultation. As for simplification of content, the plan was to streamline the Corporations Law, promote consistency and coherence; strip away unnecessary complexities maintain effective protection for investors and bring cost benefits to relevant authorities. As for the clarification of drafting, the program adopted principles of plain English to meet the needs of a variety of types of users.

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<sup>9</sup> ASIC: Australia Securities and Investment Commission. 2009



The program also called for extensive consultation, particularly with those most closely associated with its operation and administration.

The Simplification Task Force's first achievement was Law Simplification Act 1995 (Cth) (The Simplification Act), which came into force on 9 December 1995. It effected substantial changes in three areas: proprietary companies, share buy-backs and company registers.

The highlight of the Simplification Act is the introduction of a "Small Business Guide" as Part 1.5 CL and it is also available as a separate publication. In 11 sections it clearly outlines central rules including the rights, obligations and duties for most small business. The Simplification Act also made annual general meetings optional, reduced accounting and financial reporting requirements, and permitted single director companies and single member corporations.

As to the share capital, the changes include that the par value for shares and the concept of authorized share capital are abolished, the need for court approval for capital reductions and shareholders' approval for financial assistance are also removed, and a number of changes are made with respect to the procedures for the issuing of shares.

As mentioned above, the Corporate Law Simplification Program was replaced by the CLERP following the change of the Federal Government. The objective of the CLERP was "to ensure that business regulations is consistent with promoting a strong and vibrant economy and provides a framework which assists business in adapting to change" Accordingly, the reforms of companies and securities regulation aimed to "facilitate a more efficient and competitive business environment". "As part of the Coalition Government's drive to promote business and economic development". The CLERP adopted an economic approach to corporate regulation. The key principles include markets freedom, investor protection, information transparency, cost effectiveness, regulatory neutrality and flexibility, and business ethics and compliance.



### **C. Single Member Corporations of the United State of America**

The Company Law of the Central Government of United States of America and the company law of the states of United States of America state that, “the company must corporate by two or more persons may, complying with the provisions of this code, promote and form a limited company”. There are two types of corporations in the USA, a Close Held Corporation and a Public Held Corporation. The Public Held Corporation sells their shares to the general public. The Close Held Corporation, is as general company limited, is usually a small company which has a few shareholders, who manage the company by themselves. Transfers of share must be agreed by the other corporate shareholders, according to the specific rules applying to the close held corporation.

The Single-Member Limited liability Company is popular, because a large group of business organizations in USA have only one person. The single member does not pay tax as a legal person. The administration of the USA was delegated to each state. The company laws comply with the Uniform Limited Liability Company Act (1996) and the State Limited Liability Company Act, for example, the State of Delaware Limited Liability Company Act.

The State of Delaware is the first state that granted the right of one person hold the limited liability company. In 1982, the State of Florida passed the single member company law. In 2003, every state has the single member corporation law. For holding the single member corporation is suitable for the small and medium sized enterprises. The rules of corporation's benefit is as the rules of the multi-member limited liability company, but the taxation is difference from the multi-member limited liability company, because the single member corporation has no legal status in tax law.

The State of Delaware Limited Liability Company Act did not specify what capital should be, but it must be tangible, intangible, cash, promissory notes, services performed, agreement to contribute cash or property or contracts for services to be performed. And the member means a person who has been admitted to a limited liability company as a member, as provided in section 18-301 of the Delaware Limited Liability Company Act or, in the case of a foreign limited liability company,

in accordance with the laws of the state or foreign country or other foreign jurisdiction, under which the foreign limited liability company is organized.

The state of Delaware is fast becoming renowned as a business haven for corporations looking for a business-friendly environment. With its low tax incentives and increased confidentiality, these factors can provide an attractive advantage to you and your business. The established corporations in the State of Delaware require at least one director, the directors are not required to be listed in the articles of incorporation, and an increase in the shares may cause an increase in the initial filing fee.

Delaware has 0% corporate income tax rates for companies not operating within the state, though all Delaware corporations must pay an annual corporate franchise tax.

“Section 101

(a) Any person, partnership, association, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may incorporate or organize a corporation under this chapter by filing with the Secretary of State a certificate of incorporation which shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title.

(b) A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the constitution or other law of this State.”

The conclusion, the status of the single member corporation in the United States of America Act is the specific business organization, which merges the concepts of corporation and partnership. It separated the legal person from the corporate member. The single member corporation pays tax in the name of only one shareholder.

## **D. Single Member Corporation in China**

In China, one person is allowed to apply for opening a limited company with a minimum capital of 1,000,000 yuan. The amended law of China prescribes that the



owner should pay the investment capital at one time, and bars him from opening a second company of the same kind.<sup>10</sup>

“Article 3 Company is an enterprise juridical person, which has independent juridical person property and enjoys the property right of the juridical person. And it shall bear the liabilities for its debts with all its property. As for a limited liability company, the shareholders shall be responsible for the company to the extent of the capital to be responsible for the company to the extent of the shares they have subscribed to.”<sup>11</sup>

Formerly, only state-owned limited liability companies could have less than two shareholders. The revised law permits, for the first time, single member limited liability companies to be formed.

Several safeguards are also in place to prevent the shareholder from abusing its position as sole shareholder and taking advantage of the company's assets for personal use. The minimum registered capital for a single member corporation is set at RMB 1,000,000 (approximately U.S. \$12,450). This must be paid in full at the time of incorporation. At the same time, if the shareholder fails to prove that his or her assets are separate from the company's assets, the shareholder will be personally liable for the company's losses and damages. Natural persons are permitted to set up only such a company, and that company is not allowed to set up another single member corporation.<sup>12</sup>

From the analysis of the structure and the character of the incorporated company, it is easy to find that the reasons for this issue must be clarified as follows:

- a) The purpose of maintaining the independence of the corporate company;
- b) The purpose of preventing the assets or property of the company from being mixed up with those of the members;

<sup>10</sup> One-person company is a great prospect for lone entrepreneur, available at <http://economictimes.indiatimes.com/article/show/msid-2651202,prtpage-1.cms>. (last visited 5 November, 2008).

<sup>11</sup> The Company Law of the People's Republic of China. Revised for the third time at the 18th Session of the 10th National People's Congress of the People's Republic of China on October 27, 2005.

<sup>12</sup> Jianhong Fan, Survey of the Chinese investment company in the form of the single-member private limited liability holding company (Beijing : Beijing Publishing) 30 (May 2006).



c) The purpose of separating the liability of the incorporated company from that of the associated members.

In China, the modern concept of a company with limited liability was introduced as company law in 1994. Before this particular law was passed, the concept of the sole trader was dominant, and was a key factor in the privatization of the Chinese economy. To encourage investment, the new company law has swept away restrictions on setting up companies. So, some unreasonable restrictions have been abolished, including the requirement for a minimum membership in order to register a limited company. This is in accordance with the recent reform of the China Company Act (2006). It is unavoidable that some serious problems will arise, with regard to the new concept of the Single Member Corporation, which has done away with the minimum requirements regarding the number of member. If we examine the issue more closely, it is clear that the potential dangers of the implementation of the new legislation must be spelt out. (a) Although the new organizations may attract more private capital, it is necessary to provide a legal framework, so that sole traders are able to avoid unlimited liability. In the other hand, however, it may undermine the loyalty of the business community, which has been established for many years. (b) The incidence of business crime may well increase in the new business structures, as unscrupulous individuals take advantage of the Single Member Corporation to commit serious found. (c) It will tend to confuse the issue of legal authority in judicial practice, e.g. has to separate the liability of the incorporated company from that owned by the associate member.<sup>13</sup>

In conclusion, a single member corporation is not the appropriate choice for the economic development of Chinese society. It has the potential to seriously damage the development of the Chinese Market economy.

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<sup>13</sup> One-man limited company, available at [http://www.jowandray.com/webs/new\\_sinfo.php?news\\_id=2&chanel=1](http://www.jowandray.com/webs/new_sinfo.php?news_id=2&chanel=1), (last visited 15 June, 2008).

## **Chapter 4**

### **Analysis of the Research Problem**

In many countries, the Single Member Corporation is not a new type of corporation. It is just one of the many types of corporation that limit general liability. Therefore, the rules and regulations that affect Limited Corporation, to which the shareholders are subject, can also be used for the single Member Corporation. However, some principles are exempted. Some laws strengthen one share holding companies. The Single Member Corporation has been regarded as the oldest business and most popular until now. The structure of the business organization is suitable for small businesses that have one entrepreneur. The type of the business, however, can be adapted to both businesses, no matter whether the businesses are big or small. It can be applied for use in the mining industry, oil drilling, real estate and even the meatball business. The big companies like American's Zier began as single Member Corporation.

This chapter will analyze in problem on accordingly.

#### **A. Why should Thailand adopt single member corporation system?**

The single member corporations system has been established in many countries, because it is a very useful form of modern business organization, for small and medium sized enterprises. This type of business organization is very popular, because it requiring a single member and small capital sums to set up the corporation. In the United Kingdom, the single member corporation can solve the problem of nominating a shareholder. In France, the single member corporation can address the problem of single member liability in a corporation. In United State of America and China, the single member corporation is useful for overseas companies, such as American and Chinese who would like to invest in other countries, and for foreigners who would like to invest in the USA and China.

On the basis of 1) limited liability 2) Control manages of the business 3) non-profit sharing.



The single member corporation in many countries was developed from the Company Act of the multi member corporation. Some countries still use the same act for a multi member corporation, but include specific acts for the single member corporation.

The single member corporation is the most prevalent of all business organizations but has the smallest percentage of sales. There are several advantages of sole proprietorship and most are quite obvious. The single owner will have complete control over the business and also reap all of the monetary gain of the business. The single member corporation is also the easiest business to start up, and the easiest business to wind up. On the other hand, investors are incurring risks if they have a limited source of funds and unlimited liability. Regardless, of this the single member corporation works well for most people who are starting up a new business.

**The advantages and disadvantages of a single Member Corporation are the following;**

Thailand should adopt the single member corporation system. In my analysis of the single member corporation in many countries, I found that:

**Advantages**

1. To support the Small and Medium-Size Enterprises. The Twelfth Council Company Law Directive of 21 December 1989 on single member private limited liability company (89/667/EEC) that is used in the European Union supported the established single member private limited liability company.
2. The single member corporation can solve the crisis between organizational conflicts and benefits. Because the only shareholder will manage his organization to the reap the greatest benefits.
3. The single member corporation can solve the problem of the control monitor in the organization. In the multi member corporation, some of the shareholders are nominees, who never control the monitoring of the organization.
4. The single member corporation owner has the intention of establishing the organization.
5. The single member corporation does not separate ownership and control.
6. The single member corporation is the legal entity, which includes limited liability in the share value.



### **Disadvantages**

1. The single member corporations will organize their business based on the highest profits, and will not accept any social responsibility.
2. The single member corporation, the only one-member will usually refuse the fiduciary duties, the duty of care and the duty of loyalty.

The trend of single member corporations may extend to:

1. The single member corporation act is used by the foreign company or Multinational Corporation.
2. The single member corporation act is used by the joint venture company.

### **B. The Problems on Introducing the Single Member Corporation into Thailand.**

Thai Civil and Commercial Code, section 1012 show that the partnership and corporation is a type of contract, which is the special generis, deferent form the another contract and the specific contract. The partnership and corporation contract have 4 terms for consideration:

1. Must have more than two persons
2. These persons have to make the contract to share capital
3. To do same activities
4. To share the profit income from the activities.

Thai Civil and Commercial Code, section 1097 “Any three or more persons” to company’s operation relates to 3 types of person. They are the shareholder, manager and the accountant.

#### **1. Incorporation**

The contract for the organization is a type of contract, which is contributed by two or more persons, who agree to unite for a common undertaking, with a view of sharing the profits which may be derived. However, this type of contract used for ordinary partnerships and limited partnerships, except the limited companies. The contract

for limited companies must have seven or more person, the contract for public companies must have fifteen or more persons.<sup>14</sup>

## **2. Management**

For the partnership or company management, all the partners can manage the partnership as the sole-enterprise. But the result of management was related to the other partner. All the partners are jointly and unlimitedly liable for all the obligations of the partnership. Limited partnership: it is a kind of partnership in which there are two kinds. Firstly, a limited partnership which one or more partners whose liability is limited to such amount as they may respectively undertake to contribute to the partnership. Secondly, unlimited partnership which one or more partners who are jointly and unlimited liable for all the obligation of the partnership.

## **3. Dissolution and Liquidation**

The corporations are dissolved in cases: if any, provided by the contract of partnership. If made for a definite period of time, by the expiration of such period. If made for a single undertaking, by the termination of such undertaking. Section 1056 of Thai Civil and Commercial Code, states that “By any the partners giving to the other partners due notice” and

“By the death of any partner or by any partner or by any partner becoming Bankrupt or incapacitated”

\* After the dissolution of partnership the liquidation shall take place, unless some other method of adjustment of property between the partners has been agreed upon or unless the partnership is adjudicated bankrupt. If the dissolution is brought about by notice given by a creditor of one of the partners or by the bankruptcy of one of the partner, the liquidation can only be dispense with by the consent of the creditor or of the official receiver.

## **4. The transaction**

Thai Civil and Commercial Code, section 1208. “The accountant may be shareholders of the company; but no person is eligible as an accountant who is interested otherwise than as a shareholder in any transaction of the company, and no director or other agent or employee of the company is eligible as an auditor during his

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<sup>14</sup>Act of Parliament the Public Corporation B.E.2535 Section 16. Any fifteen or more persons may, by subscribing their names to a memorandum and otherwise complying will provisions of this code.

continuance in office.”The accountant of single member corporation should be hold the audit committee, who is not married couple, child or parents of the one shareholder, to evaluation the control monitor, and account audit and performance audit.

Normally a limited partnership have only one partner, who is unlimited liable for all the obligation of the partnership and manage the limited partnership.

**a. A shareholder.**

**(1) Contracted to company**

A single member corporation enters into a contract with the sole member of the company and the sole member also represents the company in the transaction, whether as a director or otherwise. The company shall, unless the contract is in writing, ensure that the terms of the contract are forthwith set out in a written memorandum, or are recorded in the minutes of the first meeting of the directors of the company, following the making of the contract.

**(2) Transferring the company's shares**

A single member corporation' shareholder could transfer all or a part of his own share to other people without obtaining permission. However, share transfers must be in writing, if done by a private agent or a certificate by the government office, was called a “notaire”

Moreover, the death of single shareholder does not mean the dissolution of company, unless it was so stated in the company contract. The share can be transferred to the single shareholder's heir, or heirs. If there are two or more persons, the company will be the general company.

**(3) Financial System**

The financial system in the single member corporation, which is a legal entity, is controlled by the financial system governing legal entities. It cannot use the tax system of ordinary people. In the labor legislation with regard to single member corporation, the manager is included in the system of freelance employees. Thus, the manager cannot receive any benefits from the labor legislation.

**(4) Liquidation of Company**

In such cases, if any, it is stipulated in the company contract. The dissolution of single company, voluntary winding-up and compulsory winding-



up, is not liquidation. The division of property to the single shareholder and the company creditors must be done within 30 days after the liquidation of company.

In Thai law which to a limited company's status and formation, the law identifies roles of partnership and a shareholder. According to the law, the single member corporation's shareholder exercises legally his/her authority in a limited company meeting. The shareholder wants to make a decision by himself. He cannot mandate it to a third party. However, a shareholder's order that is authorized by the shareholder's meeting must be recorded in the registration book. It must be submitted to the judges in commercial, or district courts. It also must be submitted to the Chief District Officer in the area where the company is situated, to sign and keep it.

#### **b. The Company Manager**

A Single Member Corporation manager's brief is divided into 2 sections, the manager's qualifications and his authority.

##### **(1) The manager's qualifications**

The best person to act as a manager in a single member corporation is a shareholder and a third party. However, if the shareholder is a legal representative, legal act must be carried out by third party, because only a natural person can do it.

If the shareholder is a natural person, the share holder acts as a company manager. There would be no obligations that have been undertaken by manager that is out of company control. In case of a manager who is a third party, the shareholder should provide in the contract founding the company that any important actions must be approved by the shareholders in advance. There is some remuneration or no remuneration in the manager's function.

However, if the single member company shareholder is a company manager, there may be a dispute regarding of personal assets and company assets if the company is in a situation in which it is unable to pay debt. It does not only bring the company to a court of law to recover company business, but also expands the liability to the manager.

##### **(2) The Manager's authority**

Apart from managing the company, a manager must also draw up the company's annual budget and annual report. One shareholder can approve the

balance sheet within 6 months. Within a given time period, the manager must submit annual accounting statements to a commercial court, otherwise he would be fined.

### **c. Accountant**

A company that has one shareholder needs to appoint a company accountant, for these three duties;

1. Providing the company's annual budget
2. Obtaining money from the operation before paying tax
3. Monitoring the number of employees

Thai Civil and Commercial Code, section 1208. "The accountant may be a shareholder of the company; but no person is eligible to be an accountant who is interested otherwise than as a shareholder in any transaction of the company, and no director or other agent or employee of the company is eligible as an accountant during his continuance in office."

The accountant of a single member corporation should hold the audit committee, who is not married couple, child or parents of the one shareholder, evaluate monitoring, the account audit and the performance audit.

## **C. The single member corporation adapted in Thailand**

Thailand should adopt the single member corporation.

1. To enact the specific corporation law for the single member corporation, or incorporate it into the Civil and Commercial Code.
2. The single member corporation should be a type of private limited liability corporation. It should not be a type of Public Limited Corporation, because this type of corporation would have to use public capital and their business would usually have to be effective in the wider economy.
3. The new law should be introduced for the single member corporation, not as a type of Multi-member Corporation.
4. The new law should limit capitalization for the single member corporation.
5. The shareholder of the single member corporation must register as the sole member of a corporation.
6. The liability of a single member corporation is limited to this small capitalization.



7. If there are one or more persons, (may be a shareholder or a third party), one will be appointed corporation director. The single shareholder or corporation director cannot borrow the company's money.

8. The several corporation laws apply mutatis when liquidating the corporation.

A single member corporation owner in Thailand who is also the entrepreneur is at a disadvantage if he is compared with a corporation manager. A manager is responsible for reduction of the corporation's debts, in particular; the corporation formatting is a means of limiting the risk to assets. In other words, there are many small corporation, either public limited corporation or Limited Corporation, which have all manager or shareholder in the corporation.

The shareholder is usually is a family member, or spouse of that person. These shareholders do not really intend to work with the corporation. The shareholders have no participation in the corporation's activities. Only the manager is assigned to run the corporation.

An entrepreneur may opt for the single member corporation legal structure because no additional work needs to be done to start the business. In the most cases, there are no legal formalities to forming or dissolving a business. A sole proprietor is not separate from the individual; what the business makes, so does the individual. At the same time, all of the individual's non-protected assets (e.g. homestead or qualified retirement accounts) are at risk. There is not necessarily better control or business administration possible with a sole proprietorship, only increased risks. For example, a single member corporation or limited corporation still only has one owner, who can make decisions quickly without having to consult others.

Also another advantage of being a single trader is that the owner makes of all the decisions rather than consulting with a partner.

It is very necessary in Thailand to accept that single persons are able to manage businesses with limited liability, either new business organizations, or small and medium-sized enterprises. If we adopt the single member corporation, it will enable the business to grow.

The single member corporation is different from several member corporations, The owner will have unlimited liability for all debts incurred by



business, and the income or loss from the business will be reported on his personal income tax return, along with all other income and expenses he or she normally reports (although it will be on a separate form). Although proprietorship avoids the expenses of forming a partnership or corporation, many start businesses this way because they are unfamiliar with the other forms of organizations.



## Chapter 5

### Conclusions and Recommendations

#### A. Conclusion

Limited Corporation: Nature and Formation of Limited Corporation. Thai Civil and Commercial Code, section 1097 provides any three or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited corporation. The number of shareholders was reduced, from 7 persons to 3 persons, less than 50% compared with the former law. This new law is the opportunity for persons, who wish to establish a new corporation, to be the owner of a corporation. In the UK, or Australia, a single person is able to form a private limited corporation which may have limited shares or a guarantee. Such single-member corporation needs to have only one director, who may also be the corporation secretary. In Singapore, the single person may be an individual or a corporation. In the US, several states permit the formation and operation of a single-member Limited Liability Company (LLC). In China, one person is permitted to apply to start up a limited company with a minimum capital of 1,000,000 yuan. The amended law of China prescribes that the owner should pay the investment capital at one time, and bars him from opening a second company of the same kind.

In Thailand, small and medium-sized enterprises are encouraged by the government. In B.E.2545, there were 1,639,427 SME in Thailand, including 799,033 in B.E.2540. Moreover, 40% of GDP of Thailand comes from SME. There are many registered limited corporation in Thailand, that use another person's name to establish the corporation. Only one person can manage and make planning strategies for the corporation. The single member corporation is useful for business:

1. Single member corporations have limited liability, and the owner's assets and duties are separate from the company's assets and obligations.
2. To give the opportunity for persons with specific skills to become the owners of enterprises. By using their services to fund the enterprise, it is easier to secure loans from financial institutions and contracts guaranteeing staff.

I have studied the single member corporation in many countries. I believe that the single member company system is very advantageous for Thai business and investment in Thailand on the following;

- The single member corporation system gives the opportunity for specialists in many careers to have their own business.
- The law governing single member corporation will help only one shareholder to manage his business.
- The shareholder of the single member corporation can reap the greatest benefit from the corporation because the owner will carefully control and manage his/her company.
- The single member corporation system allows the freedom to trade for the international business organization.
- The single member corporation law will limit the liability in the company.
- The single member corporation law will manage taxation of the sole member.

Some legal literature trends to dispute the formation of a single-member corporation under the corporation law at a certain phase in order to deny it the benefit of limited liability, which brings with it many disadvantages for third parties. But as there are actual single-member limited liabilities Corporation with the participation of nominees, it is of no great significance merely to dispute the formal single-member corporation. In this regard the restrictions imposed by statute and case law are of great importance in practice.

Finally, if one looks at the problem of the single-member limited liability corporation from a comparative point of view, one can make judgments from well-known cases from other countries. On this matter there are references in Chinese legal literature to theories and cases from the USA and Germany, such as, for example, the doctrine of piercing the corporate veil from the USA, as well as to circumstances such as illegality, insufficient capital resources, the dummy corporation and economic unit theory etc.



## B. Recommendations

The single member corporation system is useful to support the Small and Medium-Size Enterprises. It can solve the crisis between organizational conflicts and benefits because the only shareholder will manage his organization to reap the greatest benefits. The single member corporation can solve the problem of the control monitor in the organization. In the multi member corporation, some of the shareholders are nominees, who never control the monitoring of the organization. The single member corporation owner has the intention of establishing the organization. The single member corporation does not separate ownership and control. The single member corporation is the legal entity, which includes limited liability in the share value.

According to Thai Company Law should be introduced and enacted for a new type of single member corporation, by applying a principle of partnership and corporation. There should be a specific provision of single member corporation, as a part of relationship with third persons, dissolution and liquidation of corporations. The French single member corporation, Sole Trader Private Limited Company (Entreprise Unipersonnelle à Responsabilité Limitée : EURL) should be adapted as a model. EURL is a private limited company with one shareholder. The EURL is run by a manager who may be either the sole partner, or a third party. The manager's appointment and powers are detailed in the Articles of Incorporation.

The Single Member Corporation in Thailand should be a legal person because it should be useful for the shareholder defining his responsibility in liability and taxation.

Thai single member corporation law should be applied to the Civil and Commercial Code and these should specific rules for the single member corporation.

1. A single member corporation should be a private limited liability corporation. It should not be a public limited corporation, because this company has to use public capital and their business must usually be effective in broad economic terms.
2. The law should limit the 'paid-in capital' for the single member corporation.
3. The responsibility of a member corporation is limited in his or her paid-in capital.
4. There are one or more persons, who are nature personality (may be shareholder or third party), will be company director. The single shareholder or company director cannot loan company money.

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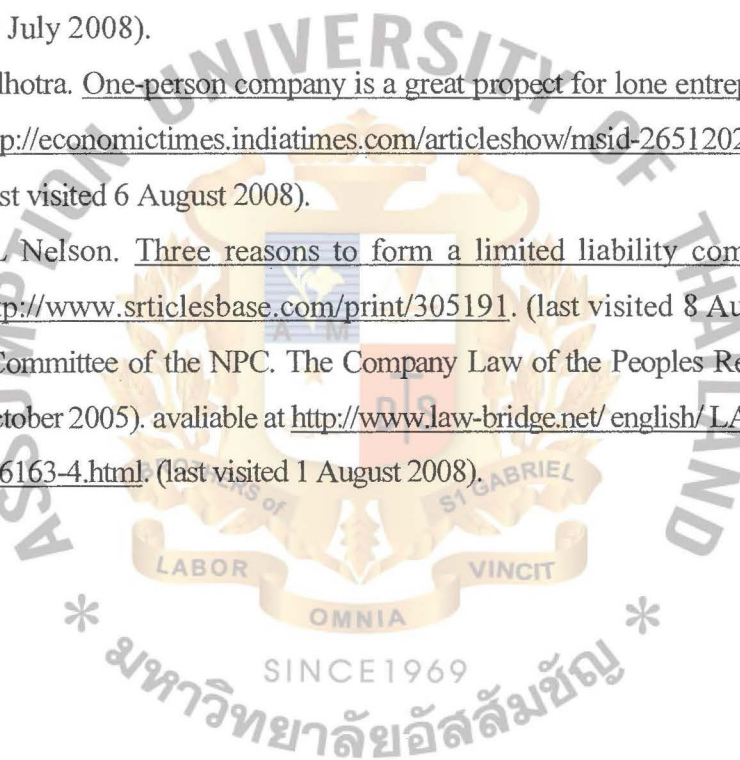
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## Appendix A

**EUROPEAN COMMUNITIES (SINGLE-MEMBER PRIVATE LIMITED  
COMPANIES) REGULATIONS, 1994.**



**EUROPEAN COMMUNITIES (SINGLE-MEMBER PRIVATE LIMITED  
COMPANIES) REGULATIONS, 1994.**

I, RUAIRÍ QUINN, Minister for Enterprise and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 89/667/EEC of 21 December 1989<sup>(1)</sup>, hereby make the following Regulations:

<sup>(1)</sup>O.J. No. L395, 30-12-1989, Pp. 40-42.

*Citation, Commencement and Construction*

1. (1) These Regulations may be cited as the European Communities (Single-Member Private Limited Companies) Regulations, 1994.

(2) These Regulations shall come into operation on the 1st day of October, 1994.

(3) These Regulations shall be construed as one with the Companies Acts, 1963 to 1990.

*Interpretation*

2. (1) In these Regulations, unless the context otherwise requires—

"accounts" means the balance sheet and profit and loss account of a company referred to in section 148 of the Principal Act, together with any notes to or other documents annexed to the accounts in question giving information which is required by any provision of the Companies Acts, and required or allowed by any such provision to be given in a note to or a document annexed to a company's accounts;

"the Act of 1990" means the Companies Act, 1990 (No. 33 of 1990);



"the Companies Acts" means the Principal Act, and every enactment which is to be construed as one with that Act;

"the Directive" means Council Directive No. 89/667/EEC of 21 December 1989;

"enactment" includes an instrument made under an enactment;

"the Principal Act" means the Companies Act, 1963 (No. 33 of 1963);

"single-member company" shall be construed in accordance with Regulation 3 (1);

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the meaning in these Regulations that it has in the Directive.

(3) In these Regulations—

( a ) a reference to a regulation is a reference to a regulation of these Regulations unless it is indicated that reference to some other Regulation is intended,

( b ) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

*Single-member private companies, limited by shares or by guarantee*

3. (1) Notwithstanding any enactment or rule of law to the contrary, a private company limited by shares or by guarantee may be formed by one person, and may have one member (in these Regulations referred to as a single-member company), to the extent permitted by the Companies Acts and these Regulations.

(2) Any enactment or rule of law which applies in relation to a private company limited by shares or guarantee incorporated under the Companies Acts shall, in

the absence of any express provision to the contrary, apply with any necessary modifications in relation to a single-member company as it applies in relation to such a company which is formed by two or more persons or which has two or more persons as members.

(3) Without prejudice to the generality of paragraphs (1) and (2), the Companies Acts shall have effect with the modifications specified in these Regulations.

*Formation of a single-member company*

4. Notwithstanding section 5 (1) of the Principal Act, one person may, for any lawful purpose, by subscribing his or her name to a memorandum of association and otherwise complying with the requirements of the Companies Acts and these Regulations relating to registration, form an incorporated company being a private company limited by shares or by guarantee.

*Company becoming a single-member company*

5. (1) A private company limited by shares or by guarantee registered with two or more subscribers to its memorandum of association, in accordance with the Companies Acts, shall become a single-member company, on such date as the number of members is reduced to one and all the shares in the company are registered in the name of a sole person.

(2) Where a company becomes a single-member company pursuant to paragraph (1) it shall cause that fact and the date on which it became a single-member company and the identity of the sole member to be notified in writing in the prescribed form to the registrar of companies within 28 days after the date on which the number of members is reduced to one.

(3) If a company fails to comply with the requirements of paragraph (2), the company and every officer of the company who is in default shall be guilty of an offence.

*Change in status of a single-member company*

6. (1) A company which is incorporated as, or becomes, a single-member

company, in accordance with the Companies Acts and these Regulations, shall cease to be a single-member company on such date as the number of members increases to more than one but shall continue to be a private company limited by shares or guarantee, as the case may be, while the number of members does not exceed 50.

(2) Where a single-member company ceases to be such pursuant to paragraph (1), it shall cause that fact and the date on which it ceased to be a single-member company to be notified in writing in the prescribed form to the registrar of companies within 28 days after the date when the number of members increased to more than one.

(3) If a company fails to comply with the requirements of paragraph (2), the company and every officer of the company who is in default shall be guilty of an offence.

*Non-application of section 36 of Principal Act*

7. (1) Section 36 of the Principal Act shall not apply to a private company limited by shares or by guarantee.

(2) Without prejudice to paragraph (1), a person who, before the coming into force of these Regulations, is liable by virtue of section 36 of the Principal Act (members severally liable for debts where business carried on with fewer than, in the case of private company, two members) for the payment of the debts of a private company limited by shares or by guarantee, shall not be so liable for the payment of the company's debts contracted on or after the date on which these Regulations come into force.

*Annual General Meeting*

8. (1) The sole member of a single-member company may decide, in the manner provided for in Regulation 9, to dispense with the holding of annual general meetings and, if he or she does so, section 131 of the Principal Act shall not apply to the company.

(2) A decision pursuant to paragraph (1) shall have effect for the year in which



it is made and subsequent years, but shall not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would, but for a decision pursuant to paragraph (1) be required to be held, and in which no such meeting has been held, the sole member or the auditor of a single-member company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such a notice is given, the provisions of section 131 of the Principal Act, other than subsection (2) thereof, shall apply with respect to the calling of the meeting and the consequence of default.

(5) Where a decision to dispense with the holding of annual general meetings for a single-member company pursuant to paragraph (1) is in force, the requirements in—

( a ) section 148 of the Principal Act that the directors lay accounts before the annual general meeting,

( b ) section 158 of the Principal Act that a directors' report shall be attached to the balance sheet,

( c ) section 193 of the Act of 1990 that the auditors shall make a report on the accounts of the company at the annual general meeting, and

( d ) Regulation 5 of the European Communities (Companies: Group Accounts) Regulations, 1992 ( S.I. No. 201 of 1992 ) that a parent undertaking lay group accounts before the annual general meeting,

shall be deemed to be satisfied where the said accounts and reports are sent to the sole member of the single-member company in accordance with section 159 of the Principal Act, with the modification that they shall be sent not less than 21 days before the appropriate date.

(6) A reference in any other provision of the Companies Acts to the accounts of a company laid before the annual general meeting of a company or the report of the auditors on or the report of the directors accompanying such accounts shall, in the case of a single-member company where a decision to dispense with the holding of annual general meetings pursuant to paragraph (1) is in force, be construed as a reference to the accounts and reports sent to the sole member in accordance with paragraph (5).

(7) If a decision to dispense with the holding of annual general meetings under paragraph (1) ceases to have effect, sections 148 and 158 of the Principal Act, section 193 of the Act of 1990, and Regulation 5 of the European Communities (Companies: Group Accounts) Regulations, 1992 shall, with any necessary modifications, apply in relation to the accounts and reports in respect of the financial year in which the decision ceases to have effect and subsequent financial years.

(8) For the purposes of the Principal Act, the requirements—

( a ) in section 127 that the annual return must be completed within 60 days after the annual general meeting,

( b ) in section 148 that the accounts must be made up to a date not earlier than the date of the annual general meeting by more than 9 months, and

( c ) in paragraph 5 of Part I of the Fifth Schedule that the list containing specified particulars of persons who are members on the 14th day after the company's annual general meeting

shall in the case of a single-member company where a decision to dispense with the holding of annual general meetings pursuant to paragraph (1) is in force, be read as relating to a similar period relative to the appropriate date.

(9) For the purposes of this Regulation, each year the "appropriate date" shall be

( a ) in the case of a single-member company formed as such and where a decision to dispense with the holding of annual general meetings is taken before the first such meeting is due, the last day of the month in which the anniversary of its formation falls;

( b ) in the case of a private company limited by share or by guarantee formed after the commencement of these Regulations which becomes a single-member company pursuant to Regulation 5 before holding its first annual general meeting and where a decision to dispense with the holding of annual general meetings is taken before the first such meeting is due, the last day of the month in which the anniversary of its formation falls; and

( c ) in the case of all other single-member companies, the last day of the month in which the anniversary of the last annual general meeting of the company was held falls.

*General Meetings — Powers exercisable by sole member*

9. (1) Subject to paragraph (2), all the powers exercisable by a company in general meeting under the Companies Acts or otherwise shall be exercisable, in the case of a single-member company, by the sole member without the need to hold a general meeting for that purpose.

(2) Paragraph (1) shall not empower the sole member of a single-member company to exercise the powers in sections 160 (2) (b), 160 (5), and 160 (6) of the Principal Act to remove an auditor from office without holding the requisite meeting provided for in the said provisions.

(3) Subject to paragraph (2), any provision of the Companies Acts which—

( a ) enables or requires any matter to be done or to be decided by a company in general meeting, or

( b ) requires any matter to be decided by a resolution of the company,



shall be deemed to be satisfied, in the case of a single-member company, by a decision of the member which is drawn up in writing and notified to the company in accordance with this Regulation.

(4) Where the sole member of a single-member company takes any decision which may be taken by the company in general meeting and which has effect, pursuant to paragraphs (1) and (3), as if agreed by the company in general meeting, he shall, unless the decision is taken by way of written resolution which he has already forwarded to the company, provide the company with a written record of that decision.

(5) Where the sole member notifies a decision taken by way of written resolution, or a written record of a decision taken pursuant to paragraph (4), to a single-member company of which he is the sole member, the notification shall be recorded and retained by the company in a book or by some other suitable means maintained for the purpose.

(6) The exercise by the sole member of a single-member company of any power, right or obligation under this Regulation, to which section 143 of the Principal Act, as amended, applies, shall, within 15 days, be notified by the company in writing to the registrar of companies and be recorded by him.

(7) If the sole member fails to comply with paragraph (4), or if a company fails to comply with paragraphs (5) or (6) the sole member, the company and every officer of the company who is in default shall be guilty of an offence.

(8) Failure by the sole member to comply with paragraph (4) shall not affect the validity of any decision referred to in that paragraph.

#### *Quorum*

10. Notwithstanding any provision to the contrary in the articles of a single-member company, one member present in person or by proxy shall be a quorum.

#### *Non-application of other provisions of Principal Act*

11. Sections 213 (d) and 215 (a) (i) of the Principal Act shall not apply to a

private company limited by shares or by guarantees.

*Connected person*

12. The sole member of a single-member company shall be deemed to be a connected person for the purposes of section 26 of the Act of 1990.

*Contracts with sole members*

13. (1) Subject to paragraph (2), where a single-member company enters into a contract with the sole member of the company and the sole member also represents the company in the transaction, whether as a director or otherwise, the company shall, unless the contract is in writing, ensure that the terms of the contract are forthwith set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Paragraph (1) shall not apply to contracts entered into in the ordinary course of the company's business.

(3) If a company fails to comply with paragraph (1), the company and every officer of the company who is in default shall be guilty of an offence.

(4) Subject to paragraph (5), nothing in this Regulation shall be taken to prejudice the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(5) Failure to comply with paragraph (1) with respect to a contract shall not affect the validity of that contract.

*Offences*

14. A person guilty of an offence under any provision of these Regulations shall be liable, on summary conviction, to a fine not exceeding £1,000.

GIVEN under my Official Seal, this 8th day of September, 1994.

RUAIRÍ QUINN,

Minister for Enterprise

and Employment.

#### EXPLANATORY NOTE.

These Regulations implement Council Directive No. 89/667/EEC on single-member private limited liability companies. The Directive requires Member States to provide for the formation of a company having one member and to permit a company to be a single member company, subject to certain safeguards. In relation to Ireland, it applies to private companies limited by shares or guarantee.

The Regulations provide that a sole person, whether natural or legal, will now be able to form or become a single-member limited liability company. The Regulations further provide that, subject to certain modifications, all the provisions of the Companies Acts which apply to private companies limited by shares or by guarantee will apply to single-member companies. For instance, the sole member, if he so decides, can dispense with the holding of General Meetings, including Annual General Meetings (AGM). However, certain notifications will have to be made. Also the accounts and reports that would normally be laid before the AGM of a company will still need to be prepared and forwarded to the member.



